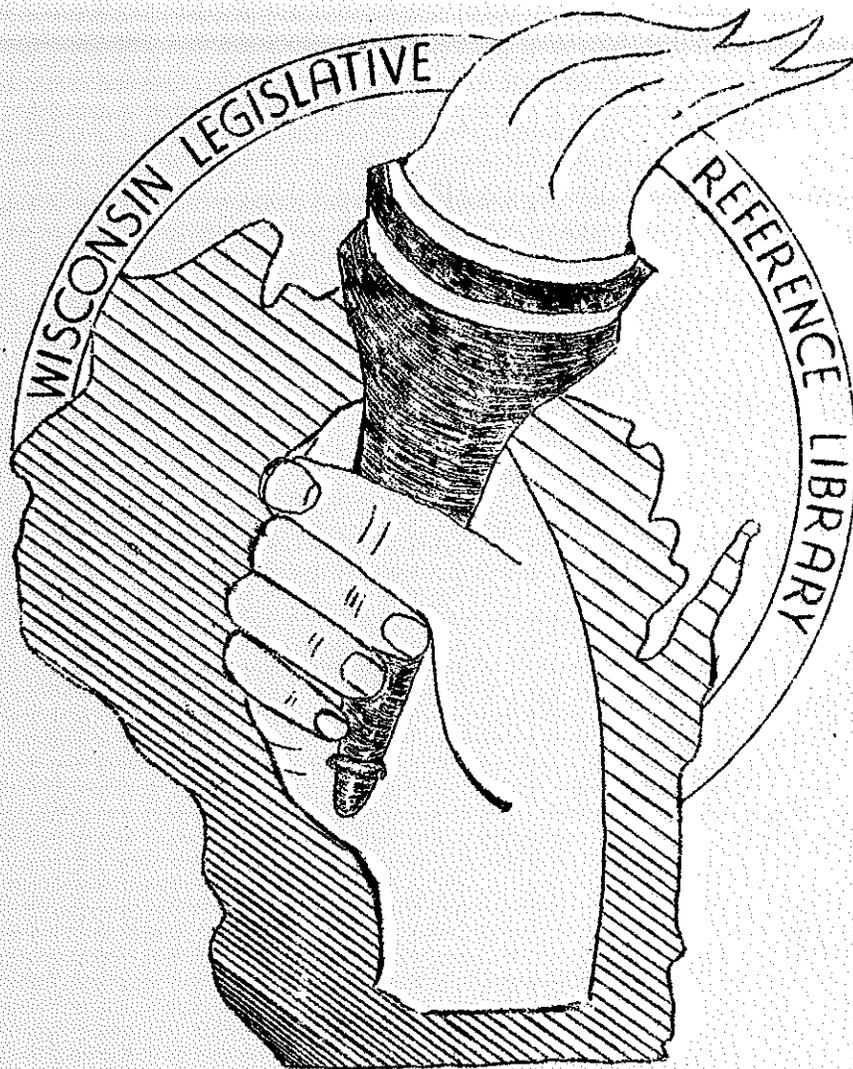


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THE ANATOMY OF  
THE SPECIAL SESSION OF  
THE WISCONSIN LEGISLATURE

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Madison 2, Wisconsin

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## Table of Contents

Introduction  
 Why a special session  
 Constitutional basis  
 The Governor's call  
 Time limitations on special sessions  
 Organizing the legislature for a special session  
 Reimbursement of members and staff for special session  
 The political organization of the legislature  
 The Governor's message  
 Procedures in a special session  
 Evasion of the rules  
 Limitation on number of proposals introduced at special session  
 Main business of special session  
 Specific items with which a special session may or may not deal  
 Points of order regarding germaneness raised in second house  
 Vetoes  
 Adjournment  
 Opinions of Attorney General relating to special sessions

## INTRODUCTION

The current discussions regarding a special session suggest to us that because the last special session was held almost exactly 10 years ago, there are few legislators or citizens generally who are acquainted with the procedures peculiar to the special session. It has been more than 20 years since we have had a major special session with the full trappings that a special session can produce. We, therefore, set forth some of the procedural and organizational matters relating to such sessions which can be gleaned from the past.

## WHY A SPECIAL SESSION

During the 35 years between 1848 and 1883 in which the legislature met annually there were but 3 special sessions, 2 of them during the early years of the Civil War. In this period the scope of government and the pace of living created few emergency situations which necessitated prompt solution. After the biennial sessions were instituted and life took on a quickened pace, situations occasionally arose which appeared to warrant prompt action, and thus the special session developed. All items which suggest a special session are not equally critical, and each suggestion that a special session might be called provokes a series of items for consideration, some more vital than others. Generally speaking, a special session results from one or more items which are considered so important that real and substantial hardships will result from the failure to act promptly. When the special session concept was discussed by the Constitutional Convention of 1848, it was agreed that the Governor should be able to call the legislature into "extraordinary session" in an emergency or when the public interest should demand it.

## CONSTITUTIONAL BASIS

The special session is based on 2 constitutional provisions. Article V, section 4, provides in part that "...He (the governor)

shall have power to convene the legislature on extraordinary occasions...". Article IV, section 11, provides that "The legislature shall meet at the seat of government at such time as shall be provided by law, once in two years, and no oftener, unless convened by the governor in special session, and when so convened no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened." The crux of the special session is the last clause which sets the substantive limits of the session.

