Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT

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UNREVISED
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3.13.20

LLS NO. R20-1170.01 Julie Pelegrin x2700 **HOUSE Joint Resolution**

HOUSE SPONSORSHIP

Becker,

SENATE SPONSORSHIP

(None),

BILL TOPIC: "Request For Interrogatories Regarding Calendar Day"

HOUSE JOINT RESOLUTION

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 12, 2020, worldwide there were over 128,883 reported cases of, and
7 4,729 deaths resulting from, COVID-19, and these numbers are
8 increasing hourly; and

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

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

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

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

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

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

individuals to congregate in centralized locations; and

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

WHEREAS, The second regular session of the Seventy-second General Assembly convened on January 8, 2020, and is currently scheduled to adjourn *sine die* on May 6, 2020, pursuant to section 7 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 120 calendar days to be 120 consecutive calendar days; and

WHEREAS, Joint Rule 44 (g) states, "Notwithstanding the provisions of Joint Rule 23 (d) of the Joint Rules of the Senate and the House of Representatives regarding counting legislative days of a regular session as consecutive days, the maximum of 120 calendar days prescribed by section 7 of article V of the state constitution shall be counted as 120 separate working calendar days if the Governor has declared a state of disaster emergency due to a public health emergency pursuant to section 24-33.5-704, Colorado Revised Statutes."; and

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

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

WHEREAS, As of March 9, 2020, there were 377 bills pending in the Senate and the House of Representatives, and upon reconvening following an extended adjournment it is likely that there will still be many

important pieces of legislation pending that are of significant interest to the public and will require a substantial amount of time for consideration, public stakeholder participation and input, and debate before these bills can be acted upon; and

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

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

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

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

WHEREAS, If the General Assembly is required to adjourn for a

significant period of time to protect the public health and, when they reconvene, the remaining time to act on legislation before May 6, 2020, is significantly reduced, legislators will be unable to serve their constituents by debating and acting on many of the bills introduced during the 2020 regular legislative session, and the citizens who elected those legislators to act on those bills will be deprived of representation by their chosen representatives, who may be ineligible to return for the following regular legislative session due to term limits or the outcome of the November 2020 election; and

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

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

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

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

WHEREAS, Quickly resolving the question of the meaning of the constitutional restriction on the length of the legislative session in the

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

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

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

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

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

1 briefs within five days after the order granting the request and submission
2 of answer briefs and scheduling for oral arguments within five days
3 following submission of briefs.

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