



**Report to the
Colorado General Assembly**

**Legislative Emergency
Epidemic Response
Committee**

Prepared by

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Legislative Emergency Epidemic Response Committee

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Representative Kent Lambert, Vice-Chair

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December 2009

To Members of the Sixty-seventh General Assembly:

Submitted herewith is the annual report of the Legislative Emergency Epidemic Response Committee. This committee was created pursuant to Senate Bill 07-229 and is required to develop a plan for the response by, and continuation of operations of, the General Assembly and the legislative service agencies in the event of an emergency epidemic. The committee is also required to meet at least annually to review and amend the plan as necessary and shall provide any updated plan to the Speaker of the House of Representatives, the President of the Senate, the Executive Director of the Department of Public Health and Environment, the Governor's Disaster Emergency Council, the Director of the Division of Emergency Management in the Department of Local Affairs, and the Governor's Expert Emergency Epidemic Response Committee.

Respectfully submitted,

/s/ Senator Paula Sandoval
Chair

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This report is also available on line at:

<http://www.colorado.gov/lcs/LEERC>

Executive Summary

Committee Charge

Senate Bill 07-229 established the Legislative Emergency Epidemic Response Committee (LEERC) in Sections 2-3-1501 through 2-3-1503, C.R.S. (Appendix A). These provisions contain the committee's charge, requires the committee to "develop a plan for the response by, and the continuation of operations of, the General Assembly and the legislative branch in the event of an epidemic emergency."

The bill created an 11-member legislative committee comprised of 2 members of the Senate, 2 members of the House, and 7 members representing the legislative staff agencies.

The authorizing legislation directs the committee to develop and submit the plan to the Speaker of the House of Representatives (Speaker), the President of the Senate (President), the Governor, the Executive Director of the Department of Public Health and Environment, the Governor's Disaster Emergency Council, the Director of the Division of Emergency Management in the Department of Local Affairs, and the Governor's Expert Emergency Epidemic Response Committee no later than July 1, 2008. The committee is required to meet at least annually to review and amend the plan as necessary and must provide any updated plan to the persons or entities listed above. The committee's charge does not specifically authorize the committee to recommend legislation. However, the committee has chosen to recommend legislation, which would have to be sponsored by individual members.

In the event of an emergency epidemic prompting the Governor to declare a disaster emergency, the LEERC is required to convene as rapidly and as often as necessary to advise the Speaker, the President, and the legislative service agencies regarding reasonable and appropriate measures to be taken by the General Assembly and the legislative service agencies to respond to the emergency epidemic and to protect public health. The committee must communicate, cooperate, and seek advice from the previously listed entities in responding to the emergency epidemic.

Committee Activities

History

The LEERC met four times during the 2008 legislative session. The focus of the committee's activity fell into four general categories:

- fact finding and collection of information about the state's existing structure of emergency epidemic response planning;
- examination of other states' activities with regard to emergency response planning, specifically in the area of pandemic events;
- a review of Colorado's constitutional, statutory, and requirements by rule governing legislative operations; and
- a proposed legislative continuity of operations plan, including interactions with executive branch departments and agencies.



The committee sought input from a number of individuals and groups and made a total of four legislative recommendations to the General Assembly. Two of those recommendations were introduced as resolutions. *House Resolution 09-1005*, in part, addressed the line of succession for the Chief Clerk of the House of Representatives in the event of the death, resignation, disability, or absence of the clerk from the state. *Senate Joint Resolution 09-004* created a new Joint Rule 44 concerning the rules of procedure during a declared disaster emergency caused by a public health emergency. Two other committee recommendations were not introduced as legislation. The first concerned the authority of the President to address matters not covered by Senate rules. The other, similar to House Resolution 09-1005, concerned the line of succession for the Secretary of the Senate.

2009 Activities

In 2009, the LEERC met five times to discuss pending matters that were not resolved in 2008 and to gather information about the possibility of an imminent influenza pandemic and the state's preparedness for such an event.

Continuity of government. The committee reviewed the 2008 final report of the committee to determine whether additions or revisions were required. The discussions specifically focused on continuity of government, relocation of the seat of government, filling legislative vacancies, and the legislative recommendations made by the committee in 2008. The committee received a thorough status report on state government continuity planning from General Mason Whitney of the Governor's Office of Homeland Security. The committee also discussed the status of individual continuity of operations plans for each legislative agency.

