

OFFICE OF LEGISLATIVE LEGAL SERVICES  
COLORADO GENERAL ASSEMBLY

Attachment D

STATE CAPITOL BUILDING, ROOM 091  
200 EAST COLFAX AVENUE  
DENVER, COLORADO 80203-1782

TELEPHONE: 303-866-2045 FACSIMILE: 303-866-4157  
E-MAIL: OLLS.GA@STATE.CO.US

## MEMORANDUM

**TO:** Legislative Emergency Epidemic Response Committee

**FROM:** Office of Legislative Legal Services

**DATE:** February 29, 2008

**SUBJECT:** Constitutional and statutory provisions and legislative rules that are potential barriers to meeting at another location than the State Capitol or to holding a virtual session<sup>1</sup>

### Issues Addressed

This memo addresses the constitutional and statutory provisions and legislative rules that might be barriers to the General Assembly either meeting in another location than the State Capitol or holding a virtual session of the General Assembly, if the General Assembly needed to meet in the event of a pandemic<sup>2</sup>. This memo does not address the mechanics of how a virtual session might be held or what the cost of such efforts would entail.

### Background on Pandemic

Dr. Ned Calonge, chief medical officer, Department of Public Health and Environment, indicated that the best response to a pandemic is social distancing, where persons are at least 6 feet apart, masks are used, and ideally, where social gatherings or meetings are banned or curtailed. In addition, he noted that the pandemic comes in waves, lasting approximately 6 to 8 weeks,

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<sup>1</sup> This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

<sup>2</sup> A pandemic is a global disease outbreak. Pandemic flu occurs when a new influenza virus emerges for which people have little or no immunity and for which there is no vaccine. Colorado has experienced 3 pandemic flue outbreaks (1918, 1957, and 1968). Colorado Department of Public Health and Environment website.

that there usually are 2-3 waves that would be 6 months apart and may continue for up to 18 months. He stated that the waves would start slowly, then reach a peak about 2 weeks where there would be approximately 40% absenteeism across all sectors, and that the infection rate is estimated at 25% (or 1 in 4). The absenteeism is higher than the infection rate because people would miss work or activities because of caring for sick people. He said that there would probably be at least a month of time to respond before the first wave of infection was present in the state. During the first wave, the challenge is to determine how to conduct business before a vaccine can be developed to address that particular strain of pandemic flu. He also said that the State Capitol is not a good environment for staying healthy.

What constitutional, statutory or legislative rules exist that would be or are potential barriers to meeting elsewhere or meeting in a virtual session and how could those be addressed?

The Office has identified existing laws or rules that impose restrictions governing where the General Assembly meets, the organization of regular sessions, the length of sessions, and electronic participation. These are potential barriers to meeting elsewhere or meeting in a virtual session.

#### *Constitutional Provisions Regarding Location*

Article VIII, section 2, of the state constitution states that the general assembly has no power to change or locate the seat of government of the state and that it shall remain at the city and county of Denver. Article VIII, Section 3, provides that the location of the seat of government can not be changed except by a two-thirds vote of the qualified electors voting on a question submitted to the voters by the general assembly. See Attachment A.

#### *Possible Remedy*

The strictest interpretation of this provision is that the constitution requires an amendment to allow for the general assembly to meet in another location than Denver or to meet electronically in an emergency epidemic. However, the Office believes that a statute could be crafted that would not violate the constitution.<sup>3</sup> A rough draft of such a statute is attached in Attachment B. The

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<sup>3</sup> It has been suggested that the General Assembly send interrogatories to the Colorado Supreme Court about the constitutionality of such a bill. Article VI, Section 3, allows the Colorado Supreme Court to issue advisory opinions "upon important questions upon solemn occasions" when requested by the Governor or by the Senate or the House of Representatives. At a minimum, if the interrogatories relate to a bill, the legislation must be passed on second reading in the house submitting

history of section 2 and 3 is that the state had experienced 23 years of territorial and early statehood when the citizens of several towns fought back and forth over the physical location of the State Capitol. This language was placed in the constitution to resolve the question once and for all. Moreover, the "seat of government" is more than just the General Assembly. The constitution prohibits moving the *seat of government* from Denver, not moving the *General Assembly*. The executive branch offices and the judicial branch offices would still be located in Denver. Legislation could be passed that clearly stated that the purpose of meeting in another location or meeting electronically is to convene the General Assembly during an emergency situation to address immediate needs during the pandemic, that it is only a temporary situation, and that it is not being done to change the seat of government within the meaning of Article VIII, section 2 or 3.

It also appears from the social distancing aspects of a pandemic and the likely course of a pandemic that moving the entire General Assembly from Denver to another city in the state would not be recommended as a way to respond. Thus, one option is to have the General Assembly meet in a virtual session. Arguably, if the General Assembly is meeting electronically it is in a sense meeting throughout the whole state rather than in one new location. Another view is to say that the server is still in Denver and the staff is still in Denver, but the members are connected through the electronic means. As mentioned before, a carefully crafted bill might be achieved that meets this situation without violating the constitution.

