

**Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**REVISED**

LLS NO. R20-1170.01 Julie Pelegrin x2700

**HJR20-1006**

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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.**

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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.*

SENATE  
Final Reading  
March 14, 2020

HOUSE  
Final Reading  
March 14, 2020

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 120<sup>th</sup>  
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; and

17 WHEREAS, Courts have held that legislation passed by a  
18 legislature outside of the constitutionally established length of a regular  
19 legislative session is void because the legislature does not have  
20 constitutional authority to enact legislation outside of the term of a  
21 regular legislative session unless convened in a special legislative session;  
22 and

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

28

29 WHEREAS, If the General Assembly is required to adjourn for a  
30 significant period of time to protect the public health and, when they  
31 reconvene, the remaining time to act on legislation before May 6, 2020,  
32 is significantly reduced, legislators will be unable to serve their  
33 constituents by debating and acting on many of the bills introduced during  
34 the 2020 regular legislative session, and the citizens who elected those  
35 legislators to act on those bills will be deprived of representation by their  
36 chosen representatives, who may be ineligible to return for the following  
37 regular legislative session due to term limits or the outcome of the

1 November 2020 election; and

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

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

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

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

28 WHEREAS, Quickly resolving the question of the meaning of the  
29 constitutional restriction on the length of the legislative session in the  
30 context of an interrogatory proceeding is necessary to enable the General  
31 Assembly to take responsible action concerning the continuance of the  
32 regular legislative session without calling into question the  
33 constitutionality of any legislation that may be enacted after the  
34 completion of 120 consecutive calendar days; now, therefore,

35 *Be It Resolved by the House of Representatives of the*  
36 *Seventy-second General Assembly of the State of Colorado, the Senate*

1 *concurring herein:*

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

19 Does the provision of section 7 of article V of the state constitution  
20 that limits the length of the regular legislative session to "one hundred  
21 twenty calendar days" require that those days be counted consecutively  
22 and continuously beginning with the first day on which the regular  
23 legislative session convenes or may the General Assembly for purposes  
24 of operating during a declared disaster emergency interpret the limitation  
25 as applying only to calendar days on which the Senate or the House of  
26 Representatives, or both, convene in regular legislative session?

27 *Be It Further Resolved,* That, in view of the extremely  
28 time-sensitive nature of this request, the Senate and the House of  
29 Representatives respectfully request that, if the Supreme Court grants this  
30 request for interrogatories and requires briefing and oral argument, the  
31 Supreme Court adopt an expedited schedule to require submission of  
32 briefs within no more than five days after the order granting the request  
33 and submission of answer briefs and scheduling for oral arguments within  
34 no more than five days following submission of briefs.

35 *Be It Further Resolved,* That the President and the Speaker of the  
36 House of Representatives, immediately upon passage of this Joint  
37 Resolution, shall transmit to the Clerk of the Colorado Supreme Court a  
38 certified copy of this Joint Resolution and certified copies of Joint Rules

1 23 and 44 of the Joint Rules of the Senate and House of Representatives,  
2 and that the Committee on Legal Services shall be directed to furnish said  
3 Court with an adequate number of copies of this Joint Resolution and said  
4 Joint Rules and shall submit to said Court such further documents and  
5 briefs as the Court may require to expedite its procedure in the premises.