

QUESTION NO. 5

Amendment to the Nevada Constitution

Senate Joint Resolution No. 23 of the 67th Session

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to authorize the legislative review of regulations of state agencies?

Yes

No

EXPLANATION

The authority to enact laws is granted to the Legislature by the Nevada Constitution. To carry out those laws, the Legislature may grant state agencies the authority to adopt administrative



regulations. Upon adoption, these regulations have the same effect as law. Under current Nevada law, the Legislature's staff reviews regulations adopted by most state agencies to determine whether the regulations exceed the authority granted by the Legislature to adopt those regulations, and whether they carry out the Legislature's intent in granting that authority. However, even if the regulations are found to exceed the agency's authority or to be contrary to the Legislature's intent, the agency's regulation becomes effective if the agency chooses to file that regulation, notwithstanding the Legislature's objection. The Legislature may not currently suspend or reject a regulation. The Legislature's only option is to pass another law on the particular issue during the next legislative session.

The proposed amendment would specifically authorize:

1. Legislative review of proposed regulations before they become effective;
2. Suspension of regulations that appear to exceed the agency's statutory authority; and
3. Rejection of regulations which are determined to exceed the agency's authority.

ARGUMENTS FOR PASSAGE

Members of the Legislature are elected by the residents of Nevada and are, therefore, more responsive and accessible to the needs and wishes of Nevadans than are the officers and employees of state agencies who are not elected. The purpose of the proposed amendment is to ensure that the Legislature may suspend or reject any state regulation that exceeds the authority granted by the Legislature when it passed the law which authorized the agency to adopt the particular regulation. The constitutional principle which provides for a separation of powers among the legislative, executive and judicial branches will remain strong because:

1. The executive branch agencies will still be adopting regulations to carry out the laws, as long as the regulations they adopt are within the authority given to them by the Legislature;
2. The courts will still be interpreting regulations and may rule that a particular regulation is legally defective; and
3. The Legislature will still pass laws while keeping the right to ensure that the people's voice is heard by the state regulators.

ARGUMENTS AGAINST PASSAGE

The Nevada Constitution provides for a separation of powers among the legislative, executive and judicial branches of government. Once it passes a law authorizing a state agency to adopt regulations, the Legislature should not have the authority to review or override the regulations proposed by agencies of the executive branch of government. In addition, the Nevada Constitution grants to the courts the authority to interpret regulations and to determine whether they exceed the agencies' statutory authority.

FISCAL NOTE

Financial Impact - No. The proposal to amend the Nevada Constitution would specifically authorize the legislative review of administrative regulations. The revisions can be accomplished with no adverse fiscal effect.

FULL TEXT OF THE MEASURE

SENATE JOINT RESOLUTION—Proposing to amend the Nevada constitution to authorize specifically the legislative review of administrative regulations.

RESOLVED BY THE SENATE AND ASSEMBLY OF STATE OF NEVADA, JOINTLY, That section 1 of article the constitution of the State of Nevada be amended to as follows:

Section [.] 1. 1. The powers of the Government of State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial no persons charged with the exercise of powers properly long to one of these departments shall exercise any functions, appertaining to either of the others, except in the case [herein] expressly directed or permitted [.] in this constitution.

2. If the legislature authorizes the adoption of regulations by an executive agency which bind persons outside the agency, the legislature may provide by law for:

(a) The review of these regulations by a legislative agency before their effective date to determine initially whether is within the statutory authority for its adoption;

(b) The suspension by a legislative agency of any regulation which appears to exceed that authority, until reviewed by a legislative body composed of members of Senate and Assembly which is authorized to act on behalf both houses of the legislature; and

(c) The nullification of any such regulation by a majority vote of that legislative body, whether or not the regulation was suspended.