#### THE GOVERNOR'S CALL

The first step in the evolution of a special session is the issuance of the proclamation by the Governor setting forth the day, the hour and the purposes of the session. This document sets the guide lines for the session, but it does not give the Governor the power to dictate the details of the legislation he desires. It permits him only to name the subjects, which he desires to have considered, in as much detail as he chooses.

The Governor may and has amended the call either before or during the special session or may issue a new call for the same time adding new subjects. In 1933 Governor Schmedeman amended the call 4 times after the legislature met. Although the legislature met pursuant to the Governor's call of September 11, 1937, on October 7 he submitted not one but 2 supplementary proclamations.

In the first supplementary proclamation the Governor not only indicated the purposes of the call, but suggested the ground rules which, in his opinion, would enable the legislature to accomplish its task in a short time. Although the legislature adopted his procedural suggestions, there is no requirement that this be done, and most proclamations are devoid of such suggestions. (See VII OAG 49, XXIII OAG 66 for discussions of the call)

In the 16 special sessions since 1905 the number of items in the call varied from one in 1916, 1926 and 1948 to 27 in 1937. An analysis of the items in the call is as follows:

<u>Year</u>	<u>No. of items</u>	<u>Major purposes</u>
1905	11	Railroad regulation and primary election law
1912	10	River Falls catastrophe
1916	1	Absentee voting by soldiers
1918 (1st)	19	War economy
(2nd)	2	Reserve officers training facilities
1919	6	Soldiers rehabilitation funds
1920	25	Cost of living, medical education, educational standards
1922	5	Income tax administration
1926	1	Indemnities for TB cattle
1928 (1st)	7	Appropriations for state colleges and public welfare
(2nd)	2	Appropriations for charitable and penal institutions
1931	17	Unemployment
1933	5	Prohibition repeal

<u>Year</u>	<u>No. of items</u>	<u>Major purposes</u>
1933 (cont.)		
1st supplementary call	2	Operation of banks
2nd supplementary call	5	Miscellaneous
3rd supplementary call	1	Banks
4th supplementary call	3	Finances
1937	9	Emergency relief
1st supplementary call	9	Agricultural Authority and Dept. of Commerce
2nd supplementary call	9	Government reorganization
1946	3	Rent control, veterans' housing state salaries
1948	1	Veterans' housing

In XXXVII OAG 374-7 (1948) the Attorney General answered several questions regarding the manner of notifying the legislature of the special session. The Attorney General said the Constitution and statutes are silent on how the legislature is called and what notice of the call is to be given. He held that notification may be given in person, by mail, telegraph or telephone, and that failure to notify due to absence or inaccessibility would not affect the validity of the call.

#### TIME LIMITATIONS ON SPECIAL SESSIONS

There is no time limitation on the special session unless one is imposed by the legislature itself as was done in 1937. Nor is there any time limit between the date of the proclamation and the date of convening. The following table illustrates the time sequence in the special sessions since 1905.

<u>Year</u>	<u>Proclamation</u>	<u>Date of Convening</u>	<u>Days Between Proclamation and Convening</u>	<u>Date of Adjournment</u>	<u>Length of Session in Days</u>
1905	11/21	12/4 3p.m.	13	12/19	16
1912	3/18	4/30 3p.m.	43	5/6	7
1916	10/3	10/10 2p.m.	7	10/11	2
1918(1st)	1/14	2/19 2p.m.	36	3/9	19
	2/1		18		
(2nd)	9/18	9/24 2p.m.	6	9/25	2
1919	8/28	9/4 2p.m.	7	9/8	5
1920	5/19	5/25 2p.m.	6	6/4	11
1922	3/14	3/22 10a.m.	8	3/28	7
1926	4/9	4/15 10a.m.	6	4/16	2
1928(1st)	1/11	1/24 11a.m.	13	2/4	12
(2nd)	2/27	3/6 11a.m.	9	3/13	8
1931	11/16	11/24 10a.m.	8	2/5	74
1933	12/2	12/11 10a.m.	9	2/3	55
1937	9/11	9/15 10a.m.	4	10/16	32
1946	7/25	7/29 10a.m.	4	7/30	2
1948	7/10	7/19 10a.m.	9	7/20	2

#### ORGANIZING THE LEGISLATURE FOR A SPECIAL SESSION

The senate is called to order by the Lieutenant Governor. Traditionally the chief clerk calls the assembly to order, but in 1937 after the assembly had amended Rule 1 by Resolution 48, A. to extend the term from "one session" to "the term for which he was

elected to the assembly", the speaker elected at the regular session called the assembly to order. In 1946 and 1948, however, the assembly reverted to the practice of having the chief clerk preside at the opening session.

Both houses then proceed with the election of officers. It is customary for both houses to elect all officers although as we have pointed out, there is a question of whether or not the speaker should be elected. Generally a simple resolution is adopted by each house choosing the same officers who served for the regular session. After their election they are escorted to the rostrum where they take the oath of office. Only once since 1905 has the speaker been unavailable. In 1926 the speaker had resigned his post as an assemblyman to become a circuit judge.

Each house then notifies the other house that it is organized, makes provision for members of the resident clergy to open the daily sessions, and adopts its rules and joint rules. Both houses on occasion also adopted resolutions relating to seating, stationery and supplies. Finally they adopt a joint resolution to create a committee to wait on the Governor and inform him that both houses are organized and prepared to receive any communications he may be pleased to make.

In each session since 1905 committee organization has been provided for, but many of the sessions were so short that it is obvious that no committee hearings were held. In 1937 the committee of the whole appears to have been used extensively.