As a result of committee deliberations, the committee recommended Senate Resolution A concerning the replacement of the Secretary of the Senate in the event of an emergency. The resolution also addresses the authority of the Senate President. The committee also recommended House Resolution B, which amends House Rule 43 (n) to eliminate the line of succession for the Chief Clerk of the House. Lastly, the committee recommended House Joint Resolution C, which makes a technical change to Joint Rule 44 that resolves an inconsistency in the language of the existing rule.

Legislative vacancies. The committee heard a presentation about the process of filling legislative vacancies in other states. Colorado law covers legislative vacancies that occur due to death or resignation, but it does not address extended absences that can occur because of illness or statewide disaster. Several other states require legislators to designate a list of successors. Others allow a majority of the legislative body to vote to fill a vacancy. The committee discussed various scenarios when legislators may need to be replaced, the current law in Colorado, and the need for a more comprehensive statute to address legislative vacancies in the case of emergencies. Although the committee discussed potential statutory or rule changes, no action was taken by the committee on this topic.

State emergency management. To help educate members of the committee on emergency management in Colorado, the LEERC toured the Department of Public Health and Environment's (CDPHE) Emergency Operations Center and the Multi-agency Coordination Center run by the Division of Emergency Management in the Department of Local Affairs. At each stop, the committee heard presentations about emergency management operations and procedures across the state.

H1N1 influenza virus. A panel of state medical experts briefed the committee regarding the H1N1 influenza virus, also known as swine flu. The briefing covered outbreaks of H1N1 in Colorado and state and local response to such outbreaks. The briefing also discussed strategies for stopping the spread of the virus and the statewide planning process for the upcoming flu season. Finally, the briefing addressed testing for the virus, vaccination efforts, and reporting of flu cases to the CDPHE.

Additional committee discussion. The committee discussed the subject of temporarily relocating the seat of government and the authority to relocate the General Assembly during a declared emergency. The committee considered, but declined to make recommendations, which may be sponsored by individual members of the committee during the 2010 session.

Committee Recommendations

The committee discussed several measures to address changes to both legislative rules and state law. As a result of discussion and deliberation, the committee recommends three resolutions for consideration in the 2010 legislative session.

Senate Resolution A — Concerning the Line of Succession for the Secretary of the Senate and the Authority of the President of the Senate to Address Matters Not Covered by the Senate Rules. The committee combined two resolutions (Senate Resolution A and Senate Resolution B) that were previously recommended by the 2008 LEERC, but not adopted during the 2009 legislative session.

This Senate resolution amends Senate Rule 40 to provide the President the authority over any matter not covered specifically by the Senate rules, subject to the right of appeal by any member of the Senate. Additionally, this resolution amends Senate Rule 13 to provide a line of succession for the Secretary of the Senate in the event of the death, resignation, disability, or absence from the state. The resolution provides for the assistant to the secretary to serve as acting secretary until a new secretary can be appointed or until the current secretary is able to return. If the assistant to the secretary is unable to serve, the President has the authority to appoint a new acting secretary.

House Resolution B — Concerning the Line of Succession for the Chief Clerk of the House of Representative. This House resolution amends House Rule 43 (n) that was previously suggested by the 2008 LEERC and adopted through House Resolution 09-1005. House Resolution 09-1005 designated the line of succession for the Chief Clerk of the House of Representatives in the event of the chief clerk's death, resignation, disability, or absence from the state. This rule currently provides that the following persons must succeed the chief clerk in the following order: the assistant chief clerk, the journal clerk, the reading clerk, and the bill status clerk.

The new resolution amends House Rule 43 (n) to eliminate the line of succession for the chief clerk. Instead, the Speaker has the authority to appoint a new acting chief clerk in the event that the assistant clerk is unable to serve as an acting chief clerk.

Joint Resolution C — Concerning Technical Changes to Joint Rule 44 (c) (2). This joint resolution amends Joint Rule 44 (c) (2), concerning rules of procedure during a declared disaster emergency. This is a technical amendment to clarify that there would be a limit on the number of bills House or Senate members could request or introduce during a declared disaster emergency.



Committee Charge

The Legislative Emergency Epidemic Response Committee (LEERC) was established by Senate Bill 07-229 in Sections 2-3-1501 through 2-3-1503, C.R.S. (Appendix A). These provisions contain the committee's charge, which requires the committee to "develop a plan for the response by, and the continuation of operations of, the General Assembly and the legislative branch in the event of an epidemic emergency." The legislative declaration expressed the urgency of this situation by stating that "in the event of an emergency epidemic in the state, the General Assembly must be prepared to respond to the emergency and have a plan for ensuring the continuation of its operations in order to assist in the protection of the health, safety, and welfare of the public."

