

Free term paper on constraints of nevadas legislature

[Law](#), [Constitution](#)



**ASSIGN
BUSTER**

Paper Due Date

Introduction

This paper provides details about Nevada's legislature and describes various aspects of the legislature including its democratic constraints (the initiative, the referendum, the recall, and affirmation of statutes), as well as its constitutional mandate to meet in alternate years for a period of only 120 days each time. The paper also compares Nevada's biennial legislature sessions with the methods used in other states and suggests some advantages and disadvantages of the two systems.

Historical Background

According to "The Nevada Legislature: A Brief History" (2011), the state legislature has always met in Carson City, though over time it has been located in different buildings. In accordance with the state's Constitution, the first session commenced in December 1864 (second Monday in the month) and the second session followed in January 1866 (first Monday in the month). The third of these regular sessions, which also became the first of the biennially-held sessions, began in January 1867 (first Monday in the month). Then, as a consequence of the outcome of an election held in 1889, the constitution was amended to start the legislature sessions on the third Monday of January each time. Finally, and over a century later, another constitutional amendment that was voted in, changed the start date to the first Monday of February every two years, and put a limit of 120 days on the duration of regular legislature sessions.

The same article ("The Nevada Legislature: A Brief History", 2011) related

that these regular sessions have – since 1867 – always been held in “ odd-numbered years” other than in 1960. That particular session resulted from a constitutional amendment passed in 1958 to hold sessions every year. However an initiative approved in 1960 brought about a return to the biennial pattern of sessions. The article reported that as well as all the regular sessions, there have been 26 other “ special” sessions. Those have to be called by the State Governor and can debate only the issues that he specifies. Between 2001 and 2010 there were 10 of those additional sessions and they were variously called to discuss issues such as “ reapportionment and redistricting, medical malpractice, taxation, budget reductions and the impeachment of one of Nevada’s constitutional officers.” That 120-day duration represented a doubling of the duration limit originally specified in the Nevada Constitution, which was observed in all the sessions convened in the 1890’s; none of them was longer than 55 days. On the other hand most of the sessions held during the 20th century ran for more than 60 days, although the sessions held between the years 1909 and 1957 were actually recorded as lasting 60 days, even though they overran that limit. The principle observed was that if business was not complete by the end of the 60th day, that “ final” day was interpreted as comprising an unlimited length in hours. As a result of these session overruns, the 60-day restriction was removed from the constitution by vote in 1958. An effect on the legislators was that they were only paid salaries for 60 days, however long the session ran; after 60 days they received only daily expenses.

In subsequent years the sessions tended to increase in duration. Between the years of 1989 and 1997, no session was shorter than 161 days, and the

two in 1995 and 1997 extended to 169 days. Those longer sessions encouraged some legislators to call for sessions every year instead of every two, but although there have been attempts to pass resolutions to that effect, none has so far succeeded. However, as reported in the referenced article, “ Senate Joint Resolution No. 3 of the 68th Session” was approved in 1998, officially extending the session duration limit to 120 days (“ The Nevada Legislature: A Brief History”, 2011).

Legislator Terms of Office

Senators serve four-year terms; Assemblymen two years. According to an initiative approved in the 1990’s Senators can serve for a maximum of three terms, whereas Assemblymen can remain in place for six terms. In other words, members of either house serve a maximum of 12 years. The Legislature controls its members and can remove individuals if needed, though so far that has not occurred. There is sometimes competition for places, though that has not usually resulted in any upsets (“ The Nevada Legislature: A Brief History”, 2011).

Evolution of the Legislature

The legislature has developed in line with the state of Nevada. For many years members voted on bills by responding to an alphabetically-sequenced “ roll call.” Then in 1973 a more modern system was introduced, whereby machines were used to register their votes simultaneously, viewing results on a display. In the beginning, bills were rarely printed and legislators had to rely on hearing them read. Then bills began to be printed, facilitating obtaining of them and any amendments by not just legislators, but also

legislature staffers and members of the public. From 1997, computers began to be utilized to a significant degree, and these days members each use laptops providing them with access to not just the texts of the bills, but a wealth of other information including “fiscal notes, committee minutes, live audio and video feeds of committee meetings, agendas, and more.” (“The Nevada Legislature: A Brief History”, 2011).

There has also been considerable change with time in respect of the support mechanisms for the legislature. In the early days there were many committees formed, though they did not often actually meet. Also, according to the referenced article there were “no posted agendas, periods for public testimony, or minutes. There were no secretaries to take the minutes, lawyers to draft bills, or researchers to provide background data.” In modern times, what committees there are meet under a set of dedicated rules and can meet in dual locations utilizing video conferencing facilities. They also have a trained and well-educated support staff, enlarged to virtually twice the base number during sessions. Since 1945 there is also a support body called the “Legislative Counsel Bureau (LCB)” which provides factual data support for the legislators. In addition, they have another body called the “Legislative Commission” that manages legislative issues occurring between sessions and oversees the LCB, which was itself reorganized in 1963, to bring it to the situation that exists today in terms of its structure and purpose. There are also other administrative bodies, bringing its current personnel strength to around 200, who provide both the Legislature’s houses with all-party support (“The Nevada Legislature: A Brief History”, 2011).

