

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. R20-1170.01 Julie Pelegrin x2700

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HOUSE JOINT RESOLUTION 20-1006

101 **CONCERNING A REQUEST TO THE SUPREME COURT OF THE STATE OF**
102 **COLORADO TO RENDER ITS OPINION UPON A QUESTION**
103 **REGARDING SECTION 7 OF ARTICLE V OF THE STATE**
104 **CONSTITUTION.**

1 WHEREAS, A new outbreak of coronavirus disease, now
2 identified specifically as COVID-19, was detected in China in December
3 2019; and

4 WHEREAS, Since then, the disease has spread to every continent
5 except Antarctica and to 125 countries and territories, and as of March
6 13, 2020, worldwide there were over 145,000 reported cases of, and
7 5,416 deaths resulting from, COVID-19, and these numbers are
8 increasing hourly; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 WHEREAS, On March 10, 2020, Governor Polis declared a state
2 of epidemic disaster emergency in Colorado, and on March 11, 2020, the
3 World Health Organization declared a global pandemic due to the spread
4 of COVID-19; and

5 WHEREAS, Joint Rule 44 of the Joint Rules of the Senate and
6 House of Representatives, adopted in 2009, establishes procedures that
7 the General Assembly follows during a declared disaster emergency
8 caused by a public health emergency infecting or exposing a great number
9 of people to disease, agents, toxins, or other such threats; and

10 WHEREAS, According to the Centers for Disease Control and
11 Prevention, one of the ways in which COVID-19 most quickly spreads is
12 through personal contact, including contact that occurs when large
13 numbers of people congregate in enclosed spaces, which is a daily
14 occurrence at the State Capitol during the legislative session when, on any
15 given day, literally thousands of people may congregate within the State
16 Capitol to participate in the legislative process; and

17 WHEREAS, The General Assembly values and considers
18 significant citizen input throughout the legislative session, and limiting
19 public access to the State Capitol to limit the spread of COVID-19 while
20 continuing to hold public hearings on legislation is not a viable option
21 that respects and upholds the foundational value of civic participation in
22 public policy-making and government; and

23 WHEREAS, Legislators and other individuals participating in the
24 legislative process return to their homes throughout the state or even in
25 other states each evening or each weekend, and if any of them have been
26 infected with COVID-19 through interactions at the State Capitol, they
27 will spread the virus to additional areas of the state or to other states in
28 which cases of the virus have not yet been identified; and

29 WHEREAS, The General Assembly has considered the possibility
30 of continuing to operate virtually, using technology to conduct committee
31 hearings and floor sessions remotely, but this option is currently not
32 feasible due to cost, the existence of numerous logistical hurdles, and the
33 time required to procure, install, and test the technological infrastructure
34 that would be necessary to ensure secure participation by legislators and
35 access for the public. Further, continuing the legislative session by
36 allowing only remote public testimony using the technological
37 infrastructure currently available at the State Capitol would still require

1 individuals to congregate in centralized locations; and

2 WHEREAS, The General Assembly is considering adjourning the
3 2020 regular legislative session for a specific period of time by passing
4 a joint resolution to adjourn for more than three days to help mitigate the
5 spread of COVID-19; and

6 WHEREAS, The second regular session of the Seventy-second
7 General Assembly convened on January 8, 2020, and is currently
8 scheduled to adjourn *sine die* on May 6, 2020, pursuant to section 7 of
9 article V of the state constitution and Joint Rule 23 (d) of the Joint Rules
10 of the Senate and House of Representatives, which deems the
11 constitutional maximum for the legislative session of 120 calendar days
12 to be 120 consecutive calendar days; and

13 WHEREAS, Joint Rule 44 (g) states, "Notwithstanding the
14 provisions of Joint Rule 23 (d) of the Joint Rules of the Senate and the
15 House of Representatives regarding counting legislative days of a regular
16 session as consecutive days, the maximum of one hundred twenty
17 calendar days prescribed by section 7 of article V of the state constitution
18 shall be counted as one hundred twenty separate working calendar days
19 if the Governor has declared a state of disaster emergency due to a public
20 health emergency pursuant to section 24-33.5-704, Colorado Revised
21 Statutes."; and

