

House Joint Resolution 7—Referred to the Electorate of Oregon by the Legislative Assembly of the 2011 Regular Session to be voted on at the General Election, November 6, 2012.

## Ballot Title

# 77

Amends Constitution: Governor may declare “catastrophic disaster” (defined); requires legislative session; authorizes suspending specified constitutional spending restrictions

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<b>Arguments in Favor</b>	<b>none</b>
<b>Arguments in Opposition</b>	<b>none</b>

### Result of “Yes” Vote

“Yes” vote grants Governor constitutional authority to declare “catastrophic disaster” (defined); requires legislative session; legislature may suspend specified constitutional spending restrictions to aid response, recovery.

### Result of “No” Vote

“No” vote retains Governor’s statutory authority to declare state of emergency; retains constitutional spending restrictions and constitutional restrictions on legislative authority without exception for emergency.

### Summary

Amends Constitution. Currently, Governor has statutory, but not constitutional, authority to declare state of emergency and direct response to emergency. Measure grants Governor constitutional authority to declare and respond to natural or human-caused “catastrophic disaster” (defined). Authorizes Governor to redirect previously allocated General Fund and lottery monies to disaster response. Requires legislative session (under emergency conditions, if necessary) to enact implementing legislation; legislation may include temporarily suspending specified constitutional spending restrictions. Terminates Governor’s disaster spending authority upon enactment of law specifying purposes for which funds may be used. Limits disaster authority of Governor and legislature to 30 days unless legislature acts to shorten/lengthen period; such legislation may include any provision legislature deems necessary to provide “orderly transition” (undefined) to normal conditions. Other provisions.

### Estimate of Financial Impact

Referral 401 allows for government action in the event of a catastrophic disaster. It grants the Governor temporary authority to redirect certain state monies from legislatively-approved purposes to disaster response. It requires the Governor to convene the legislature unless the Legislative Assembly is already in session or scheduled to convene within 30 days.

The financial effect of the measure is indeterminate.

## Explanation of Estimate of Financial Impact

The financial impact of the measure is indeterminate. The actual cost will depend on the frequency or occurrence of catastrophic event(s); whether it is necessary to call the legislature into special session; and the length of the special session. The length of special legislative sessions can only be determined by Legislative Assembly members at the time of the session.

The measure will have no financial impact on local government spending.

### Committee Members:

Secretary of State Kate Brown  
 State Treasurer Ted Wheeler  
 Michael Jordan, Director, Dept. of Administrative Services  
 James Bucholz, Director, Dept. of Revenue  
 Debra Guzman, Local Government Representative

*(The estimate of financial impact and explanation was provided by the above committee pursuant to ORS 250.127.)*

## Text of Measure

**Be It Resolved by the Legislative Assembly of the State of Oregon, two-thirds of all the members of each house concurring:**

**PARAGRAPH 1.** The Constitution of the State of Oregon is revised by creating a new Article to be known as Article X-A, such Article to read:

### ARTICLE X-A

**SECTION 1. (1)** As used in this Article, "catastrophic disaster" means a natural or human-caused event that:

- (a) Results in extraordinary levels of death, injury, property damage or disruption of daily life in this state; and
- (b) Severely affects the population, infrastructure, environment, economy or government functioning of this state.

**(2)** As used in this Article, "catastrophic disaster" includes, but is not limited to, any of the following events if the event meets the criteria listed in subsection (1) of this section:

- (a) Act of terrorism.
- (b) Earthquake.
- (c) Flood.
- (d) Public health emergency.
- (e) Tsunami.
- (f) Volcanic eruption.
- (g) War.

**(3)** The Governor may invoke the provisions of this Article if the Governor finds and declares that a catastrophic disaster has occurred. A finding required by this subsection shall specify the nature of the catastrophic disaster.