Overall, from those early years of the Nevada Legislature when it met in

makeshift premises, the Legislature has changed and grown dramatically – now operating in a well equipped building of almost 200, 000 square feet. According to “ The Nevada Legislature: A Brief History” (2011), the rapidly expanding population of Nevada and the more extensive utilization of technology in the systems involved in the operation of the Legislature, mean that it will continue to evolve.

Initiative, Referendum and Recall

Erquiaga & Cafferata “ Initiative” (2010) reported that the period around the turn of the 19th to 20th centuries – referred to as the “ Progressive Era” in terms of political reform in America, introduced three popular changes to the Constitution of Nevada. These were known as “ initiative, referendum and recall.” These provisions are described below:

Initiative. This is a process that affords voters the opportunity to “ propose and enact laws by a vote of the people.” As required by the terms of the Nevada Constitution, the legislature (in 1909 and again in 1911) enabled legislation that would allow “ initiative petitions” that would facilitate new laws coming into being. In the Nevada General Election of 1912, the initiative was approved by a 9 to 1 majority of the electorate. As Erquiaga & Cafferata explained, the initiative process in Nevada is in two parts, the first is to make the needed amendment to the constitution and the second is the creation of a new Nevada statute. The first part of the process is described as “ direct”, i. e. an individual compiles and distributes a petition calling for the amendment. The needed minimum number of signatures is equivalent to ten percent of the voter numbers in the last general election. There is also a

secondary condition regarding the signatures (though it is subject to challenge), which requires that the collected signatures originate from at least three quarters of the state's counties. When the required numbers of eligible signatures have been obtained, the issue is placed ready for a people's ballot, and must then be "approved in two consecutive general elections." For the second part of the process (creating or amending a statute), the procedure is called "indirect." The proposed law or amendment is tabled for the Legislature; if they adopt it, it becomes part of state law. If they don't, it is included in the ballot for the subsequent general election to be voted on by the electorate. Although the initiative process had been rarely used prior to 1980, initiatives had appeared since then in many general election ballots. Some notable initiatives involved amendments to the constitution concerning "the right to work, property taxes, personal income tax, term limits on elected office, campaign contribution limits, and recognition of marriage only between persons of the opposite sex."

Referendum. This is one of the political reforms enacted in the "Progressive Era" and was actually the first one, dating from 1904 (Erquiaga & Cafferata, "Referendum" 2010). As the article's authors explained, the term referendum in this context is used to describe a public vote that can decide whether to approve (or conversely to repeal) a piece of legislation enacted by Nevada's Legislature. According to state law, the voters' decision cannot be reversed by the state's legislators. The provision for referendums in Nevada was finally approved by the electorate in 1904 after being passed by the Legislature twice in 1901 and 1903, in accordance with the constitution. The vote in 1904 was over 5 to 1 in favour. As described earlier, the

referendum process starts with a petition.

Erquiaga & Cafferata reported that since 1908, referendums have in fact occurred only on five occasions. Four of the five were approved and one – the “ Rabies Commission Law” – was rejected by the electorate and therefore removed from the state’s statutes. Two of those that were approved concerned “ Sales and Use Tax” and “ the right to an abortion.” Recall Elections. This was the third provision of political reform added to the Nevada Constitution in the “ Progressive Era.” As described by Erquiaga & Cafferata, “ Recall Elections” 2010), the measure allows the electorate to “ remove an elected official from office before the end of the official’s term.” It can be used either to simply remove that person or to remove him/her to be replaced with someone else. According to the article’s authors, eighteen states have this provision, including Nevada. It should be noted that in the case of Nevada, Congress Representatives and U. S. Senators are not subject to recall elections; to remove one of those officials from office requires impeachment by their peers. Partly because the recall process is difficult, (often gathering insufficient signatures), of 108 recall notices filed from 1993 to 2004, only 20 officials were ultimately recalled. In Nevada, not a single state official has yet been recalled, although the process has been successfully used in certain counties, most particularly concerning trustees on school boards and certain city and town council or board members. It was noted by the article’s authors that an individual’s political allegiance is not a published factor in the associated ballots.

Statute Affirmation

Neitzke (2007) reported that Nevada is alone among 24 U. S. states that have provisions for referendums to also have “ Statute Affirmation.”

Associated with the referendum measure described earlier in this paper, this process prevents the legislature from ever amending or repealing a piece of legislation voted for by the required majority of the electorate. Neitzke quoted a relatively recent example of its use when in 1990 the people were able to prevent the legislature from cancelling women’s “ reproductive rights.” The Nevada Legislature was then unable to ever amend the state law under which abortion was legal. Neitzke considered that the “ Statute Affirmation” process made it easy to retain that law, but that without it the upholding of the abortion law could have been difficult.

