



**WYOMING LEGISLATIVE SERVICE OFFICE**

# Memorandum

**DATE** November 19, 2020

**TO** Management Council

**FROM** Matt Obrecht, LSO

**SUBJECT** Consideration and Logistics for Delaying 2021 General Session

The COVID-19 virus continues to spread throughout the nation and the State of Wyoming, equally impacting urban and rural locations. Daily infections and hospitalizations have grown throughout the last month. There is nothing to indicate that the spread of the virus will lessen in the coming months, or if it does momentarily slacken, that it might not return with rates of infection similar to what we are currently experiencing. As this virus continues to infect a larger share of Wyoming's population, more and more of us have seen firsthand that COVID-19 is highly contagious and in some cases deadly.

The General Session of the Wyoming Legislature is set to begin on January 12, 2021 and to continue for up to 40 legislative days after that date. During a typical day of a General Session, up to 600 people pass through the Capitol Complex, including legislators, legislative staff, executive and judicial branch officials and employees, Wyoming Highway Patrol troopers, custodial staff, media, lobbyists, school children and members of the public. To further the necessary work of the Legislature, these people circulate freely throughout the Capitol Complex through the galleries, committee rooms, hallways and private offices. Close contact is helpful if not indeed required to express ideas, build compromises and find solutions in a legislative setting. For that and other reasons, conducting a remote General Session where upwards of 500 bills may be considered does not appear to be a practical, viable option. But that very need for a collaborative process through close contact between a large number of people provides an ideal forum for the COVID-19 virus to spread at a potentially alarming rate. Compounding the concern over the potential rate of spread is the disproportionate effect of COVID-19 on certain populations, including those over sixty years of age. The Wyoming Legislature has 45 members who are over sixty years of age, and of those thirteen are over seventy-years of age. Session staff historically (and somewhat of necessity) is generally comprised of retirees, who are often involved with the process as a civic calling.

Over the last several months, legislative staff have worked with leadership to identify solutions to safely hold an in-person session in January 2021. Unfortunately, none of the options we explored ultimately proved viable. Many of the plans did not have the requisite safeguards in place to

adequately protect legislators, staff or the public from the spread of COVID-19 during an in-person session. In-person session plans that did provide the necessary level of protection from COVID-19 exposure were rejected because they presented insurmountable challenges such as access to the process for lobbyists and the public or were unenforceable in a legislative setting.

An alternative for the Legislature to consider is to remotely convene the General Session on January 12, 2021, as required by the Wyoming Constitution, conduct all necessary initial business of the Legislature, and then recess the session to a later date and time when, given current timelines for vaccine distribution and better weather conditions, the COVID-19 virus may not be as prevalent in our population. This memorandum lays out the legal and logistic process for delaying the majority of the 2021 General Session until May 2021 at the latest.

I fully understand moving the General Session from January to May would present a very real personal, financial and professional burden for many legislators, state officials, state employees and interested members of the public. It is not a suggestion that is made lightly. If LSO believed it was possible to safely and effectively conduct a full General Session in January, I would not be suggesting you delay. Like all matters before the Legislature, this issue is preliminarily for leadership to consider and ultimately for a majority of the members of both bodies of the 66<sup>th</sup> Legislature of the State of Wyoming to decide.

### **What would be the Potential Benefits of Delaying the Majority of the 2021 General Session?**

There are many potential health and safety benefits of delaying the General Session until May 2021:

1. An effective vaccine against COVID-19 is more likely to be widely available;
2. The number of cases and therefore the amount of virus circulating through the State may be reduced;
3. The worst of the winter flu season will have passed. We will not have to deal with dual public health issues and conflating symptoms;
4. Testing, screening and other preventative measures will have another five months to become more accurate and effective;
5. A session starting in May will run less risk of multiple “starts and stops” due to COVID-19 sicknesses and quarantines;
6. The public will be more able to fully and safely engage in a later session because of the reduced risk of becoming infected with COVID-19.

When all of these factors are taken together, what it really means is that a session in May (while perhaps still requiring numerous safety measures and protocols) holds the promise of much more closely resembling a typical session of the Wyoming Legislature than attempting to hold a session in January. This will ultimately benefit all of your constituents, the various stakeholders and the State of Wyoming.

## What are the legal requirements for when the 2021 General Session Must Convene?

Wyoming Constitution Article 3, Section 7(a) provides “[t]he legislature shall meet at the seat of government at twelve o'clock noon, on the second Tuesday of January of the odd-numbered years for general and budget session...” In 2021, the Constitution requires the Legislature to meet on January 12, 2021. The Constitution also provides that the two houses of the Legislature may adjourn for more than three days with consent of the other house.<sup>1</sup>

An idea being considered is for the 66<sup>th</sup> Legislature to gavel in on January 12, 2021 via a remote platform such a Zoom while anchored in the Capitol Complex at the seat of government, conduct the necessary business of the Legislature and adjourn to a later date as agreed to by both houses.