**(4)** At the time the Governor invokes the provisions of this Article under subsection (3) of this section, the Governor shall issue a proclamation convening the Legislative Assembly under section 12, Article V of this Constitution, unless:

- (a) The Legislative Assembly is in session at the time the catastrophic disaster is declared; or
- (b) The Legislative Assembly is scheduled to convene in regular session within 30 days after the date the catastrophic disaster is declared.

**(5)** If the Governor declares that a catastrophic disaster has occurred, the Governor shall manage the immediate response to the disaster. The actions of the Legislative Assembly under sections 3 and 4 of this Article are limited to actions necessary to implement the Governor's immediate response to the disaster and to actions necessary to aid recovery from the disaster.

**SECTION 2. (1)** If the Governor declares that a catastrophic disaster has occurred, the Governor may:

- (a) Use moneys appropriated from the General Fund to executive agencies for the current biennium to respond to the catastrophic disaster, regardless of the legislatively expressed purpose of the appropriation at the time the appropriation was made.
- (b) Use lottery funds allocated to executive agencies for the current biennium to respond to the catastrophic disaster, regardless of the legislatively expressed purpose of the allocation at the time the allocation was made. The Governor may not reallocate lottery funds under this paragraph for purposes not authorized by section 4, Article XV of this Constitution.

**(2)** The authority granted to the Governor by this section terminates upon the taking effect of a law enacted after the declaration of a catastrophic disaster that specifies purposes for which appropriated General Fund moneys or allocated lottery funds may be used, or upon the date on which the

provisions of sections 1 to 5 of this Article cease to be operative as provided in section 6 of this Article, whichever is sooner.

**SECTION 3.** If the Governor declares that a catastrophic disaster has occurred:

(1) Notwithstanding sections 10 and 10a, Article IV of this Constitution, the Legislative Assembly may convene in a place other than the Capitol of the State if the Governor or the Legislative Assembly determines that the Capitol is inaccessible.

(2) Notwithstanding section 12, Article IV of this Constitution, during any period of time when members of the Legislative Assembly are unable to compel the attendance of two-thirds of the members of each house because the catastrophic disaster has made it impossible to locate members or impossible for them to attend, two-thirds of the members of each house who are able to attend shall constitute a quorum to do business.

(3) In a session of the Legislative Assembly that is called because of the catastrophic disaster or that was imminent or ongoing at the time the catastrophic disaster was declared, the number of members of each house that constitutes a quorum under subsection (2) of this section may suspend the rule regarding reading of bills under the same circumstances and in the same manner that two-thirds of the members may suspend the rule under section 19, Article IV of this Constitution.

(4) Notwithstanding section 25, Article IV of this Constitution, during any period of time when members of the Legislative Assembly are unable to compel the attendance of two-thirds of the members of each house because the catastrophic disaster has made it impossible to locate members or impossible for them to attend, three-fifths of the members of each house who are able to attend a session described in subsection (3) of this section shall be necessary to pass every bill or joint resolution.

(5) Notwithstanding section 1a, Article IX of this Constitution, the Legislative Assembly may declare an emergency in any bill regulating taxation or exemption, including but not limited to any bill that decreases or suspends taxes or postpones the due date of taxes, if the Legislative Assembly determines that the enactment of the bill is necessary to provide an adequate response to the catastrophic disaster.

**SECTION 4.** (1) If the Governor declares that a catastrophic disaster has occurred:

(a) The Legislative Assembly may enact laws authorizing the use of revenue described in section 3a, Article IX of this Constitution, for purposes other than those described in that section.

(b) The Legislative Assembly may, by a vote of the number of members of each house that constitutes a quorum under subsection (2) of section 3 of this Article, appropriate moneys that would otherwise be returned to taxpayers under section 14, Article IX of this Constitution, to state agencies for the purpose of responding to the catastrophic disaster.

(c) Notwithstanding section 7, Article XI of this Constitution, the Legislative Assembly may lend the credit of the state or create debts or liabilities in an amount the Legislative Assembly considers necessary to provide an adequate response to the catastrophic disaster.