More on Biennial Legislature Sessions

One may well ask why the Nevada State Legislature meets biennially and for only 120 days. The “ man in the street” may be forgiven for thinking that perhaps those running an organization as large as a state legislature need to meet not only more frequently, but for longer, too. However, one must remember that as with other similar state legislatures, Nevada’s does have the benefit of a considerable number of support staff keeping things ticking over when the legislature is not in session. Even so, there is surely a case for meeting annually rather than biennially although the electorate have in the past rejected that idea.

According to “ Annual versus Biennial Legislative Sessions” (n. d.), back in the 1960’s just 19 state legislatures held sessions every year and the rest

(31) met – like Nevada – on a biennial basis (and all in the “ odd” years).

Then, over time, more of those 31 states changed to annual sessions so that by the middle of the 1970’s 41 legislatures were meeting every year, although a few operated on what they called a “ flexible” basis, in which the overall session duration was split between two years. Today there are 46 state legislatures meeting each year, with only four left in the “ biennial club.” Those are Montana, Texas, North Dakota and of course Nevada. The article cited political scientists Keefe and Ogul as originators of arguments for and against biennial sessions. Some of those arguments are paraphrased below:

In support of the annual cycle of sessions, it is suggested that the complexity of today’s legislative issues are not satisfactorily handled with meeting every second year. The opposing argument suggests that we already have sufficient laws and that the biennial approach inhibits rushing into new legislation. A second argument in support of annual meetings is that increased frequency of meetings may elevate the status of that body, helping at the same time to keep power in local (state) hands. The opposing view is that annual sessions will result in unnecessary “ harassment” of the administration. An argument for the annual approach that offers significant credibility is that meeting biennially (referred to as “ operating in fits and starts”) is inefficient and ineffective and that annual sessions make for a “ more timely and orderly” process overall. The counterargument offered to that view is that annual sessions make for higher costs because the legislators and their support staff are assembled twice as frequently (“ Annual versus Biennial Legislative Sessions”, n. d.).

For this writer, the process practiced in Nevada for initiatives means that getting a new law “ onto the books” appears to take around three years, partly due to the biennial frequency of the legislature sessions. It would seem desirable for the people of Nevada to accelerate that lengthy process, which could certainly be easier if the sessions were every year instead of every two.

There are of course means to meet if matters are urgent. According to “ FAQ: The Nevada Legislature” (2012) although there is much background work that goes on between sessions (committees, etc), there is a provision whereby an emergency session can be called. However that can only happen: a) If at least a two-thirds majority of both the House and Senate request the Secretary of State to permit it, and b) The petition to the Secretary of State must provide full details of any bills to be discussed and on the understanding that it is not permitted to discuss any other business in that session.

Conclusions

Many of the systems and constraints which are a feature of the Nevada State Legislature are shared with other states, although the biennial frequency of their sessions is perhaps outmoded. With a rapidly increasing population and therefore an ever-increasing workload, meeting just once every two years for 120 days each time seems somewhat inadequate.

Nevada is very much in the minority of states still holding on to the biennial sessions approach. An obvious consequence is that new legislation takes around three years from inception to the statute books, which seems rather

a long time in today's age of high speed technology.

Also the affirmation of statutes provision of the Nevada state law is of concern. The concept that a law enabled in that process can never in the future be repealed or amended by legislators is a real issue. Things change, society changes; having laws permanently and rigidly set in stone seems somewhat of an anachronism in that context. However, on a positive note, the lengthy process involved in bringing a law into force in Nevada must help avoid the possibility of poorly-thought out legislation making it all the way through on to the statutes.

.

Works Cited:

- " Annual versus Biennial Legislative Sessions." National Conference of State Legislatures. (n. d). Web. Accessed 22 June 2013. Available from: .
- Erquiaga, D., & Cafferata, P. " Initiative." Online Nevada Encyclopedia. (2010). Web. Accesed 22 June 2013. Available from: .
- Erquiaga, D., & Cafferata, P. " Recall Elections." Online Nevada Encyclopedia. (2010). Web. Accessed 22 June 2013. Available from: .
- Erquiaga, D., & Cafferata, P. " Referendum." Online Nevada Encyclopedia. (2010). Web. Accessed 22 June 2013. Available from: .
- " FAQ: The Nevada Legislature." American Civil Liberties Union of Nevada. (2012). Web. Accessed 22 June 2013. Available from: .
- Neitzke, S. " States DD Chart." Direct Democracy League. (2007). Web. Accessed 22 June 2013. Available from: .

“ The Nevada Legislature: A Brief History.” State Library and Archives.
(2011). Web. Accessed 22 June 2013. Available from: .