The following compilation indicates the provisions for standing committees made during the special sessions.

<u>Year</u>	<u>Senate</u>	<u>Assembly</u>
1905	Standing committees were created by resolution (see S.J.,p.8)	Speaker announced same committees as in regular session (see A.J.,p.10)
1912	Res. 1,S. held over same committees as in regular session	Res. 1,A. held over same committees as in regular session
1916	Res. 1,S. provided that no standing committees be appointed	Res. 1, A. provided that no standing committees be appointed
1918(1st)	Res. 1, S. held over same committees as in regular session	Res. 1, A. held over same committees as in regular session
(2nd)	Res. 1, S. held over same committees as in 1st special session	Res. 1, A. held over same committees as in 1st special session
1919	Res. 1, S. held over same committees as in regular session	Res. 1, A. held over same committees as in regular session

<u>Year</u>	<u>Senate</u>	<u>Assembly</u>
1920	Res. 1, S. held over same committees as in regular session	Res. 1, A. held over same committees as in regular session
1922	Same	Same
1926	Same	Same
1928 (1st)	Same	Same
(2nd)	Same	Same
1931	Same	Same
1933	Same	Res. 2, A. provided that all bills go to committee of whole and no bulletin of hearings
1937	Same	No assembly resolution, but J.R. 1, S. set the pattern
1946	Same	Same
1948	Same	Res. 1, A. held over same committees as in regular session

Within the limits established by the special rules, the mechanics of the special session are the same as a regular session. Bills, joint resolutions and amendments thereto are printed. A journal is kept. The acts are printed and the session laws are issued either as a separate volume or as part of the regular session volume.

Some of the same problems have arisen in connection with the publication of these records as have occurred in connection with the publication of the records of the adjourned sessions of recent years. The journals and session laws of some of the special sessions are so small that they tend to get lost. Some process of alerting the user to the existence of such volumes or of tying them into the volumes relating thereto in either the prior or subsequent regular session might facilitate their preservation.

#### REIMBURSEMENT OF MEMBERS AND STAFF FOR SPECIAL SESSION

Because the legislators receive a monthly salary throughout their term, the special session would not affect this item.

In 1921 when the salary was \$500 for the session the issue was raised as to whether 5 members who were elected to fill vacancies after the regular session was over were entitled to any compensation. In X OAG 243-5 the Attorney General held that section 21 of Article IV of the Constitution as then worded expressly prohibited any payment.

Section 20.530 (1) (f) of the statutes relating to expenses for establishing a temporary residence in Madison applies "for the period of any regular or special legislative session".

The 10¢ a mile rate for one trip to and from the capitol applic "for each special or regular session" under section 20.530 (1) (b), but the weekly mileage applies only to the regular session (see 20.530 (1) (g)).

Section 20.530 (3)(a) grants the chief clerks \$12 per day for any special session and 20.530 (4)(a) grants the sergeants at-arms \$10 per day.

The provisions relating to legislative staff does not appear to contain any restriction as to their employment for a special session as opposed to a regular session.

In 1928 the Attorney General held that a member was not entitled to travel expense for a special session unless he actually made the trip for the purpose of attending the session. (XVII OAG p. 111-2; see also VII OAG 116-8)

In 1928 the Attorney General held that the appropriation for clerical services at the end of the session under what was then section 20.01 (9) of the statutes could be used at the end of the special session as well as the regular session. (XVII OAG p. 170-1)

In 1922 the Superintendent of Public Property asked the Attorney General if the members who received a copy of the statutes, session laws, Blue Book and journals in 1921 were entitled to another copy by reason of the 1922 special session and the Attorney General said no. (XI OAG 235-7)

In 1905 the assembly by rule provided for 17 employes and listed their positions, and the senate provided for 12 which were also listed.

THE POLITICAL ORGANIZATION OF THE LEGISLATURE

Although the political complexion of the state legislature does not change drastically between a regular and special session, almost always there is some change due to unfilled vacancies caused by death or resignation. As many as 5 vacancies in the assembly have existed when a special session was called. It would probably be well if the chief clerks would supplement the original roll call with a statement that the following seats are vacant due to death or resignation.

The following table shows the name and party of the Governor and the political composition of the 2 houses at the time the session began, noting the vacancies.

Year	Governor	Senate					Assembly				
		P	R	D	SD	Soc	R	D	SD	P	Soc
1905	R. M. La Follette(R)	-	27	4	1	-(1)	85	11	4	-	-
1912	F. E. McGovern(R)	-	27	4	2	-	59	29	12	-	-
1916	E. L. Philipp(R)	-	18	11	1	-(2)	57	28	8	1	-(3)
1918	1st E. L. Philipp(R)	-	24	6	-	3(4)	78	14	8	-	-
	2nd E. L. Philipp(R)	-	24	6	-	3	78	14	8	-	-
1919	E. L. Philipp(R)	-	27	2	-	4	78	5	-	-	16(5)
1920	E. L. Philipp(R)	-	27	2	-	4	77	5	-	-	16(6)

