

CHAPTER 227

GENERAL ASSEMBLY

SENATE BILL 20-209

BY SENATOR(S) Garcia and Holbert, Bridges, Cooke, Donovan, Moreno, Scott, Sonnenberg, Winter;
also REPRESENTATIVE(S) Becker and Neville, Baisley, Bockenfeld, Duran, Exum, Humphrey, Kipp, Michaelson Jenet,
Sandridge, Snyder, Sullivan, Valdez D., Will, Williams D.

AN ACT

**CONCERNING BILLS ENACTED IN THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND
GENERAL ASSEMBLY THAT INCLUDE AN ACT SUBJECT TO PETITION CLAUSE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 1-40-136 as follows:

1-40-136. Bills enacted in the second regular session of the seventy-second general assembly that include an act subject to petition clause - legislative declaration. (1) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(I) THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY CONVENED ON JANUARY 8, 2020, AND WAS SCHEDULED TO ADJOURN SINE DIE ON MAY 6, 2020, PURSUANT TO SECTION 8 OF ARTICLE V OF THE STATE CONSTITUTION AND JOINT RULE 23 (d) OF THE JOINT RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES, WHICH DEEMS THE CONSTITUTIONAL MAXIMUM FOR THE LEGISLATIVE SESSION OF ONE HUNDRED TWENTY CALENDAR DAYS TO BE ONE HUNDRED TWENTY CONSECUTIVE CALENDAR DAYS;

(II) JOINT RULE 44 (g) OF THE JOINT RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES STATES THAT THE "MAXIMUM OF ONE HUNDRED TWENTY CALENDAR DAYS . . . SHALL BE COUNTED AS ONE HUNDRED TWENTY SEPARATE WORKING CALENDAR DAYS IF THE GOVERNOR HAS DECLARED A STATE OF DISASTER EMERGENCY";

(III) ON MARCH 10, 2020, THE GOVERNOR DECLARED A DISASTER EMERGENCY DUE TO THE PRESENCE OF CORONAVIRUS DISEASE 2019, KNOWN AS "COVID-19", AND THE PUBLIC HEALTH CRISIS NECESSITATED THE TEMPORARY ADJOURNMENT OF

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THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY;

(IV) ON MARCH 16, 2020, CONCERNED THAT ANY LEGISLATION ENACTED AFTER MAY 6, 2020, COULD BE SUBJECT TO CHALLENGE IF JOINT RULE 44 (g) WERE DEEMED UNCONSTITUTIONAL, THE GENERAL ASSEMBLY SUBMITTED AN INTERROGATORY TO THE COLORADO SUPREME COURT;

(V) ON APRIL 1, 2020, THE COLORADO SUPREME COURT FOUND IN *IN RE: INTERROGATORY ON HOUSE JOINT RESOLUTION 20-1006, 2020 CO 23 (COLO. 2020)*, THAT JOINT RULE 44 (g) WAS CONSTITUTIONAL. CONSEQUENTLY, ONCE IT RECONVENES, THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY MAY CONTINUE FOR THE FIFTY-TWO REMAINING LEGISLATIVE DAYS.

(VI) THE GOVERNOR HAS EXTENDED THE DECLARED DISASTER EMERGENCY SEVERAL TIMES, WHICH WILL NOW EXPIRE THIRTY DAYS FROM MAY 7, 2020, AND IT IS LIKELY THAT THE GOVERNOR'S DECLARED DISASTER EMERGENCY WILL BE FURTHER EXTENDED; AND

(VII) THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY REMAINED IN TEMPORARY ADJOURNMENT UNTIL IT RECONVENED ON MAY 26, 2020, WHICH WILL BE COUNTED AS THE SIXTY-NINTH LEGISLATIVE DAY. IT IS UNCERTAIN WHEN THE GENERAL ASSEMBLY WILL ADJOURN SINE DIE, BUT IT COULD BE AS LATE AS JULY 30, 2020, UNDER JOINT RULE 44 (g) OR LATER IF THE BODY UNDERTAKES ANOTHER TEMPORARY ADJOURNMENT.