Because of the cost of running a virtual session, the potential logistical difficulties in running a virtual session, and the time that it might take to develop a plan for such occurrence, the other option that the Committee might want to entertain is whether the General Assembly could find a different location in the city and county of Denver to meet that would allow for a short session where social distancing measures could be more easily achieved, especially during a less contagious time during the pandemic. For instance, could the members meet at the Convention Center, Invesco Field, Auraria, or Denver International Airport? These buildings are all located in the city and county of Denver, are more modern buildings than the Capitol, have larger spaces, multiple elevators, and ample parking. In such spaces, it might be

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the interrogatories. It should also be noted that the Supreme Court has declined to take interrogatories propounded by the General Assembly when the Court did not believe there was sufficient time remaining in the legislative session for counsel to fully and adequately argue and the Court to carefully consider and decide the interrogatories. It is probably too late in the session to expect the Court to take interrogatories. The other thing to consider is that legislation passed by the General Assembly is presumed to be constitutional.

more feasible to run a session using social distancing methods than attempting to do so in the State Capitol. The other advantage of this option is that it avoids the argument about moving the General Assembly from Denver.

Another possible location that might be explored is whether large hotels might have the technological infrastructure already in place to allow members of the General Assembly to meet. For instance, individual rooms in a hotel are already equipped with telephones and with television sets with closed circuit broadcasting and access to a cable system. Most large hotels have their own channel which includes the ability to broadcast text messages. Perhaps, a plan could be developed with a cable provider and a Denver hotel that uses such technology in combination with the members' individual lap tops.

#### *Statutory Provisions on Location and Organization of the General Assembly*

Section 2-2-301, C.R.S., pertains to the organization of the General Assembly in the first regular session of a General Assembly and refers to the members of the House meeting in the hall of the house of representatives and the members of the Senate meeting in the hall of the Senate.

#### *Possible Remedy*

This statute could either be amended or a new statute adopted to allow the members to meet in another location or electronically in a pandemic situation.

#### *Constitutional and Statutory Provisions on When a General Assembly Meets*

Article V, section 7 states that the general assembly "shall meet in regular session at 10 a.m. no later than the second Wednesday of January of each year". Under section 2-2-303.5, C.R.S., the general assembly, acting by resolution, designates a specific date for the regular session on or after January 1 but prior to the second Wednesday of January and if the general assembly has not acted to designate a date by resolution, the executive committee sets the date between January 1 and the second Wednesday of January.

#### *Possible Remedy*

If the pandemic occurs when the General Assembly is in session, the members could reprioritize their work, recess during the highly contagious period, and come back when it is safe to assemble in public. If the pandemic occurs when the General Assembly is not in session, under Article V, section 7, and Article IV, section 9, the Governor can call the General Assembly to a special session

or two-thirds of the members of each house can call themselves into special session by a written request.

### *Length of a Session*

Article V, Section 7, of the state constitution provides that "Regular sessions of the general assembly shall not exceed one hundred twenty calendar days." Joint Rule 23 (d) has further defined how the days of a regular session are counted. That rule provides:

The maximum of one hundred twenty calendar days prescribed by section 7 of article V of the state constitution for regular sessions of the General Assembly shall be deemed to be one hundred twenty *consecutive* calendar days. (emphasis added)

Joint Rule 23 (d) operates to make every day count towards the 120 days, including the weekends. Depending upon when the pandemic was occurring, Joint Rule 23 (d) might limit the General Assembly's ability to recess a regular session and come back before adjourning sine die.

### *Possible Remedy*

Joint rule 23 (d) could be amended to provide for one hundred twenty calendar days during an emergency pandemic or it could be one of the things the General Assembly first adopts when it meets. Of course, Joint Rule 23 (d) is not an issue if the General Assembly meets in a special session since Joint Rule 23 (d) only applies to a regular session.

### *Limits on electronic participation*

House Rule 25A and Senate Rule 22B prohibit participation by legislators in any meeting of a committee of reference through telephone or other electronic connection. Joint Rule 24A also prohibits legislators from participating in any meeting of an interim study committee through telephone or other electronic connection. In order to meet in a virtual session, these rules would either need to be suspended during a pandemic or amended to allow for electronic participation during a pandemic.

### Proactive Measures

This Committee may want to consider having a petition or individual petitions ready for the General Assembly to call itself into special session in the event

of a pandemic. Since it might be easier to have the Governor call the members of the General Assembly into a special session rather than seek agreement of at least 2/3rds of the members of the General Assembly, the General Assembly or the Executive Committee may also wish to have discussions with the Governor's Office about drawing up a plan for the Governor to call the General Assembly into special session in the event of a pandemic.

