

## **SPECIAL SESSIONS IN KANSAS**

### **BACKGROUND AND HISTORY**

#### GENERALLY

There are two types of legislative sessions—regular and special. A regular session is the annual (or biennial) gathering of legislators, typically with a start date and length determined by a statutory or constitutional provision. A special session occurs when the legislature is called to convene at a time outside the regular legislative session usually to address a particular topic or emergency. There is no specific timing for a special session. In most states, either the governor or the legislature may call a special session. In 16 states, only the governor may call a special session. In Kansas, the governor may call a special session, or the legislature may petition the governor to call a special session.

#### KANSAS

Article 1, Section 5 of the Constitution of the State of Kansas provides, “The governor may, on extraordinary occasions, call the legislature into special session by proclamation; and shall call the legislature into special session, upon petition signed by at least two-thirds of the members elected to each house.”

Originally, the constitution only allowed the governor to call a special session but was amended in 1972 to allow the legislature to petition the governor to call a special session. In 1974, the legislature enacted K.S.A. 46-1401 through 46-1403 to provide for the proper procedure for the legislature to petition the governor for a special session. Of the seven special sessions since the constitutional amendment allowing the legislature to petition the governor to call a special session, only the 2021 special session has been the result of legislative petition.

Though special session proclamations usually provide a particular start date and subject matter, once called, the length and subject matter of a special session may not be limited by the proclamation. In 2005 and 2013, the gubernatorial proclamations contained deadline dates for particular legislation to be passed. However, such deadlines have no legal force or effect (AG Op. 87-92).

There have been 25 special sessions in Kansas. The first was in 1874 to deal with a grasshopper plague destroying crops. The most recent special session in 2021 is to provide the state's response to certain federal COVID-19 mandates. Governor Alf Landon (1933-1937) called the most legislative sessions with three.

### PREVIOUS SPECIAL SESSIONS

**1874:** Gov. Osborn, 7 days—Address grasshopper plague destroying crops.

**1884:** Gov. Glick, 7 days—Address foot and mouth disease outbreak in cattle.

**1886:** Gov. Martin, 28 days—Address redistricting and appropriations.

**1898-99:** Gov. Leedy, 17 days—Regulate railroad charges.

**1903:** Gov. Baily, 3 days—Provide emergency flood relief.

**1908:** Gov. Hoch, 16 days—Regulate railroad rates, address banking regulations and create a primary election.

**1919:** Gov. Allen, 4 days—Ratify the 19<sup>th</sup> Amendment to the Constitution of the United States.

**1920:** Gov. Allen, 20 days—Address coal miners' strike and provide funding for Kansas National Guard expenses.

**1923:** Gov. Davis, 7 days—Address voter-approved payments to World War I veterans that \$25 million in bonds would not cover.

**1928:** Gov. Paulen, 3 days—Amend the Constitution of the State of Kansas to allow the state to build and maintain highways so as not to lose federal funds.

**1930:** Gov. Reed, 11 days—Amend the Constitutional of the State of Kansas with an amendment on tax policy.

**1933:** Gov. Landon, 25 days—Investigate municipal bonds and respond to federal banking and work relief laws.

**1934:** Gov. Landon, 6 days—Extend a mortgage foreclosure moratorium.

**1936:** Gov. Landon, 6 days—Amend the Constitution of the State of Kansas to allow the state to participate in the federal social security program.

**1938:** Gov. Huxman, 22 days—Amend welfare laws and increase state funding.

**1958:** Gov. Docking, 17 days—Respond to budget crisis after the Kansas Supreme Court struck down a mineral severance tax.

**1964:** Gov. Anderson, 6 days—Respond to one-person, one-vote U.S. Supreme Court ruling through redistricting.

**1966:** Gov. Avery, 14 days—Address legislative redistricting.

**1987:** Gov. Hayden, 6 days—Attempt to enact a comprehensive highway program.

**1989:** Gov. Hayden, 2 days—Extend deadline to pay property taxes.

**2005:** Gov. Sebelius, 12 days—Respond to a Kansas Supreme Court order regarding public school funding.

**2013:** Gov. Brownback, 2 days— Respond to a U.S. Supreme Court ruling regarding criminal sentencing procedures used to impose a 50-year mandatory minimum term of imprisonment ("hard 50").