The bill created an 11-member legislative committee comprised of 4 members of the General Assembly and 7 members of the legislative staff. The committee consists of the following members:

Senator Paula Sandoval

Senator Nancy Spence

Representative Kent Lambert

Representative Claire Levy

Mr. Michael Adams, Director, Legislative Information Services

Ms. Marilyn Eddins, Chief Clerk of the House

Ms. Karen Goldman, Secretary of the Senate

Mr. Todd Herreid, Chief Fiscal Officer, Legislative Council Staff

Ms. Debbie Haskins, Senior Attorney, Office of Legislative Legal Services

Ms. Dianne Ray, Deputy Auditor, Office of the State Auditor

Mr. John Ziegler, Director, Joint Budget Committee

In addition to its statutory charge, the committee is authorized to convene, in the event of an emergency epidemic that the Governor declares to be a disaster emergency, as rapidly and as often as necessary to advise the Speaker, the President, and the legislative service agencies regarding reasonable and appropriate measures to be taken by the General Assembly and the legislative service agencies to respond to the emergency epidemic and protect public health. The legislative committee shall communicate, cooperate, and seek advice from the Governor's Disaster Emergency Council, the Division of Emergency Management in the Department of Local Affairs, the Department of Public Health and Environment, and the Governor's Expert Emergency Epidemic Response Committee.



Committee Activities

The LEERC met five times in 2009, meeting both during the legislative session and the interim. The focus of the committee's activity fell into four general categories: fact finding and collection of information about the state's existing structure of emergency epidemic response planning; examination of other states' activities in emergency response planning, specifically in the area of pandemic events; a review of Colorado's legislative environment in terms of constitutional, statutory, and requirements by rule that govern legislative operations; and considering a proposed legislative continuity of operations plan, including interactions with executive branch departments and agencies. Resource materials which contributed to this final report may in found in the resource materials section and the appendices at the back of the document.

State Emergency Management

Effectively responding to a disaster emergency is crucial to the resumption of normal state, public, and private business. Disaster emergencies may occur as a result of any number of events, including disease outbreaks, weather and climate conditions, terrorist activity, and spills of hazardous chemicals or waste. Each of these types of disasters or hazards requires a tailored approach for emergency management. The LEERC was briefed on many facets of emergency management across the state, including a number of coordinated efforts between state agencies.

Public health emergency management. Members of the LEERC toured the CDPHE Emergency Operations Center in Denver. The CDPHE is the lead state agency responsible for coordinating public health and medical response activities and supporting mass fatality response for all-hazard disaster emergencies. The department's operations center contains state-of-the-art technology and provides a base for incident management that is compliant with national standards. In addition to its function as an incident command center, the facility is used to conduct training and planning exercises to ensure the preparedness of public health and medical response entities across the state.

The technology installed in the operations center enables incident managers to effectively communicate with public health officials across the country and the state. Such communication is key to stopping or slowing the spread of communicable diseases, responding to medical needs, sharing resources efficiently, and handling disasters with high casualties. The operations center uses multiple computer and telephone systems to meet state needs. No one system was capable of meeting all of the needs that arise during a disaster emergency.

Division of Emergency Management. The Division of Emergency Management (DEM) in the Department of Local Affairs is responsible for the state's comprehensive emergency management program, which supports local and state agencies. Activities and services cover the four phases of emergency management:

- preparedness;
- prevention;
- response; and
- recovery for disasters like flooding, tornadoes, wildfire, hazardous materials incidents, and acts of terrorism.



Planning and training services to local governments include financial and technical assistance as well as training and exercise support. The DEM provides technical assistance under a variety of federally funded programs for the planning, development, execution, and evaluation of training exercises involving state, regional, county, and local jurisdictions, agencies, and assets. Services are made available through local emergency managers supported by DEM staff assigned to specific areas of the state. During an actual emergency or disaster, the DEM coordinates the state response and recovery program in support of local governments.

State Emergency Operations Center (SEOC). The DEM maintains the State Emergency Operations Center (SEOC) in Centennial, where representatives from a variety of state departments and agencies come together to coordinate state response to an emergency situation. Members of the LEERC were briefed at the SEOC site, also known as the Multi-agency Coordination Center, about state emergency management efforts.