Year	Governor	Senate					Assembly				
		P	R	D	SD	Soc	R	D	SD	P	Soc
1922	John J. Blaine (R)	-	27	2	-	4	88	2	-	-	6 (7)
1926	John J. Blaine (R)	-	30	-	-	3 (8)	88	1	-	-	7 (9)
1928	1st F. R. Zimmerman (R)	-	31	-	-	2	87	3	-	-	8 (10)
	2nd F. R. Zimmerman (R)	-	31	-	-	2	88	3	-	-	8 (11)
1931	P. F. La Follette (R)	-	30	1	-	2	88	2	-	-	9 (11)
1933	A. G. Schmedeman (D)	12	12	8	-	1	14	59	-	23	3 (12)
1937	P. F. La Follette (P)	16	8	9	-	-	20	31	-	46	2 (13)
1946	W. S. Goodland (R)	4	21	6	-	-(14)	71	18	-	6	-(15)
1948	Oscar Rennebohm (R)	1	27	5	-	-	84	11	-	-	-(16)

- (1) Only 32 members.
- (2) 3 Republicans no longer in senate.
- (3) 5 Republicans and 1 Democrat not in special session.
- (4) One Socialist ousted and one Republican elected before special session.
- (5) One Republican died.
- (6) 2 Republicans died, one of whom was listed in (5).
- (7) 3 Republicans resigned and one Republican died.
- (8) 1 Republican died or resigned.
- (9) 4 Republicans died or resigned.
- (10) 2 Republicans died or resigned.
- (11) 1 Republican died or resigned. 1 vacancy filled by a Republican.
- (12) 1 unknown.
- (13) 1 Republican died.
- (14) 1 Progressive and 1 Republican died or resigned.
- (15) 4 Republicans and 1 Democrat died or resigned
- (16) 4 Republicans died or resigned and 1 seat was vacant in regular session.

#### THE GOVERNOR'S MESSAGE

Invariably the Governor transmits or delivers a message at the outset of the special session elaborating on the items in the call. He may submit other messages and this has been done. While most messages set forth the objectives of the session, the Governor has on occasion sought to suggest to the legislature what procedures might be used to best carry out the objectives.

#### PROCEDURES IN A SPECIAL SESSION

Unless the legislature or either house amend their rules or adopt special rules, the regular rules apply. The desire to expedite the session, however, has resulted in rules streamlining the procedures or restricting the introduction of measures.

In 1928 by Resolutions 3, S. and 4, A. the senate and assembly adopted essentially the same restrictive rule. The assembly version was as follows:

"Resolved by the assembly, That the rules of the assembly in force at the regular session of 1927 be and are hereby adopted as the rules of the assembly at this session except that all provisions requiring the lapse of any time or delay in any action or other matter are suspended, and that no notice of hearings before committees shall be required."

An effort in 1928 to adopt Joint Resolution 7, S. which would have streamlined committee procedures by creating joint committees

to hold hearings failed to pass the senate.

After convening on January 24 the assembly approved on January 26 and the senate concurred in on January 27, Joint Resolution 18, A. which stated:

"Whereas, the time of the legislature is wasted by the consideration of resolutions that are of little, if any, importance. Therefore, be it

"Resolved by the assembly, the senate concurring, That no resolution be hereafter received or considered by either house, other than resolutions relating to conduct of legislative business, and adjournment, memorial resolutions on the death of members and former members and resolutions relating to the special purposes for which the legislature is convened."

The senate put this same proposal in as Joint Resolution No. 1, S. at the beginning in the second special session of 1928, but the assembly nonconcurred in it. However, Joint Resolution 4, A. of the same import was adopted and concurred in.

The very next day, however, on January 27, the assembly adopted a joint resolution relating to a study of unemployment conditions and a joint resolution commending Al Smith for his splendid record as Governor of New York and both resolutions were concurred in. (AJ 1928, 1st SS, pp. 70-2) Similarly on January 31 a joint resolution authorizing the Board of Control to grant an easement to the City of Waukesha was adopted and subsequently concurred in.

In 1937 the ground rules under which the session was to operate received a great deal of attention. At the outset Joint Resolution 1, S. was adopted after 8 amendments, 1 amendment to an amendment, and 1 substitute amendment were introduced in the senate and 1 amendment was introduced in the assembly. As finally approved it read as follows:

"JOINT RESOLUTION NO. 1, S.  
September 15, 1937 - Introduced by Senators Rowlands, Shearer, Dempsey and Severson. Adopted

Relating to rules governing the senate and assembly in the 1937 special session.

Whereas, It is in the public interest that the work of this session be expedited; therefore, be it

Resolved by the senate, the assembly concurring, That during the special session of 1937.

(1) The rules of each house and the joint rules in force during the regular session of 1937 are hereby adopted except as they are changed by the special rules hereinafter provided;

(2) No memorials to congress shall be considered in either house

(3) No resolutions shall be considered excepting necessary procedural resolutions;

(4) No bills shall be introduced after September 22nd of the 1937 special session, excepting by the Joint Committee on Finance, the Committee on Judiciary of either house, except bills on subject included in subsequent additions to the Governor's call after September 14, which bills must be introduced not later than 5 days after the publication of such additions to the call;

(5) Beginning September 20 the legislature shall convene not later than 10:30 A.M. on Monday of each week and not later than 10:00 A.M. on Tuesday, Wednesday, Thursday and Friday of each week;

(6) During the special session of 1937 all measures introduced shall have a single joint hearing before the appropriate committees from each house within 48 hours after such reference. Each measure shall be reported back to the house of introduction not less than two days after the hearing, bearing the recommendations of the joint committees that shall sit at the joint hearings;

(7) During the special session of 1937 no motion to lay over a bill for more than one calendar day at a time shall be entertained in either house. In the assembly a motion to reconsider the laying over a bill shall be taken up immediately;"

On October 4, 1937 in his message to the legislature the Governor said:

"Let me further emphasize that if the legislature would put in eight hours a day, six days a week for the next two weeks, you would have more actual time to discuss, deliberate and act upon these matters than you put in during two months of the regular session ...

