

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

LLS NO. R21-0912.01 Julie Pelegrin x2700

SJR21-006

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SENATE JOINT RESOLUTION 21-006

101 **CONCERNING A REQUEST TO THE SUPREME COURT OF THE STATE OF**
102 **COLORADO TO RENDER ITS OPINION UPON A QUESTION**
103 **REGARDING HOUSE BILL 21-1164.**

1 WHEREAS, Article IX, section 2 of the Colorado Constitution
2 mandates that the Colorado General Assembly must "provide for the
3 establishment and maintenance of a thorough and uniform system of free
4 public schools throughout the state"; and

5 WHEREAS, Pursuant to that mandate, the General Assembly
6 enacted a school finance system to fund public schools through a
7 combination of state-appropriated money and local property tax revenue
8 collected from mill levies imposed by school districts; and

9 WHEREAS, In 1992, the Colorado voters approved article X,

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 19, 2021

1 section 20 of the Colorado Constitution (TABOR), which, among other
2 things, imposes a property tax revenue limit on all districts that impose
3 property taxes, including school districts, unless the voters in a district
4 approve a revenue change to allow the district to keep property tax
5 revenue that exceeds the limit; and

6 WHEREAS, In 1994, the General Assembly passed and the
7 Governor signed the "Public School Finance Act of 1994", article 54 of
8 title 22, Colorado Revised Statutes, (1994 Act), which, like previous
9 school finance acts, creates a shared obligation between school districts
10 and the state to fund public education in Colorado; and

11 WHEREAS, The 1994 Act requires each school district to
12 annually levy a certain number of property tax mills, as determined under
13 the 1994 Act, to fund the local share of the school district's total program
14 funding, which levy is referred to as the "total program mill levy"; and

15 WHEREAS, The 1994 Act, as enacted, set limits on each school
16 district's total program mill levy, including limiting a school district to
17 levying no more than the number of mills that the district could levy
18 under its TABOR property tax revenue limit; and

19 WHEREAS, As the Colorado Supreme Court recognized in *Mesa*
20 *County Bd. of County Comm'rs v. State*, 203 P.3d 519 (Colo. 2009), since
21 1994, nearly every school district in Colorado has obtained voter approval
22 to permanently waive its TABOR property tax revenue limit; and

23 WHEREAS, In recognizing the elections at which voter approval
24 was given, the Colorado Supreme Court concluded that "[t]he waiver
25 elections were effective immediately and gave the school districts, which
26 are the relevant taxing authorities, the right to receive property tax
27 revenue above the [revenue] limit." *Mesa County*, 203 P.3d 519, 535; and

28 WHEREAS, Despite the waiver elections, the Colorado
29 Department of Education (CDE) continued to instruct each school district
30 to limit its total program mill levy to no more than the number of mills
31 that could be imposed under the school district's TABOR property tax
32 revenue limit as if the school district's voters had not waived the limit;
33 and

34 WHEREAS, In *Mesa County*, the Colorado Supreme Court
35 implied that CDE acted without authority in mandating that school

1 districts ignore the waiver elections and reduce their total program mill
2 levies: "However, this result [i.e., that school districts were no longer
3 subject to the property tax revenue limit when determining their mill
4 levies under the 1994 Act] was not implemented because of the manner
5 in which the CDE administered the School Finance Act. Rather than
6 recognizing that all limits had been waived immediately after each
7 successful election occurred, the CDE continued to advise school districts
8 to certify mill levies in accordance with the property tax revenue limit ...,
9 and to reduce their mill levies when property tax revenues rose faster than
10 the revenue limits permitted." *Mesa County*, 203 P.3d 519, 535; and

11 WHEREAS, Between 1998 and 2007, CDE, without authority to
12 do so, instructed over 100 school districts to reduce their total program
13 mill levies to remain under their TABOR property tax revenue limits,
14 even though waived by the school districts' voters; and