The SEOC is a state-of-the-art center developed specifically to help Colorado respond to any type of disaster or emergency it may face. The Colorado Information Analysis Center is also a part of the SEOC and has a disaster prevention focus with strong links to federal and local agencies. The facility was designed to meet the new National Incident Management System requirements and includes a policy room; a secure video teleconference room; designated space for administration, logistics, planning, and assessment; an operations and coordination room; a communications center; and a room for the media. The SEOC has a virtual connection to the CDPHE operations center, the Health Alert Network, and various emergency management systems.

In addition to supporting actual emergencies throughout the state, the SEOC is activated in support of local and regional planning and training exercises. It is designed for multiple agency communication and coordination of support for local, regional, state, and federal disaster emergencies.

Governor's Office of Homeland Security planning efforts. The committee heard two briefings from General Mason Whitney of the Governor's Office of Homeland Security regarding executive branch planning efforts for disaster recovery. The goal of the Office of Homeland Security is to prevent and disrupt terrorist attacks, protect against man-made and natural hazards, and respond to and recover from incidents that do occur. To that end, General Whitney and his team have developed a comprehensive state homeland security strategy that requires coordination, cooperation, and focused effort from the state and its local, regional, tribal, nonprofit, private sector, and federal partners, as well as the citizens of Colorado.

The State Homeland Security Strategy contains five major goals that overlap each other. They are to:

- prevent and disrupt terrorist attacks by denying terrorists, weapons, and other terror-related materials entry into Colorado;
- protect Colorado's communities, critical infrastructure, and key resources against all hazards;
- respond to all incidents using current chemical, biological, radiological, nuclear material detection, seamless interoperable communications capabilities, and appropriate equipment, training, and exercises;
- recover from all incidents and enable resurgence from any disaster emergency for both public and private entities; and
- strengthen homeland security systems and structures.

The Governor's Office of Homeland Security is funded completely through federal money and works closely with the U.S. Department of Homeland Security to address the needs of the state with regard to disaster prevention and recovery. The office is charged with administering federal grant money that is passed onto state and local entities. It is also involved with most state planning and training exercises.

The committee did not make any recommendations related to state emergency management.

The Legislative Environment: Constitutional, Statutory, and Requirements by Rule

The committee reviewed the findings from the 2008 LEERC report regarding current requirements for legislative sessions that would need to be altered in the event of a pandemic incident. First, the committee was apprised of the types of measures that the General Assembly needs to act upon on an annual basis. These measures were broken into first priority and second priority categories.

Among the first priority measures were the following:

- the annual revenue resolution which the General Assembly must adopt pursuant to Section 24-75-201.3, C.R.S.;
- the Long Appropriation Bill;
- the legislative appropriation bill;
- supplemental appropriation bills; and
- the annual school finance bill.

Examples of second priority measures include the following:

- the water pollution/drinking water projects resolution, pursuant to Section 37-95-107.8, C.R.S., the passage of which could be a requirement for receipt of federal funds;
- the annual rule review bill under which state rules adopted or revised between November 1 and October 1 automatically expire on May 15 unless extended by the General Assembly through this bill;
- various bills each year that extend automatic repeals of programs, sunset agencies, or boards, or extend tax check-offs; and
- the annual bill to enact the Colorado Revised Statutes as the Positive and Statutory Law (publication of statutes).

After review of the 2008 final report, the committee decided to recommend the two Senate Resolutions that were not introduced during the 2009 session. Senate Resolution A addresses the same issues of the two Senate Resolutions previously recommended by the 2008 LEERC. Senate Resolution A addresses the President's authority over any matter not covered specifically by the Senate rules, and also provides a line of succession for the Secretary of the Senate. The committee also recommended House Resolution B, which amends House Rule 43 (n) to eliminate the line of succession for the Chief Clerk of the House, and House Joint Resolution C, which makes a technical change to Joint Rule 44 to resolve an inconsistency in the language of the existing rule.



Continuity of State Government and Legislative Branch

Continuity of Operations Plans (COOP). COOPs are created to identify an organization's response to a wide range of potential emergencies. The plans address issues of communication, staffing, facilities, and decision-making in order for the organization to meet critical responsibilities. Plans provide steps for an immediate reaction to an emergency and for a long-term response when circumstances prohibit resuming normal business functions.