"I specifically recommend that your rules be amended in the following particulars:

"Special Rule Number I. That the senate and assembly shall meet on Monday, Tuesday, Wednesday, Thursday, Friday and Saturday not later than ten o'clock in the morning and shall remain in session at least eight hours each of these days during the special session of 1937.

"Special Rule Number II. That the special session of the 1937 session of the legislature shall adjourn sine die at 12 o'clock noon October 16.

"Special Rule Number III. That all bills relating to any amendment of the original call for the 1937 special session of the legislature shall be introduced by the joint committee on finance with a recommendation for passage or indefinite postponement and shall be referred by the presiding officer of each house to the next calendar day following their introduction and recommendation by the said joint committee on finance. All measures relating to amendments of the original call of the 1937 special session shall not be referred to any other committee than the joint committee on finance, and any hearings on such measures shall be before the committee of the whole of the respective houses. All substitute amendments to measures relating to additions to the call for the special session of 1937

shall be treated as amendments. Any legislation affecting the amendments to the original call for the special session of 1937 that shall pass in either house shall be messaged immediately to the other house for its consideration." (SJ 1937, pp. 72-3)

Joint resolution 5, S. incorporating these provisions was introduced October 4 and concurred in October 6. There was formal objection to the rigidity of this proposal from both the Governor's political opponents and proponents but it was approved.

When the proposal reached the senate for adoption Senator Callan rose to a point of inquiry as to whether it required a 2/3 vote and Lieutenant Governor Gunderson handed down the following opinion.

"The question of whether a majority or a 2/3 vote is necessary to adopt Joint Resolution No. 5, S. has given me a great deal of trouble for the last two days. I have hunted for precedents and have consulted personally with authorities in whom I have great confidence.

"The chief of the legislative reference library has been very kind and submitted to me a written opinion holding that a bare majority is all that is necessary for the adoption of this resolution. My prejudices incline me to this view as I am thoroughly convinced that the governor's present legislative program would be very beneficial to the state if put into effect.

"But it seems impossible for me to ignore the plain words of joint rule No. 15 that requires a 2/3 vote to rescind, amend or suspend a standing rule and I must so hold." (SJ 1937, p. 94)

In 1937 by Joint Resolution 1, S. introduced September 15 the legislature adopted the rules of each house and the joint rules in effect during the regular session of 1937 except as they were changed by the special rules listed thereafter. This joint resolution adopted 32 to 1 and concurred in 87 to 6 as amended. The senate then concurred in the amendment 20 to 9 and it was adopted.

On October 4 Joint resolution 5, S. was introduced seeking to amend the special rules then in effect. On October 6 Senator Callan rose to a point of inquiry to ascertain whether a 2/3 vote was required to adopt the resolution. The President of the senate, as quoted above, ruled that a 2/3 vote was required under Joint Rule No. 15, which covered the rescinding, amending or suspension of a standing rule. This joint resolution was adopted 27 to 4 and concurred in 61 to 21.

The distinction between the vote necessary for Joint Resolution 1, S. and 5, S. was that by Joint Resolution 1, S. the legislature adopted its rules for the session while by Joint Resolution 5, S. it amended the rules then in effect.

The provision of Joint Resolution 5, S. relating to the 8-hour working day haunted the legislature throughout the session because they could not adjourn until 6 p.m. At first the presiding officer ruled that the special rule to work 8 hours did not affect the constitutional right to adjourn (SJ, 10/7/37, p. 111) but later he ruled

that the special rule applied and that the senate could not adjourn until 6 p.m. (SJ, 10/8/37, p. 126) Having apparently completed their work for the day prior to 6 p.m. on October 9, "Senator Coakley asked unanimous consent that the senate be informal until 5:59 o'clock this afternoon.

"Senator Kannenberg objected.

"Senator Risser moved that the senate be informal until 5:59 this evening and at 6:00 o'clock should adjourn.

"The motion prevailed.

"At 5:59 o'clock p.m. the president took the chair.

"At 6:00 o'clock p.m. Senator Duel moved that the senate adjourn.

"The motion prevailed and the senate adjourned until 10:00 o'clock next Monday morning."

At the special session of 1946 the ground rules were established by Joint Resolution No. 1, S. which provided as follows:

"Relating to rules governing the senate and assembly in the 1946 special session.

"Whereas, It is in the public interest that the work of this session be expedited; therefore, be it

"Resolved by the senate, the assembly concurring, That during the special session of 1946 -

"(1) The rules of each house and the joint rules in force during the regular session of 1945 are hereby adopted except as they are changed by the special rules hereafter provided.

"(2) No memorials to congress shall be considered in either house.

"(3) No resolutions shall be considered excepting necessary procedural resolutions.

"(4) During the special session of 1946 all measures introduced shall have a single joint hearing before the appropriate committees from each house. Each measure shall be reported back to the house of introduction within two days of the hearing bearing the recommendation of the joint committees that shall sit at the joint hearing.

"(5) No notice of hearings before committees shall be required other than posting on the legislative bulletin boards, and no bulletin of committee hearings shall be published.