15 WHEREAS, These unauthorized reductions have had a cumulative
16 effect, because each unauthorized mill levy reduction created a new,
17 lower limit on a school district's total program mill levy, above which the
18 1994 Act would not allow the mill levy to increase; and

19 WHEREAS, As a result, the statewide average total program mill
20 levy imposed by school districts decreased from 38 mills in 1994 to 21
21 mills in 2006, causing school districts to lose billions of dollars in
22 property tax revenue for schools, which the state then was required to
23 replace with state revenue; and

24 WHEREAS, This significant reduction in the amount of property
25 tax revenue contributed to total program funding by school districts has
26 severely impacted the state's ability to adequately fund public schools;
27 and

28 WHEREAS, During the 2020 regular legislative session, the
29 General Assembly, in the exercise of its plenary authority, passed, and the
30 Governor signed, House Bill 20-1418, which, in part, is designed to
31 correct the unauthorized reductions in school district total program mill
32 levies; and

33 WHEREAS, Beginning in the 2020 property tax year, House Bill
34 20-1418 requires most school districts to correct their total program mill
35 levies to reverse the previous, unauthorized reductions; and

1 WHEREAS, While the total program mill levies were corrected in
2 the 2020 property tax year, school district taxpayers did not in fact pay
3 more property taxes due to this correction because House Bill 20-1418
4 also requires each school district for which the total program mill levy is
5 corrected to grant a temporary property tax credit for the number of mills
6 by which the mill levy is increased above the number of mills levied in
7 the 2019 property tax year; and

8 WHEREAS, During the 2021 regular legislative session, the
9 General Assembly, in the exercise of its plenary authority, introduced
10 House Bill 21-1164, which directs the CDE to adopt a correction schedule
11 to incrementally implement the total program mill levy corrections by
12 requiring school districts to reduce the temporary property tax credits by
13 no more than one mill per year beginning in the 2021 property tax year,
14 resulting in complete correction of the mill levy rates in all impacted
15 school districts by 2040; and

16 WHEREAS, House Bill 21-1164 was passed on third reading by
17 the House of Representatives on March 16, 2021, was passed by the
18 Senate on second reading on March 19, 2021, and now awaits final
19 passage by the Senate; and

20 WHEREAS, With the implementation of the correction schedule
21 required by House Bill 21-1164, 127 school districts will actually impose
22 a higher number of mills on their taxpayers for the total program mill levy
23 for the 2021 property tax year than was imposed for the 2020 property tax
24 year due to the correction; and

25 WHEREAS, Substantial questions have been raised about the
26 constitutionality of House Bill 21-1164 regarding:

27 (1) The underlying assumption that the General Assembly may
28 correct the CDE's unauthorized mill levy reductions by requiring school
29 districts to reset their total program mill levies to the levels at which the
30 levies would have been but for the unauthorized reductions, without
31 requiring a school district to obtain prior voter approval under article X,
32 section 20(4) of TABOR; and

33 (2) The fact that, in implementing the correction of its total
34 program mill levy by reducing the temporary property tax credit in
35 accordance with the correction schedule, a school district is assessing a
36 "mill levy above that for the prior year", which normally requires prior

1 voter approval under article X, section 20(4) of TABOR; and

2 WHEREAS, The issues raised by House Bill 21-1164 are strictly
3 legal issues involving the interpretation and construction of the 1994 Act
4 and article X, section 20 of the Colorado Constitution, and no factual
5 issues are likely to arise in the context of a private suit that would
6 enhance the Colorado Supreme Court's ability to adjudicate these issues;
7 and

8 WHEREAS, Unless the Colorado Supreme Court resolves these
9 constitutional questions in the context of an interrogatory proceeding:

10 (1) The state and school districts will lack certainty as to the
11 appropriate level of school districts' total program mill levies and the
12 concomitant level of state funding required for public education
13 beginning in the 2021-22 fiscal year;