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## ATTACHMENT A

**Article VIII, Section 2. Seat of government - where located.** The general assembly shall have no power to change or to locate the seat of government of the state, which shall remain at the city and county of Denver.

**Article VIII, Section 3. Seat of government - how changed.** When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the state voting on that question, at a general election, at which the question of location of the seat of government shall have been submitted by the general assembly.

ATTACHMENT B

**SECTION 1.** Part 15 of article 3 of title 2, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**2-3-1504. Emergency epidemic - time and location for convening regular or special sessions - legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT IN THE EVENT OF AN EMERGENCY EPIDEMIC, THE GENERAL ASSEMBLY MAY NEED TO CONDUCT ITS BUSINESS IN SUCH A WAY THAT IT DOES NOT FURTHER SPREAD COMMUNICABLE DISEASES OR WORSEN THE EMERGENCY EPIDEMIC. THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE PURPOSE OF THE PROCESS OUTLINED IN THIS SECTION IS TO ALLOW FOR THE GENERAL ASSEMBLY TO CARRY OUT ITS ESSENTIAL BUSINESS WITHOUT VIOLATING THE CONSTITUTIONAL REQUIREMENTS GOVERNING THE OPERATIONS OF THE GENERAL ASSEMBLY. THE GENERAL ASSEMBLY FINDS THAT THE PROCESSES OUTLINED IN THIS SECTION TO BE FOLLOWED IN THE EVENT OF AN EPIDEMIC EMERGENCY ARE ONLY OF A TEMPORARY NATURE AND THAT TAKING SUCH MEASURES WITH RESPECT TO HAVING A TEMPORARY LOCATION FOR A MEETING SPACE FOR THE GENERAL ASSEMBLY OR FOR CONDUCTING SESSIONS OR COMMITTEE MEETINGS THROUGH ELECTRONIC METHODS DOES NOT CONSTITUTE MOVING THE SEAT OF GOVERNMENT OF THE STATE FOR PURPOSES OF SECTION 2 OF ARTICLE VIII OF THE STATE CONSTITUTION.

(2) NOTWITHSTANDING THE PROVISIONS OF SECTION 2-2-301 REGARDING THE LOCATION OF THE GENERAL ASSEMBLY AND SECTION 2-2-303.5 REGARDING THE TIME FOR CONVENING OF REGULAR SESSIONS OF THE GENERAL ASSEMBLY, THE GENERAL ASSEMBLY MAY CONVENE ANY REGULAR SESSION OR SPECIAL SESSION OF THE GENERAL ASSEMBLY IN A DIFFERENT LOCATION THAN IN THE CITY AND COUNTY OF DENVER OR MAY MEET USING A FORMAT AND METHOD THAT ALLOWS FOR CONDUCTING MEETINGS OF THE GENERAL ASSEMBLY OR ANY OF ITS COMMITTEES THROUGH TELECONFERENCING OR VIDEOCONFERENCING. IN ORDER TO CONVENE EITHER IN A DIFFERENT LOCATION OR THROUGH A METHOD OF ELECTRONIC CONFERENCING, A MAJORITY OF THE MEMBERS OF THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, AFTER CONSULTING WITH THE GOVERNOR AND PUBLIC HEALTH OFFICIALS, SHALL MAKE THE FOLLOWING DETERMINATIONS:

(a) THAT THE STATE IS EXPERIENCING OR IS IMMINENTLY EXPECTED TO BE EXPERIENCING AN EMERGENCY EPIDEMIC;

(b) TO RESPOND TO THE EMERGENCY EPIDEMIC AND AVOID THE SPREAD



OF DISEASE, THAT THE INTERESTS OF THE STATE AND ITS CITIZENS WOULD BE SERVED BY HOLDING ANY REGULAR SESSION OR SPECIAL SESSION OF THE GENERAL ASSEMBLY IN A DIFFERENT LOCATION THAN IN THE CITY AND COUNTY OF DENVER OR IN A FORMAT AND METHOD THAT ALLOWS FOR CONDUCTING MEETINGS OF THE GENERAL ASSEMBLY OR ITS COMMITTEES THROUGH TELECONFERENCING OR VIDEOCONFERENCING;

(c) THAT THE MEASURES THAT ARE TAKEN SHALL BE OF A TEMPORARY NATURE AND THAT ONCE THE THREAT OF THE EMERGENCY EPIDEMIC HAS SUBSIDED, THE GENERAL ASSEMBLY SHALL RETURN TO MEETING IN THE CITY AND COUNTY OF DENVER.

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Note: The draft language is a new section added to the part 15 that created the LEERC committee. It uses the term "emergency epidemic" which is defined in 2-3-1502 (5), C.R.S., as follows:

**2-3-1502. Definitions.** As used in this part 15, unless the context otherwise requires:

(5) "Emergency epidemic" means cases of an illness or condition, communicable or noncommunicable, caused by bioterrorism, pandemic influenza, or novel and highly fatal infectious agents or biological toxins.