**2016:** Gov. Brownback, 2 days—Respond to a Kansas Supreme Court order regarding public school funding.

**2020:** Gov. Kelly, 2 days—Respond to the COVID-19 pandemic and provide certain relief related to health, welfare, property and economic security during this public health emergency.

**2021:** Gov. Kelly (by petition)—Provide the state's response to certain federal COVID-19 mandates.

### **LEGISLATIVE PETITION**

Article 1, Section 5 of the Constitution of the State of Kansas allows the legislature to petition the governor to call a special session if at least two-thirds of the members of each chamber sign such a petition. K.S.A. 46-1401 states, “Whenever any legislator wishes to petition the governor to call a special session of the legislature as provided in section 5 of article 1 of the constitution of the state of Kansas, he shall subscribe the form prescribed in this section.” K.S.A. 46-1401 also provides the petition form and requirements for such petition, including sworn affirmation before a notary public. The Constitution and K.S.A. 46-1402 require the governor to call a special session when properly petitioned by the legislature. The constitutional provision allowing for legislative petition was enacted in 1972. There have been seven special sessions called since that time, but only one in 2021 has been the result of legislative petition.

### **GOVERNOR’S PROCLAMATION**

To call a special session, Article 1, Section 5 of the Constitution of the State of Kansas requires the governor to issue a proclamation. K.S.A. 75-403 requires that all proclamations issued by the governor be countersigned by the secretary of state. Once it is signed, the proclamation will be filed with the secretary of state pursuant to Executive Order No. 75-1. The original will remain in the secretary of state’s office, but for any certified copies, the secretary of state will “attach an official certification thereto under the secretary of state’s official seal,” pursuant to K.S.A. 75-409.

Historically, the governor’s proclamation has included both the date and time which the legislature will gather for the special session. However, Attorney General Opinion No. 87-92 states that the proclamation may not require an end date or limit the subject matter of the special session. If such proclamation does provide an end date or subject matter limitation, it will have no legal force or effect.

Because of the pressing nature of special sessions, the governor’s proclamation is typically issued less than a month before the start of the special session and can be within a few days. In 1987, the governor’s proclamation was issued on August 4 with the special session beginning on August 31. In 1989, the governor’s proclamation was issued on December 4 with the special session beginning on December 8. In 2021, the governor’s proclamation was issued on November 12 with the special session beginning on November 22. This date was required in the legislative petition to the governor to call the 2021 special session.

### **MESSAGE FROM THE GOVERNOR**

Article 1, Section 5 of the Constitution of the State of Kansas requires the governor to communicate in writing to the legislature at every session. This message from the governor includes priorities and need for a special session.

## **RESOLUTIONS**

### **ORGANIZATIONAL RESOLUTION**

At the beginning of each session, including special sessions, the legislature must organize and name its officers. Both chambers traditionally prepare an organizational resolution declaring the officers and notifying the other chamber that they are organized.

### **SEATING CHART RESOLUTION**

Pursuant to House Rule 2504 and Senate Rule 20, both chambers are to ensure that all current members have an assigned seat. Typically, this is done by adoption of a seating chart resolution.

### **CONCURRENT ORGANIZATIONAL RESOLUTION**

A concurrent resolution notifying the governor that the chambers are organized and ready to receive messages is prepared. This resolution requirement is implied by Article 1, Section 5 of the Constitution of the State of Kansas. The governor is required to send certain messages to the legislature, so it is necessary for the governor to know when the legislature is organized and prepared to receive such messages.

### **CONCURRENT ADJOURNMENT RESOLUTION**

The Constitution of the State of Kansas states that one chamber cannot adjourn without the consent of the other chamber. Traditionally, this is accomplished with a concurrent adjournment resolution. However, on one occasion in 1989, both chambers simply declared their respective chamber adjourned sine die.

## **BILLS**

### **REGULAR SESSION BILLS**

Regular session bills may not be acted upon during the special session. Article 2, Section 8 of the Constitution of the State of Kansas provides, in part, “Bills and concurrent resolutions under consideration by the legislature upon adjournment of a regular session held in an odd-numbered year may be considered at the next succeeding regular session held in an even-numbered year, as if there had been no such adjournment.” (Emphasis added.)

AG Opinion No. 87-92 states that bills and resolutions introduced, but not acted upon, during the preceding regular session may not be carried over to a special session.