22 WHEREAS, If the General Assembly adjourns for more than three
23 days, pursuant to Joint Rule 44 (g) the General Assembly will count the
24 first day upon which the General Assembly reconvenes following the
25 adjournment as the next legislative day following the day upon which the
26 General Assembly adjourned. For example, if the General Assembly
27 adjourns on March 16, 2020, the sixty-ninth legislative day, the day upon
28 which the General Assembly reconvenes will be counted as the seventieth
29 legislative day; and

30 WHEREAS, Upon reconvening following an extended
31 adjournment, the General Assembly may continue taking action on
32 pending legislation until the General Assembly reaches the 120th
33 legislative day, which, because of the period of adjournment, will occur
34 after May 6, 2020; and

35 WHEREAS, As of March 13, 2020, there were 355 bills pending
36 in the Senate and the House of Representatives, and upon reconvening

1 following an extended adjournment it is likely that there will still be many
2 important pieces of legislation pending that are of significant interest to
3 the public and will require a substantial amount of time for consideration,
4 public stakeholder participation and input, and debate before these bills
5 can be acted upon; and

6 WHEREAS, If the General Assembly were to adjourn *sine die* on
7 May 6, 2020, it could return in an extraordinary legislative session to
8 address any legislation not enacted by that date. However, the General
9 Assembly may convene in an extraordinary legislative session only if
10 called by the governor, who could limit the issues under consideration
11 during the session, or by the written request, specifying the purpose of the
12 session, of two-thirds of the members of each house. Thus, the General
13 Assembly could be foreclosed from considering one or more of the bills
14 pending upon adjournment if the subjects of those bills were not included
15 within the scope of the governor's call or agreed to by two-thirds of the
16 legislators. Further, an extraordinary legislative session would be
17 inefficient because any bills pending upon adjournment would have to
18 start again in the extraordinary legislative session with introduction in the
19 first house, and there would be no reasonable expectation that any one of
20 the bills would advance even as far as the stage of the legislative process
21 it was at when the General Assembly adjourned *sine die*; and

22 WHEREAS, Courts have held that legislation passed by a
23 legislature outside of the constitutionally established length of a regular
24 legislative session is void because the legislature does not have
25 constitutional authority to enact legislation outside of the term of a
26 regular legislative session unless convened in a special legislative session;
27 and

28 WHEREAS, The constitutionality of the currently pending bills
29 may be challenged if they are enacted after May 6, 2020, and could be
30 struck down if the provisions of Joint Rule 44 (g) that allow the limited
31 number of calendar days to be counted as working, rather than
32 consecutive, calendar days are found to be unconstitutional; and

33 WHEREAS, The General Assembly is thus faced with the difficult
34 choice to either protect public health and potentially fail to meet the
35 public's need for legislation or meet the public's interests and needs by
36 continuing to work on legislation while ignoring the danger to public
37 health; and

1 WHEREAS, If the General Assembly is required to adjourn for a
2 significant period of time to protect the public health and, when they
3 reconvene, the remaining time to act on legislation before May 6, 2020,
4 is significantly reduced, legislators will be unable to serve their
5 constituents by debating and acting on many of the bills introduced during
6 the 2020 regular legislative session, and the citizens who elected those
7 legislators to act on those bills will be deprived of representation by their
8 chosen representatives, who may be ineligible to return for the following
9 regular legislative session due to term limits or the outcome of the
10 November 2020 election; and

11 WHEREAS, Section 3 of article VI of the state constitution directs
12 the Colorado Supreme Court to "give its opinion upon important
13 questions upon solemn occasions when requested by the ... senate, or the
14 house of representatives;..."; and