The Governor's Office of Homeland Security coordinates the development and execution of COOPs for state departments. The office is also available to assist and coordinate COOP activities with the legislative and judicial branches. After developing the COOP, departments are encouraged to exercise the plan and identify personnel within groups that are responsible for maintaining the COOP on a regular basis. All 19 state departments have developed a COOP and a majority of these have exercised the plan in training.

The legislative branch has a COOP that was developed by the legislative staff directors. This plan can be found in Appendix B of this report. The LEERC developed an emergency plan in 2008 that involves activation of a legislative COOP and the process outlined in Joint Rule 44, which was adopted by the General Assembly during the 2009 legislative session. Activation of the legislative COOP and the use of Joint Rule 44 depends on the timing of the emergency — whether during session or not — and the nature of the emergency. The LEERC Decision Tree, found in Appendix C, maps the legislature's responses to an emergency during and out of session.

The legislative service agencies each maintain their own COOP, which can be obtained from each individual agency. Appendix D outlines the contents of each agency's plan.

Legislative vacancies. The committee heard a presentation from the Office of Legislative Legal Services about filling legislative vacancies resulting from a declared disaster emergency. This discussion covered current state law, policies in other states, and potential changes to address emergency succession of legislators in Colorado. Appendix E is a memorandum concerning the emergency succession of legislators from the Office of Legislative Legal Services that was distributed to the committee members during this presentation.

Colorado law covers legislative vacancies that occur due to death or resignation, but does not address how legislative vacancies would be filled in the event of a declared disaster emergency. Because state law is silent on legislative vacancies during a disaster emergency, such vacancies would be filled according to current law contained in Section 1-12-203, C.R.S. This section provides that legislative vacancies can only be filled by a vacancy committee of the legislator's respective political party. However, the law is clear that the vacancy committee process is only for filling vacancies caused by the death or resignation of a member, and may not apply to a situation where a member is temporarily unavailable due to a disaster emergency.

Legislative vacancies in other states. Fifteen states have enacted some type of temporary emergency succession act either in the form of constitutional provisions or statutes. Most states have codified succession plans that require legislators to designate a list of temporary emergency successors. Other states allow vacancies to be filled by a majority of the legislature or from committees at the county level.

The committee discussed the statutory deadlines required to fill a legislative vacancy, and whether more time or less time would be necessary during a declared disaster or epidemic

emergency. With statutory deadlines, the vacancy process would generally take between two and ten weeks. Even if the law applied to an absent legislator due to a declared disaster emergency, the statutory process for filling a vacancy could be more time-consuming to be effective in an emergency situation. Additionally, the committee debated whether more time would be needed for the vacancy committee process during a pandemic. The committee determined that vacancy committees and designated replacements should not be required to meet during a pandemic where social distancing is recommended.

The committee discussed various scenarios when legislators may need to be replaced; the current law in Colorado; the process of legislative vacancy committees; the terms of successors; quorum and vote requirements; and a change of location for a legislative session. Ultimately, they debated the idea of a comprehensive statutory plan to determine how legislative vacancies would be designated during a declared disaster emergency. Although the committee discussed potential statutory or rule changes, no action was taken by the committee on this topic.

Temporary relocation of government. The committee also considered constitutional and statutory provisions that address temporarily relocating the General Assembly during an epidemic emergency. Specifically, the committee debated existing laws that impose restrictions that might limit the ability of the General Assembly to temporarily relocate outside of the State Capitol.

Article VII, Section 2, of the Colorado 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 VII, Section 3, of the Constitution provides that the location of the seat of government cannot be changed except by a two-thirds vote of the qualified electors voting on a question submitted to the voters by the General Assembly. The strictest interpretation of this provision is that the constitution requires an amendment to allow for the General Assembly to meet in a location other than Denver or to meet electronically during an emergency epidemic.

However, the committee revisited an opinion issued in an Office of Legislative Legal Services memorandum to the LEERC. This opinion, found in Appendix F, states that the constitution prohibits moving the *seat of government* from Denver, not moving the *General Assembly*. A law that allows meeting in an alternate and temporary location would not violate the constitution. Such language would allow a temporary situation during an emergency to address immediate needs, and not permanently change the seat of government within the meaning of the constitutional provisions. The committee debated this opinion and talked about potential constitutional or statutory changes to convene the General Assembly during an emergency situation in order to address immediate needs.

The committee did not make final recommendations, concerning relocating the seat of government during a declared emergency.

State Pandemic Response

A pandemic is defined as 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. The United States experienced three pandemic flu events in the twentieth century (1918, 1957, and 1968).