14 (2) School districts, in reducing the temporary property tax credits,
15 and thereby imposing a de facto increase in the school districts' total
16 program mill levies, will risk the costs and delays of legal action and the
17 imposition of substantial refund obligations under TABOR if the
18 increases in total program mill levies are found to be unconstitutional.
19 These refund obligations would substantially impact school districts'
20 already strained finances; and

21 (3) Individual lawsuits brought against multiple school districts
22 by taxpayers who are required to pay more in school district property
23 taxes due to the reductions in the temporary property tax credits would
24 create substantial unnecessary costs for and confusion among school
25 districts and taxpayers. The many potential lawsuits could result in a
26 confusing patchwork of inconsistent district court decisions, requiring
27 some school districts to reduce their temporary property tax credits and
28 enjoining others from doing so. This would result in unequal treatment of
29 similarly situated taxpayers around the state, inconsistent with the
30 thorough and uniform requirements specified in article IX, section 2 of
31 the Colorado Constitution. Seeking a final resolution of these issues from
32 the Colorado Supreme Court would force taxpayers and school districts
33 to expend significant additional resources; and

34 WHEREAS, The General Assembly has elected to submit this
35 interrogatory by Joint Resolution adopted by the two houses to
36 demonstrate to the Colorado Supreme Court that both houses concur in

1 the importance of the issue set forth below and the urgency of the
2 situation described in this Joint Resolution; and

3 WHEREAS, If, before the adjournment sine die of the first regular
4 session of the Seventy-third General Assembly, the Colorado Supreme
5 Court determines that, to correct the prior unauthorized reductions in
6 school district mill levies, school districts may be required to decrease the
7 temporary property tax credit required in House Bill 20-1418 in
8 accordance with a correction schedule, resulting in a de facto increase in
9 the total program mill levy, without obtaining prior voter approval, House
10 Bill 21-1164 will likely pass the Senate on third reading and be signed
11 into law by the Governor; now, therefore,

12 *Be It Resolved by the Senate of the Seventy-third General*
13 *Assembly of the State of Colorado, the House of Representatives*
14 *concurring herein:*

15 That, in view of the premises, there is an important question as to
16 the constitutionality of House Bill 21-1164, and it is the judgment of the
17 Senate and the House of Representatives that the question of the
18 constitutionality of House Bill 21-1164 is a matter of extreme importance
19 and public interest affecting the overall level of funding for public
20 education and property tax equity among school districts. Further, it is
21 essential that the constitutionality of House Bill 21-1164 be determined
22 as soon as possible to enable the state and school districts to finalize the
23 budgets for the 2021-22 fiscal year and enable school districts to
24 determine with confidence the total program mill levies to be imposed for
25 the 2021 property tax year. The Senate and the House of Representatives
26 concur that a solemn occasion within the meaning and intent of article VI,
27 section 3 of the Colorado Constitution has arisen and, accordingly,
28 respectfully request the Colorado Supreme Court to render its opinion
29 upon the following question:

30 Given that most school districts obtained voter approval to
31 retain all excess property tax revenue but were required,
32 without legal authority, to subsequently reduce their total
33 program mill levies, can the General Assembly, having
34 already mandated that those school districts reset their total
35 program mill levies to the levels that would have been in
36 effect but for the unauthorized reductions, now require
37 such school districts to: (a) gradually eliminate the
38 temporary property tax credits as provided in House Bill

1 21-1164; and (b) do so without again obtaining voter
2 approval?

3 *Be It Further Resolved*, That the President of the Senate and the
4 Speaker of the House of Representatives, immediately upon passage of
5 this Joint Resolution, shall transmit to the Clerk of the Colorado Supreme
6 Court a certified copy of this Joint Resolution and a certified copy of the
7 revised version of House Bill 21-1164, and that the Committee on Legal
8 Services is directed to furnish said Court with an adequate number of
9 copies of this Joint Resolution and said bill and shall submit to said Court
10 such further documents and briefs as the Court may require to expedite
11 its procedure in the premises.