15 WHEREAS, The rare, almost unprecedented, public health
16 situation currently facing the state warrants resolution by the Colorado
17 Supreme Court of whether the 120 calendar days of the regular legislative
18 session must be counted consecutively because the General Assembly, in
19 seeking to protect the public health by adjourning the legislative session
20 to a specified date to mitigate the spread of COVID-19, should not be
21 forced to either significantly reduce the length of the legislative session
22 and thereby fail to meet its responsibility to serve the citizens of the state
23 by passing legislation in the public interest or jeopardize the
24 constitutionality of that legislation, including legislation required to fund
25 state government, by proceeding to take action on legislation after May
26 6, 2020; and

27 WHEREAS, Resolving the issue of whether section 7 of article V
28 of the state constitution limits the regular legislative session to 120
29 consecutive calendar days relates directly to all of the legislation that will
30 be pending as of May 6, 2020, and the right of the public to full
31 legislative debate and consideration of that legislation; and

32 WHEREAS, Due to the rapid spread of COVID-19 and the
33 immediate need for the General Assembly to decide on a course of action
34 concerning the regular legislative session in order to protect the public
35 health, time is of the essence in determining the meaning of the
36 constitutional restriction on the length of the legislative session; and

37 WHEREAS, Quickly resolving the question of the meaning of the

1 constitutional restriction on the length of the legislative session in the
2 context of an interrogatory proceeding is necessary to enable the General
3 Assembly to take responsible action concerning the continuance of the
4 regular legislative session without calling into question the
5 constitutionality of any legislation that may be enacted after the
6 completion of 120 consecutive calendar days; now, therefore,

7 *Be It Resolved by the House of Representatives of the*
8 *Seventy-second General Assembly of the State of Colorado, the Senate*
9 *concurring herein:*

10 That, in view of the premises, the question of the constitutionally
11 required length of the regular legislative session, in the judgment of the
12 Senate and the House of Representatives, is a matter of extreme
13 importance and public interest and is being raised on the solemn and
14 historic occasion of the occurrence of a global pandemic and the need to
15 protect the health and safety of the citizens of Colorado. Further,
16 resolution of the question is connected to the ultimate constitutionality of
17 pending legislation that may be enacted outside of the period of 120
18 consecutive calendar days. The Senate and the House of Representatives
19 require resolution of this question as soon as possible in order to act in a
20 manner that protects the public health and safety, preserves the public's
21 rights of civic engagement, preserves the validity and constitutionality of
22 enacted legislation, and ensures the General Assembly's ability to enact
23 legislation to promote the public interest and provide for the continued
24 operation of state government. The Senate and the House of
25 Representatives accordingly respectfully request the Supreme Court of
26 the State of Colorado to render its opinion upon the following question:

27 Does the provision of section 7 of article V of the state constitution
28 that limits the length of the regular legislative session to "one hundred
29 twenty calendar days" require that those days be counted consecutively
30 and continuously beginning with the first day on which the regular
31 legislative session convenes or may the General Assembly for purposes
32 of operating during a declared disaster emergency interpret the limitation
33 as applying only to calendar days on which the Senate or the House of
34 Representatives, or both, convene in regular legislative session?

35 *Be It Further Resolved*, That, in view of the extremely
36 time-sensitive nature of this request, the Senate and the House of
37 Representatives respectfully request that, if the Supreme Court grants this
38 request for interrogatories and requires briefing and oral argument, the

1 Supreme Court adopt an expedited schedule to require submission of
2 briefs within no more than five days after the order granting the request
3 and submission of answer briefs and scheduling for oral arguments within
4 no more than five days following submission of briefs.

5 *Be It Further Resolved*, That the President and the Speaker of the
6 House of Representatives, immediately upon passage of this Joint
7 Resolution, shall transmit to the Clerk of the Colorado Supreme Court a
8 certified copy of this Joint Resolution and certified copies of Joint Rules
9 23 and 44 of the Joint Rules of the Senate and House of Representatives,
10 and that the Committee on Legal Services shall be directed to furnish said
11 Court with an adequate number of copies of this Joint Resolution and said
12 Joint Rules and shall submit to said Court such further documents and
13 briefs as the Court may require to expedite its procedure in the premises.