"(6) During the special session of 1946 no motion to lay over a bill for more than one calendar day at a time shall be entertained in either house. In the assembly a motion to reconsider the laying over a bill shall be taken up immediately."

This joint resolution required only a majority vote but was adopted 31-0 and concurred in 90-1.

An identical measure was adopted as Joint Resolution 1, S. at the beginning of the 1948 special session. It was adopted 20 to 12 by the senate and concurred in without a record vote.

#### EVASION OF THE RULES

During the 1937 special session 2 efforts were made to evade the rule prohibiting all but necessary procedural resolutions.

On October 6 Senator Cashman submitted a motion in writing to the effect that the Department of Agriculture and Markets be request to provide to each member of the senate a copy of the department's recent order on the matter of Bang's disease test regulation covering the transfer of cattle. The motion was adopted and the chief clerk sent the request.

On October 7 Senator Cashman offered a joint resolution memorializing the President of the U.S. and Congress to keep the U.S. out of foreign wars, alliances and controversies. The president of the senate held that the joint resolution was not admissible under the special joint rules governing the special session. Then Senator Kannenberg asked unanimous consent that the chief clerk be instructed to transmit a letter to the U.S. President and Secretary of State expressing the opinions contained in the joint resolution. There was objection. The senator than moved that the chief clerk do as directed. Senator Bolens then raised the point of order that the motion was not in order as it was an evasion of the joint rules in that it sought by indirection to accomplish that which had been prohibited by the joint rules. The president of the senate held the point of order well taken.

#### LIMITATION ON THE NUMBER OF PROPOSALS INTRODUCED AT A SPECIAL SESSION

There is no limitation on the number of proposals which may be introduced or approved at a special session so long as they meet the requirement of being germane to the call or are unrestricted by the call. The following table indicates the proposals introduced and laws enacted in the special sessions since 1905:

Year	Bills intro.	Laws enacted	JR amending Const. intro.	JR amending Const. adopted	Other JR intro.	Other JR concurred in	Res. intro.	Res. adopted
1905	24	17	0	0	15	12	26	25
1912	41	22	0	0	7	5	7	7
1916	2	2	0	0	8	8	4	4
1918								
1st	27	16	0	0	22	15	28	23
2nd	2	2	0	0	6	5	9	9
1919	7	7	0	0	4	3	6	6
1920	46	32	1	0	9	6	22	22
1922	10	4	0	0	7	7	12	12
1926	1	1	0	0	8	7	12	12
1928								
1st	20	5	0	0	35	23	23	22
2nd	13	2	0	0	9	5	17	15
1931	99	31	3	0	90	74	83	62
1933	45	25	1	0	159	108	53	42
1937	28	15	0	0	18	6	23	21
1946	2	2	0	0	6	6	14	14
1948	-	-	1	1	4	4	11	11

#### THE MAIN BUSINESS OF THE SPECIAL SESSION

The basic concept of the special session is that it is called for the specific purposes outlined in the Governor's call which lays out in some detail the substantive limitations on the proposals initiated. The legislature by its own ground rules may further limit the activities of the session.

Basically the call affects the activities of the session in the following ways:

1. It spells out the objectives of the legislation which the session may consider.

2. It leaves to the legislature the means of accomplishing these objectives including the procedural changes desired to expedite action.

3. It permits the legislature to propose without restrictions joint resolutions and resolutions except joint resolutions amending the Constitution unless the latter are provided for in the call.

Two important discussions of this concept of the scope of the legislature's authority may be cited. The first is a 1922 opinion of the Attorney General which provided:

"Although call for special session of legislature specifies in minute detail laws which the governor wishes enacted, legislature has power under Sec. 11, Art. IV, Constitution, to enact any law

designed to accomplish the objects of legislation suggested in the call. (XI OAG 249)

This was further elaborated in an opinion of the Lieutenant Governor in 1933.

"Held, that while legislature in special session may only act upon such matters as are specifically included in the governor's call it may act on them in any manner it sees fit. On December 15, 1933, (page 54, senate journal of special session), Senator Mueller rose to the point of order that the bill was not germane to the governor's call for the special session. The president (Lieutenant Governor O'Malley) deferred ruling

"On December 19, 1933, (page 77, senate journal of special session), the president (Lieutenant Governor O'Malley) ruled that:

"The point of order made against introduction of Bill No. 3, S. is not well taken.

"Section 11 of Article IV of the Constitution prescribes what business may be brought before the legislature when convened in a special session. This section provides that when the legislature has been convened by the Governor in special session "no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened".

"No less than 26 other states have clauses in their constitutions which are substantially the same as the clause in our Section 11 of Article IV. How these clauses have been construed is discussed in a very complete manner in an article by M. T. Van Hecke on "Legislative Power at Special Sessions" which was published in the Cornell Law Quarterly in 1924, Vol. 9, pages 447 to 462. From this article it appears that there has been a considerable variety of opinion in the decisions of Supreme Courts in various states upon this point. The general doctrine, however, is clear, namely, that the legislature may deal only with the subjects included in the Governor's call, but may deal with them in any manner that it sees fit, and not merely in the manner suggested by the Governor.

"I believe there is no question as to the germaneness of Section 1 of Bill No. 3, S.

"Section 2 is as follows:

"Section 2. A new section is added to the statutes to read: 139.015 REFUNDS. (1) Every brewer within or without the state who pays the tax required by section 139.01 shall be entitled to a refund of such portion of the tax so paid by him as equals ten cents per barrel, provided that sixty-six and two-thirds per cent or more of the grain used in the manufacture of the fermented malt beverage upon which such tax was paid consists of barley produced in Wisconsin or malt made from barley produced in Wisconsin".