(d) The provisions of section 15, Article XI of this Constitution, do not apply to any law that is approved by three-fifths of the members of each house who are able to attend a session described in subsection (3) of section 3 of this Article.

(e) The Legislative Assembly may take action described in subsection (6) of section 15, Article XI of this Constitution, upon approval by three-fifths of the members of each house

who are able to attend a session described in subsection (3) of section 3 of this Article.

(f) Notwithstanding section 4, Article XV of this Constitution, the Legislative Assembly may allocate proceeds from the State Lottery for any purpose and in any ratio the Legislative Assembly determines necessary to provide an adequate response to the catastrophic disaster.

(2) Nothing in this section overrides or otherwise affects the provisions of section 15b, Article V of this Constitution.

**SECTION 5.** For purposes of sections 3 and 4 of this Article, a member of the Legislative Assembly who cannot be physically present at a session convened under section 1 of this Article shall be considered in attendance if the member is able to participate in the session through electronic or other means that enable the member to hear or read the proceedings as the proceedings are occurring and enable others to hear or read the member's votes or other contributions as the votes or other contributions are occurring.

**SECTION 6.** (1) Except as provided in subsection (2) of this section, the provisions of sections 1 to 5 of this Article, once invoked, shall cease to be operative not later than 30 days following the date the Governor invoked the provisions of sections 1 to 5 of this Article, or on an earlier date recommended by the Governor and determined by the Legislative Assembly. The Governor may not recommend a date under this subsection unless the Governor finds and declares that the immediate response to the catastrophic disaster has ended.

(2) Prior to expiration of the 30-day limit established in subsection (1) of this section, the Legislative Assembly may extend the operation of sections 1 to 5 of this Article beyond the 30-day limit upon the approval of three-fifths of the members of each house who are able to attend a session described in subsection (3) of section 3 of this Article.

(3) The determination by the Legislative Assembly required by subsection (1) of this section or an extension described in subsection (2) of this section shall take the form of a bill. A bill that extends the operation of sections 1 to 5 of this Article shall establish a date upon which the provisions of sections 1 to 5 of this Article shall cease to be operative. A bill described in this subsection shall be presented to the Governor for action in accordance with section 15b, Article V of this Constitution.

(4) A bill described in subsection (3) of this section may include any provisions the Legislative Assembly considers necessary to provide an orderly transition to compliance with the requirements of this Constitution that have been overridden under this Article because of the Governor's declaration of a catastrophic disaster.

(5) The Governor may not invoke the provisions of sections 1 to 5 of this Article more than one time with respect to the same catastrophic disaster. A determination under subsection (1) of this section or an extension described in subsection (2) of this section that establishes a date upon which the provisions of sections 1 to 5 of this Article shall cease to be operative does not prevent invoking the provisions of sections 1 to 5 of this Article in response to a new declaration by the Governor that a different catastrophic disaster has occurred.

**PARAGRAPH 2.** The revision proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held on the same date as the next general election.

Note: Boldfaced type indicates new language; [brackets and italic] type indicates deletions or comments.

## Explanatory Statement

Ballot Measure 77 is a constitutional revision relating to state governmental responses to catastrophic disasters.

The measure allows the Governor to declare that a catastrophic disaster has occurred. Upon such declaration, the Governor and Legislature are granted new temporary powers not available under certain constitutional provisions and statutes:

- The Governor may override laws allocating moneys to state agencies in order to respond to the disaster.
- The Legislature may override constitutional provisions relating to legislative procedures and legislative powers.

A "catastrophic disaster" is a natural or human-caused event resulting in extraordinary levels of death, injury, property damage or disruption of daily life and severely affecting the population, infrastructure, environment, economy or government of Oregon. The terms "extraordinary levels" and "severely affects" are not defined. Examples include, but are not limited to, acts of terrorism, earthquakes, floods, public health emergencies, tsunamis, volcanic eruptions and war.