### **SPECIAL SESSION BILLS**

Bills and resolutions introduced during the special session may not be carried over to the next regular session. AG Opinion No. 87-92 states that all bills and resolutions enacted during a special session must have been introduced during such special session.

#### PREFILED BILLS

Bills may not be prefiled for a special session. Both K.S.A. 46-801 and 46-804 specify that prefilng is specific to the “regular session.”

#### REFERRAL OF BILLS

All bills introduced during special session are referred by the presiding officer in each chamber in the same manner as during a regular session absent a specific rule adopted for the special session.

#### LIMITATIONS ON CONSIDERATION OF BILLS

Consideration of bills during a special session may be limited, but only by the adoption of a resolution. Such resolution may state that the only bills to be considered will be those introduced by specific committees. AG Opinion No. 87-92 states that the legislature may adopt a rule or resolution which would restrict the subject matter of bills which may be introduced during a special session. (e.g. 2005 SS HR 6003)

#### PASSING BILLS ON THE DAY THEY ARE INTRODUCED

During a special session, it is common for bills to move through the legislative process much faster than during a regular session. Sometimes a bill may pass on the day it is introduced. However, to do so requires special action because Article 2, Section 15 of the Constitution of the State of Kansas provides that “No bill shall be passed on the day that it is introduced, unless in case of emergency declared by two-thirds of the members present in the house where a bill is pending.” This constitutional provision requires two-thirds of the chamber to declare an emergency before it votes on a bill that was introduced that same day.

#### COMMITTEE MEETINGS

##### COMMITTEE MEETINGS PRIOR TO THE SPECIAL SESSION

A committee may meet in the interim prior to the special session to review or discuss issues. However, if members of the committee would like to be compensated for attending such meetings, the meetings must be approved by the Legislative Coordinating Council (LCC). During the interim, the LCC governs the affairs, meetings and activities of standing and other committees pursuant to K.S.A. 46-1202 and also governs the mechanics and procedures of all legislative committee work and activities. For a member to receive compensation, travel expenses and subsistence expenses or allowances for a standing committee, special committee or select committee that is meeting during the interim (except for the Ways and Means Committee of the Senate and the Committee on Appropriations of the House when meeting pursuant to K.S.A. 46-134a), pursuant to K.S.A. 46-1209, the committee meeting must be authorized by the LCC.

The LCC has previously authorized specific standing committees of the House and Senate to meet during the interim to study subject matters assigned to the committee by the LCC. In 1993, the

LCC designated all standing committees of the legislature as interim study committees and authorized them to meet and to conduct studies.

#### COMMITTEE MEETINGS DURING THE SPECIAL SESSION

Standing committees may meet during a special session upon call of the chairperson, but committee secretarial staff may or may not be available to such committees during a special session.

#### CONFIRMATIONS

##### JUDICIAL SELECTION

For confirmations of judges by the Senate, there is a statutory time limitation by which such confirmation must be done. It is the opinion of the Office of Revisor of Statutes that the time requirement does start if a special session is called. K.S.A. 20-3020 (b) provides:

“No person appointed pursuant to subsection (a) shall assume the office of judge of the court of appeals until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 60-day time limitation, the senate shall vote to consent to any such appointment not later than 20 days after the senate begins its next session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within 60 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the senate in the same procedure as provided in this section. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the time limitation imposed by this subsection, the senate shall be deemed to have given consent to such appointment.” (Emphasis added.)

The language does not distinguish between a regular session and a special session, but merely uses the term “session.” The legislative history was not clear as to whether or not this was intended to be limited to the regular session. Since it is not distinguished, the Office of Revisor of Statutes is of the opinion that “session” includes both a regular session and a special session.

The language does not address what role, if any, the Senate Committee on Confirmation Oversight would have in the court of appeals appointment process. The language states that no person appointed by the governor shall assume office until the senate acts on such appointment. Thus, K.S.A. 46-2601, which allows the Senate Committee on Confirmation Oversight to give temporary approval to a person appointed by the governor and authorize the person to exercise the powers, duties and functions of the office until such appointment is confirmed by the Senate, does not

appear to be applicable. When the Senate is in session, Senate Rule 56 provides that appointments “shall, unless otherwise ordered by the President, be referred to appropriate committees by the President.” The Office of Revisor of Statutes is of the opinion that Senate Rule 56 is applicable to the court of appeals appointment and would allow any appropriate committee to consider such appointment during the special session, upon referral by the president.