"The third subject in the Governor's call is as follows:

"(3) To provide for a tax on fermented malt beverages regardless of alcoholic content from the effective date of the repeal of the 18th Amendment to the United States Constitution, equal to the tax heretofore imposed on fermented malt beverages containing 3.2% of alcohol by weight".

"While Section 2 of Bill No. 3, S., does not deal with the matter of a tax in the manner suggested by the Governor it does deal with a subject specifically included in the Governor's call and I therefore hold that the bill is germane." (See also XVII OAG 171-6, 1928, for discussion of the scope of authority under the call. XV OAG 163, 1926; XVII OAG 181, 1928; XX OAG 1115, 1931)

The germaneness of original proposals and amendments to the call has been raised on many occasions, sometimes in sincerity and sometimes as a tactical move. Very frequently the decision has been made at the time the point is raised but occasionally the reasoning behind a decision is given. Following are some instances of matters not considered to be within the call.

"Governor's Call for the 1931 Special Session included (6) To provide necessary state revenues for unemployment relief and tax reduction by providing for an emergency tax upon net incomes, on gifts, on chain stores and inheritance tax. Bill No. 50, A., proposing a tax on pelts of all fur-bearing animals which are being raised for commercial purposes, for unemployment relief, was held not included within the executive call. Speaker Perry, 1931 Spec. Session Journal, p. 246."

"Where special session is called by the governor to make emergency appropriation in addition to that already provided for bovine tuberculosis eradication, action is not permitted on any proposed amendments to statutes relating to maximum specific indemnities to be paid upon condemnation and slaughter of animals. XV, OAG. 249."

"Bill No. 5, A., provided for a state regulatory system for the sale and manufacture of intoxicating liquor and a state fund for old age pensions. The governor's call for this special session includes five specific subjects which relate to the regulation of the manufacture, sale and transportation of alcohol beverages, a tax on such beverages and on fermented malt beverages of any alcoholic content and confirmation of any appointments to office under any legislation that may be enacted. Clearly, the subject of old age pensions is not included within the call and any bill providing for such legislation cannot be considered at this special session. Since Bill No. 5, A., includes two subjects, one being germane and the other not germane, the entire bill must be considered not germane, as the old age pension provisions are an integral part of the bill, the bill as a whole must be considered. Point of order raised against Bill No. 5, A., was sustained. Speaker Young, 1933 Spec. Sess. Jour, p. 122."

"Any bill relating to the subject of the prevention of frauds under the income tax laws, or to correct or prevent errors, or to impose penalties for violations or making appropriations for these purposes, was included within the call for the special session of 1922, but a bill dealing with exemptions under the income tax law was not included. XI, O.A.G. 249."

On March 9, 1928 the Attorney General ruled that a proposal to transfer unexpended appropriation balances made by previous session does not come within the call requiring an appropriation of funds.

Again in 1928 Amendment No. 1, S., to Amendment No. 1, A., to Bill No. 9, S. was held germane because the call provided for the enactment of new statutes relating to revenues as well as the enactment of appropriations for the State Board of Control. (SJ, 1928, p. 70)

In 1937 Amendment No. 4, S., to Bill No. 3, S. was held not germane because the allotment of funds for snow removal was not part of a program of highway safety promotion within the meaning of the call.

**SPECIFIC ITEMS WITH WHICH A SPECIAL SESSION MAY OR MAY NOT DEAL.**

Over the years, experience has set forth a variety of decisions regarding items which the special session can or cannot consider. Some of these are as follows:

Confirming appointments of the Governor. In the first special session of 1928 confirmation of appointments by the Governor was specifically indicated in the call. In the second special session it was not. On March 6 at the second special session an appointment came up for confirmation and Senator Hunt raised the point of order that the appointment could not be considered because it was not included in the call. The president ruled that the point of order was not well taken. (SJ, 1928, 2nd SS, p. 7) On January 23, 1928 the then chief of the legislative reference library prepared a memorandum which stated in part: "The legislature in special session assembled has all the powers of the legislature in regular session except that it may not transact business not included within the call of the governor. Thus, the senate may confirm appointments, although this matter is not mentioned in the call of the governor as has been the case in the calls issued for special sessions other than the present one."

Joint resolutions amending Constitution. There is a precedent in both houses for holding that a joint resolution amending the Constitution is not germane unless included within the Governor's call. (See also XXIII OAG 65-7)

"Joint resolutions to amend the constitution are not admissible unless included within the Governor's Call for special session. At the 1931 special session, Jt. Res. No. 13, A., to amend the constitution by adding thereto Sec. 12, Art. VIII, relating to the production and distribution of the necessities of life was before the assembly. On point of order raised by Mr. Carow that the joint resolution was not within the executive call for the special session, the Speaker, Mr. Perry, held the point of order well taken and joint resolution not properly before the Assembly. 1931, Assembly Journal, Sp. Sess., p. 145."

"Joint resolution proposing amendment to constitution not in order at special session unless such matter is specifically mentioned in governor's call. On January 31, 1934, (page 349, senate journal of special session), the senate had under consideration

Joint Resolution No. 58, S. Senator Cashman rose to the point of order that the joint resolution was not in order, as a joint resolution proposing an amendment to the constitution can not be considered at a special session when such matter is not included within the governor's call for the special session. The president pro tempore (Senator Loomis) citing a former precedent directly in point, held the point of order well taken."