If the Governor declares that a catastrophic disaster has occurred, the Governor may manage immediate response to the disaster by:

- Redirecting general fund moneys for state agencies.
- Using only lottery funds allocated to state agencies.

If the Governor declares that a catastrophic disaster has occurred, the Governor also must convene the Legislature within 30 days. The Legislature may:

- Meet at a place other than the Capitol or by electronic means.
- Conduct business and suspend rules with two-thirds of the members able to attend, instead of two-thirds of all members.
- Pass bills with three-fifths of the members who are able to attend, instead of a majority of all members.
- Pass tax bills that take effect upon passage instead of 90 days after the Legislature adjourns.

The Legislature may take additional actions otherwise prohibited by the Oregon Constitution and are limited to actions necessary to implement immediate response and aid in recovery. The Legislature may:

- Spend State Highway Fund moneys (gas taxes) for any purpose.
- Spend moneys that otherwise would go to individual and corporate tax "kicker" refunds by vote of 2/3 of members able to attend.
- Exceed the state debt limit.
- Override funding of local mandate provisions.
- Spend any lottery funds.

The powers granted by Measure 77 end 30 days after the Governor declares the catastrophic disaster or at an earlier date determined by the Legislature. The Legislature by law may extend the 30-day limit but must set an ending date.

A law that ends or extends operation of the measure may include provisions necessary for an orderly transition to compliance with constitutional provisions overridden during the catastrophic disaster.

The Governor may not invoke the provisions of the measure more than once for the same catastrophic disaster.

**Committee Members:**  
 Senator Brian Boquist  
 Representative Jean Cowan  
 Representative Tim Freeman  
 Representative Kim Thatcher  
 Jim Nass

**Appointed by:**  
 President of the Senate  
 Speaker of the House  
 Secretary of State  
 Secretary of State  
 Members of the Committee

*(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)*

## Legislative Argument in Support

**The Oregon State Constitution does not provide state government the flexibility to respond quickly and appropriately to aid Oregon's citizens should catastrophic disasters strike.**

We are at risk of severe natural disasters (volcanic eruptions, major flooding, earthquakes or tsunamis); wars and terrorism are also possible. Currently our state government lacks the constitutional authority to efficiently and effectively meet the critical needs after such an event.

Existing state constitutional limitations restrict the Governor's ability to immediately implement and fund critically needed recovery efforts.

Existing state constitutional limitations restrict the Governor's ability to call the Legislature into session outside of the Capitol building in Salem.

Existing state constitutional limitations prevent the Legislature from meeting in session if some of the legislators do not survive the event, are incapacitated, or are unable to travel to Salem.

Measure 77 will allow the Governor and the Legislature to play a critical role in directing the recovery effort. The measure retains the Governor's responsibility to oversee immediate response efforts, maintaining his/her role in the process of disaster declaration and deployment of an incident command structure. It grants the Governor temporary access to a defined and limited portion of otherwise budgeted funds to cover critical, urgent needs.

Measure 77 will allow the Legislature to convene quickly in order to pass laws in an alternative location, or by electronic means; and to do so with only those members who are well enough and able to take part.

Measure 77 allows the Legislature to repurpose additional recovery funding from certain delineated budget components.

Measure 77 will maintain our system of checks and balances, allowing state government to effectively react to a critical and tragically challenging event.

**Measure 77 assures that the Governor and the Legislature will be able to work as a team to meet the urgent needs of Oregonians who have been subjected to a catastrophic disaster.**

**We urge your "YES" vote on Measure 77.**

**Committee Members:**  
 Senator Brian Boquist  
 Representative Jean Cowan  
 Representative Gene Whisnant

**Appointed by:**  
 President of the Senate  
 Speaker of the House  
 Speaker of the House

*(This Joint Legislative Committee was appointed to provide the legislative argument in support of the ballot measure pursuant to ORS 251.245.)*