(b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(I) IF A BILL DOES NOT INCLUDE A SAFETY CLAUSE, IT IS SUBJECT TO THE PEOPLE'S REFERENDUM POWER UNDER SECTION 1 OF ARTICLE V OF THE STATE CONSTITUTION, WHICH PROVIDES THAT A PERSON CAN FILE A REFERENDUM PETITION UP TO NINETY DAYS AFTER A GENERAL ASSEMBLY'S ADJOURNMENT SINE DIE TO PLACE AN ACT, OR AN ITEM, SECTION, OR PART OF AN ACT ON THE BALLOT AT A GENERAL ELECTION;

(II) WHEN THE SEVENTY-SECOND GENERAL ASSEMBLY COMMENCED ITS SECOND REGULAR SESSION ON JANUARY 8, 2020, AND UNTIL IT RECONVENED ON MAY 26, 2020, THE ACT SUBJECT TO PETITION CLAUSE SPECIFIED THAT IF A REFERENDUM PETITION WERE FILED AGAINST AN ACT, OR AN ITEM, SECTION, OR PART OF AN ACT, IT WOULD BE PLACED ON THE BALLOT FOR THE NOVEMBER 2020 GENERAL ELECTION;

(III) THE ACT SUBJECT TO PETITION CLAUSE IMPLICATES TWO INTERLOCKING ISSUES, BOTH OF WHICH HAVE CONSTITUTIONAL, STATUTORY, AND PRACTICAL DIMENSIONS;

(IV) IF A PETITION IS FILED WITHIN THE NINETY DAYS ALLOWED BY THE STATE CONSTITUTION, THE OFFICE OF THE SECRETARY OF STATE MUST VALIDATE THE PETITION TO DETERMINE IF IT IS SUFFICIENT. BEFORE THE ELECTION, THE OFFICE OF THE SECRETARY OF STATE MUST ALSO CERTIFY THE CONTENT OF THE BALLOT AND COUNTY CLERK AND RECORDERS MUST PRINT AND MAIL BALLOTS IN ACCORDANCE WITH DEADLINES SET FORTH IN BOTH STATE AND FEDERAL LAW.

(V) AT THE SAME TIME, THE CONSTITUTION REQUIRES LEGISLATIVE COUNCIL

STAFF TO DISTRIBUTE THE BALLOT INFORMATION BOOKLETS, WHICH INCLUDES AN ANALYSIS OF EACH MEASURE PLACED ON THE BALLOT, AT LEAST THIRTY DAYS BEFORE THE ELECTION. THIS PROCESS ALSO INVOLVES MULTIPLE STEPS.

(VI) BECAUSE OF THE DELAYED ADJOURNMENT SINE DIE DUE TO COVID-19, THERE WILL NOT BE SUFFICIENT TIME AFTER THE CONSTITUTIONAL DEADLINE TO FILE PETITIONS TO MEET THE DEADLINE IN FEDERAL LAW FOR THE DISTRIBUTION OF BALLOTS TO UNIFORMED AND OVERSEAS CITIZENS OR THE DEADLINE IN THE STATE CONSTITUTION FOR THE DISTRIBUTION OF THE BALLOT INFORMATION BOOKLETS FOR THE 2020 GENERAL ELECTION ON NOVEMBER 3;

(VII) SECTION 1 (4)(a) OF ARTICLE V OF THE STATE CONSTITUTION SPECIFIES THAT "ELECTIONS ON MEASURES INITIATED BY OR REFERRED TO THE PEOPLE OF THE STATE SHALL BE HELD AT THE BIENNIAL REGULAR GENERAL ELECTION". WHILE UNDER NORMAL CIRCUMSTANCES THIS IS UNDERSTOOD TO MEAN THE GENERAL ELECTION THAT FOLLOWS THE SESSION OF THE GENERAL ASSEMBLY THAT PASSED THE BILL, THE CONSTITUTION DOES NOT SPECIFY THAT THE ELECTION BE HELD AT THE NEXT GENERAL ELECTION.