## What does the Legislature Absolutely Need to Accomplish in January 2021?

First, the terms of the 66<sup>th</sup> Legislature begin on the first Monday of January, which in 2021 is January 4th.<sup>2</sup> Article 6, Section 21 of the Wyoming Constitution requires that before undertaking their duties members of the Legislature take the oath of office in the “hall of the house to which the members shall be elected.” Seventy-five members begin their terms that day. Those members could come down to Cheyenne in assigned shifts during that first week of January (potentially with all new members coming on the same day to be sworn in, or new members could come on January 12, be sworn in that day and participate in the session proceedings from the floors via Zoom). Shifts would allow enough room for social distancing. Members could receive salary, mileage and per diem for this trip and in addition to administering the oath to members, staff could accomplish multiple administrative tasks on those days.

Next, during the beginning of the General Session in January, the Legislature would need to undertake some official business, including the following:

1. Elect Senate and House leadership;
2. Adopt Rules for the 66<sup>th</sup> Legislature (including special rules necessary for this unique session);
3. Receive an address from Governor Gordon;<sup>3</sup>
4. Consider bills, if any, which need to be adopted prior to May 2021;
5. Introduce and assign committee bills to joint standing committees to work during the first part of the interim until May pursuant to Joint Rule 9-2;
6. Assign gubernatorial appointees, if submitted at that time, to Senate Standing Committees to consider so they are ready for confirmation consideration near the beginning of the May session. If appointees aren't submitted that early, their confirmation can be handled entirely in a May session.<sup>4</sup>

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<sup>1</sup> Article 3, Section 15 of the Wyoming Constitution.

<sup>2</sup> Article 3, Section 5 of the Wyoming Constitution.

<sup>3</sup> Article 4, Section 4 of the Wyoming Constitution.

<sup>4</sup> See W.S. 28-12-101 et seq.

## **What Bills Might the Legislature Need to Consider under Special Rules at the Beginning of January 2021?**

From a legal and budget perspective, it appears to LSO staff there may not be any bills that absolutely need to be passed in January of 2021. The Legislature has this luxury because of our biennial budget process. Remember, for the majority of statehood, the Wyoming Legislature only met every other year.

By way of example, a few things that the Legislature may wish to consider while acting under special rules in January include:

1. Extension of CARES Act Programs created in the May 2020 Special Session as may be necessary;
2. The Executive Branch may benefit from temporary additional authority to access cash balances to meet the reduced budget requirements until the Legislature reconvenes.
3. The Legislature could consider redirecting the one percent severance tax proceeds to the General Fund or Legislative Stabilization Reserve Account to provide more time to consider if the revenue should be directed to the inviolate Permanent Wyoming Mineral Trust Fund or be kept available for expenditure, or savings at a later date.<sup>5</sup>

## **What Tasks Could the Legislature Accomplish during this “First Interim” between Session Dates?**

1. As mentioned above, introduced committee bills could be reviewed by remote joint meetings of the House and Senate standing committees under Joint Rule 9-2 of the Senate and House of Representatives. This would save time during the reconvened session in that all committee bills could be treated as mirror bills or could all be assigned to Committee of the Whole in both houses, if that is the desire of the houses. If not, they could go through the normal committee process during session, but with likely much less need for public participation or development of amendments during the session. LSO would staff these meetings.
2. Management Council could meet in January and assign interim topics for consideration at the 2022 Budget Session. This would allow joint interim committees to begin to consider those topics in the first quarter of 2021. Of special importance would be assigning legislative redistricting. Bills which are determined by straw polls of joint committees as items which can wait until 2022 could be considered in the second interim after May – thereby reducing assigned interim topics for this year.

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<sup>5</sup> 2020 Wyoming Session Laws, Chapter 80, Section 314(b).

3. The Joint Appropriations Committee could hold budget hearings (potentially in late January, February or early March) and sponsor the 2021 Supplemental General Appropriations Bill prior to the reconvening of the session in May.

### **What Would a Session in May Look Like?**

Attached to this memorandum are three potential session schedules – a 22-day session, a 27-day session and a 32-day session. All schedules assume that the Supplemental General Appropriations Bill has been approved by the Joint Appropriations Committee, prefiled, numbered and distributed to members and the public prior to May 3, 2021. Remember, less time would be needed because all committee bills could be treated as either mirror bills, assigned directly to Committee of the Whole in both houses, or could just need less time committed to in-session committee deliberation. Any days left over could be used in the 2022 Budget Session if needed.

This need not be the only route the Legislature considers. There are many creative options available to conduct the work of the 66<sup>th</sup> Legislature safely and effectively. The Legislature could meet for 4-day weeks during a spring session so that members could return home over the weekend to work. Alternatively, the Legislature could hold a “mini budget session” in May to consider the supplemental budget bill for five total session days (spread over two weeks so the budget bill joint conference committee could meet) and a few other bills which would need to be inputted into the State’s fiscal systems before the end of the fiscal year on June 30. Then the Legislature could meet for an additional ten to fifteen session days (or more) later in the summer or early fall. Finally, the Legislature could meet for forty days in 2022 during that typical budget session or could meet for twenty days during a 2022 budget session and then call itself immediately into another twenty-day special session to consider additional bills without the two-thirds vote requirement.<sup>6</sup> Again, there are many other options that could be considered to accomplish the work of the Legislature if everyone remains creative and flexible.

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<sup>6</sup> See Art. 3, Sec. 6 of the Wyoming Constitution limiting the numbering of legislative meeting days in regular session to not more than forty (40) days.