Resolutions and memorials expressing opinions of the legislature. It has been held that under the call a resolution or memorial expressing an opinion may be considered. It should be noted, however that the legislature has frequently prohibited such proposals by restrictions in the rules. Thus at least 2 such resolutions were held out of order in 1937 as prohibited by the rules. (SJ 10/13/37, p. 224; SJ 10/14/37, p. 231)

"In the absence of authority establishing that the passage of resolutions, or the adoption of memorials merely expressive of the opinion of the legislature constituted business, it would seem to follow that the legislature was not prohibited to express its opinions by this means, if it so saw fit. VIII, O.A.G., 663-664 (Sept. 5, 1919)."

Investigating committees. On January 23, 1928 the chief of the legislative reference library prepared a memo stating that there was precedent for the legislature to create an investigating committee although not set forth in the call, and citing Joint Resolution 5, A. of 1905 special session relating to an investigation of the university and Joint Resolution 8, S. of 1918 1st special session relating to an investigation of reconstruction after the war. A similar joint resolution, Joint Resolution 11, A. of 1928, providing for an interim legislative committee to study the educational system of the state and make recommendations to the legislature of 1929 was held in order although there was no mention of this subject in the call. (SJ, 1928, p. 49)

Petitions. In 1937 the chair ruled that a petition could not be received under the rules in effect for the session. (AJ 9/23/37, p. 32)

Summary of proposals on which points of order were raised. By and large either the legislators have not introduced measures which were not germane or the presiding officers have taken a liberal view toward what was germane. In only 3 of the 16 special sessions since 1905 have any proposals been dropped because there were not germane. During one other, 1937 Joint Resolutions 4, A., 5, A. and 6, A. were dropped because they were not proper under the joint rules in effect

Ruled not germane:

1912 Joint Resolutions 2, S. and 2, A.  
1931 Bills No. 12, S.; 20, S.; 22, S.; 30, S.; 33, S.; 34, S.;  
41, S.; 17, A.; 21, A.; 23, A.; 24, A.; 29, A.; 30, A.; 31, A.  
38, A.; 40, A.; 46, A.; 47, A.; 50, A. and Joint Resolu-  
tions 10, S.; 13, A.; 18, A. and 19, A.  
1933 Bills No. 11, S. and 5, A. and Joint Resolution 58, S.;  
21, A. and 25, A.

## POINTS OF ORDER REGARDING GERMANENESS RAISED IN SECOND HOUSE

Normally under the principle of comity the house does not question the germaneness of a proposal initiated in the other house, but this principle has not been adhered to in the special session. Senator Schumann raised the point of order that Joint Resolution 11, A. of the 1st special session of 1928 was not germane to the call. The president held that the resolution was in order under the call. No mention was made of the fact that the proposal originated in the assembly. (SJ 1928, p. 49)

Senator Severson raised the point of order that Joint Resolution 17, A. of 1928 first special session was not germane to the call. In this case the president held the point of order not well taken inasmuch as Joint Resolution 17, A. had originated in and been considered by the assembly. (SJ 1928, p. 53)

In 1937 the senate raised the point of order that Joint Resolutions 4, A., 5, A. and 6, A. were not in order under Joint Resolution 1, S. which provided that no resolution except necessary procedural resolutions be considered. In each case the point of order was considered well taken. (SJ 1937, p. 277)

## VETOES

The power to veto may be exercised during a special session as well as during a regular session. Even the partial veto may be and has been used. Since 1905 the veto has been used in 4 special sessions on a total of 6 bills. In no case has the veto ever been overridden. The vetoed measures are as follows:

1918 1st special session	Bills No. 12, S. and 5, A.
1922 special session	Bill No. 2, A.
1931 special session	Bills No. 45, A. and 48, A.
1937 special session	Bill No. 1, S. Partially vetoed

## ADJOURNMENT

While the Governor has the sole power to convene the legislature in special session, he has no authority to adjourn it. The Governor has on occasion hinted that his requests could be handled quickly, but he can do nothing about it. The legislature sets the date and time of adjournment by joint resolution. In 1916 no date was set for adjournment. The joint resolution merely stated the legislature would adjourn upon receipt of information from the Governor that he had no further communication to make to this special session. The resolution of adjournment may originate in either house. Usually a joint resolution is adopted near the close of the session authorizing a joint committee to wait on the Governor, inform him that the legislature has completed its work and ascertaining if he has any further communication to put before the legislature.

## OPINIONS OF THE ATTORNEY GENERAL RELATING TO SPECIAL SESSIONS

VII OAG 49	(1918)	Call by governor
VII OAG 116	(1918)	Salary and mileage for special session
VIII OAG 663	(1919)	Joint Resolution is not business and therefore permitted even though subject is not in the call
X OAG 243-5	(1921)	Salary for special session

XI OAG 235	{1922}	Perquisites of office
XI OAG 249-54	{1922}	Scope of authority under the call
XV OAG 163-5	{1926}	Scope of authority under the call
XVII OAG 111-2	{1928}	Compensation for special session
XVII OAG 166-8	{1928}	Joint Resolution does not have force of law
XVII OAG 170-71	{1928}	Appropriation for staff
XVII OAG 171-76	{1928}	Scope of authority under call
XXIII OAG 65	{1934}	Joint Resolution amending Constitution cannot be considered under call
XXXVII OAG 374	{1948}	Calling special session