(VIII) BECAUSE OF THE DELAYED ADJOURNMENT SINE DIE DUE TO COVID-19, AND THE RESULTING INABILITY TO PLACE BILLS REFERRED BY PETITION ON THE BALLOT FOR THE 2020 GENERAL ELECTION, IT IS REASONABLE TO INTERPRET SECTION 1 (4)(a) OF ARTICLE V OF THE STATE CONSTITUTION TO MEAN THE NOVEMBER 2022 GENERAL ELECTION INSTEAD OF THE NOVEMBER 2020 GENERAL ELECTION;

(IX) REFERENCING THE NOVEMBER 2022 GENERAL ELECTION INSTEAD OF THE NOVEMBER 2020 GENERAL ELECTION PRESERVES THE RIGHT OF REFERENDUM, AFFORDS THE ABILITY TO COMPLY WITH THE OTHER STATUTORY AND CONSTITUTIONAL DEADLINES FOR THE NOVEMBER 2020 ELECTION, AND AVOIDS THE UNCERTAINTY THAT MIGHT COME WITH THE RISK OF LEGAL CHALLENGES IF THIS ISSUE IS NOT ADDRESSED;

(X) AMENDING THE ACT SUBJECT TO PETITION CLAUSE IN EACH BILL COULD REQUIRE AMENDING HUNDREDS OF PENDING BILLS AND WOULD REQUIRE CHANGING THE ACT SUBJECT TO PETITION CLAUSE IN OVER SEVENTY ENACTED BILLS; AND

(XI) IT IS A MORE EFFICIENT SOLUTION TO ENACT THIS SECTION TO ADDRESS THE ISSUE FOR ALL BILLS ENACTED IN THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY.

(c) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(I) THE ACT SUBJECT TO PETITION CLAUSE IN BILLS THAT WERE PENDING OR ENACTED PRIOR TO THE TEMPORARY ADJOURNMENT OF THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY ON MARCH 14, 2020, MAKE REFERENCE TO AUGUST 5, 2020, AS THE POSSIBLE EFFECTIVE DATE OF SUCH BILLS IF ADJOURNMENT SINE DIE WAS ON MAY 6, 2020; AND

(II) BECAUSE THE ADJOURNMENT SINE DIE OF THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY WAS DELAYED BEYOND MAY 6, 2020, THIS SECTION IS INTENDED TO REITERATE THAT UNLESS A LATER DATE IS OTHERWISE

SPECIFIED IN THE ACT, THE EFFECTIVE DATE FOR ANY ACT, OR AN ITEM, SECTION, OR PART OF AN ACT WITH AN ACT SUBJECT TO PETITION CLAUSE IS 12:01 A.M. ON THE DAY FOLLOWING THE EXPIRATION OF THE NINETY-DAY PERIOD AFTER ADJOURNMENT SINE DIE, NOT AUGUST 5, 2020.

(2) NOTWITHSTANDING ANY LAW TO THE CONTRARY, FOR ANY ACT, ITEM, SECTION, OR PART OF AN ACT THAT IS ENACTED BY BILL WITH AN ACT SUBJECT TO PETITION CLAUSE DURING THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY:

(a) THE ACT, ITEM, SECTION, OR PART OF THE ACT TAKES EFFECT AT 12:01 A.M. ON THE DAY FOLLOWING THE EXPIRATION OF THE NINETY-DAY PERIOD AFTER ADJOURNMENT SINE DIE OF THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY, UNLESS A LATER DATE IS OTHERWISE SPECIFIED IN THE ACT; AND

(b) NOTWITHSTANDING SUBSECTION (2)(a) OF THIS SECTION, IF A REFERENDUM PETITION IS FILED PURSUANT TO SECTION 1 (3) OF ARTICLE V OF THE STATE CONSTITUTION AGAINST SUCH AN ACT, ITEM, SECTION, OR PART OF THE ACT WITHIN THE NINETY-DAY PERIOD AFTER ADJOURNMENT SINE DIE OF THE SECOND REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY, THEN THE ACT, ITEM, SECTION, OR PART OF THE ACT WILL NOT TAKE EFFECT UNLESS APPROVED BY THE PEOPLE AT THE GENERAL ELECTION TO BE HELD IN NOVEMBER 2022 AND, IN SUCH CASE, WILL TAKE EFFECT ON THE DATE OF THE OFFICIAL DECLARATION OF THE VOTE THEREON BY THE GOVERNOR.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: July 2, 2020