H1N1 influenza virus. Beginning in mid-April 2009, scientists became increasingly concerned about a new and potentially severe form of influenza known as H1N1, also known as



swine flu. The symptoms of the H1N1 flu are similar to the symptoms of regular flu; however, this influenza appears to be more contagious and able to spread from human to human more easily than the typical seasonal flu. Also, like seasonal flu, H1N1 may make underlying chronic medical conditions worse and infected populations can experience severe illness, including pneumonia, respiratory failure, and even death.

Due to this outbreak, the committee met on April 30, 2009, and used its initial meeting to discuss the impact of H1N1 in the state. It also reviewed the committee's charge, the 2008 report, and the emergency plan for Colorado state government. Within one month, H1N1 had spread widely through the United States and the world, prompting some school closures and cancellation of school-related events throughout the country. On June 11, 2009, the World Health Organization (WHO) declared that a global pandemic of H1N1 flu was underway.

A panel of state medical experts briefed the committee regarding the H1N1 influenza virus during the 2009 interim. Testimony was presented by the CDPHE, including: Dr. Ned Calonge, Chief Medical Officer; Dr. Lisa Miller, Director of the Disease Control and Environmental Epidemiology Division; and Dr. Bernadette Albanese, Medical Director of the El Paso County Health Department. The briefing covered outbreaks of swine flu in Colorado and state and local response to such outbreaks. Dr. Albanese reported on a H1N1 outbreak at the Air Force Academy in El Paso County, and the panel discussed other outbreaks at schools and summer camps during the summer.

The briefing also discussed strategies for stopping the spread of the virus and the statewide planning process for the upcoming flu season. Department officials indicated that H1N1 cases would most likely increase as students returned to school. They explained that CDPHE was working with the Department of Education and Department of Higher Education on strategies to address the upcoming flu season and the spread of H1N1. Department officials indicated that the best response to a pandemic is social distancing, where persons are at least six feet apart, frequent hand washing is encouraged, masks may be used, and meetings are banned or curtailed.

Finally, the briefing addressed testing for the virus, vaccination efforts, and reporting of flu cases to the CDPHE. Dr. Miller discussed flu surveillance systems that can be used to track the impact of H1N1. These systems work to determine when and where flu activity is occurring, track flu-related illness, determine what flu viruses are circulating, detect changes in flu viruses, and measure the impact of flu on hospitalizations and deaths.

The department discussed the counting and reporting methods for influenza and influenza-like illnesses and explained how every case of influenza cannot be documented. Instead, only cases where individuals have been hospitalized or have died are counted by CDPHE. Dr. Calonge indicated that the department was working on distribution strategies for vaccines scheduled to arrive in mid-October.

The committee did not make any recommendations related to the H1N1 virus.

Summary of Recommendations

As a result of committee deliberations, the 2009 Legislative Emergency Epidemic Response Committee recommends three resolutions for consideration during the 2010 legislative session.

Resolution A — Concerning the Line of Succession for the Secretary of the Senate and the Authority of the President of the Senate to Address Matters Not Covered by the Senate Rules.

The committee combined two resolutions (Senate Resolution A and Senate Resolution B) that were previously recommended by the 2008 LEERC, but not adopted during the 2009 legislative session.

This resolution amends Senate Rule 40 to provide the President the authority over any matter not covered specifically by the Senate rules, subject to the right of appeal by any member of the Senate. Additionally, this resolution amends Senate Rule 13 to provide a line of succession for the Secretary of the Senate in the event of the death, resignation, disability, or absence from the state. The resolution provides for the assistant to the secretary to serve as acting secretary until a new secretary can be appointed or until the current secretary is able to return. If the assistant to the secretary is unable to serve, the President has the authority to appoint a new acting secretary.

Resolution B — Concerning the Line of Succession for the Chief Clerk of the House of Representative.

This resolution amends House Rule 43 (n) that was previously recommended by the 2008 LEERC and adopted through House Resolution 09-1005. House Resolution 09-1005 designated the line of succession for the Chief Clerk of the House of Representatives in the event of the chief clerk's death, resignation, disability, or absence from the state. This rule currently provides that the following persons must succeed the chief clerk in the following order: the assistant chief clerk, the journal clerk, the reading clerk, and the bill status clerk.

The new resolution amends House Rule 43 (n) to eliminate the line of succession for the chief clerk. Instead, the Speaker has the authority to appoint a new acting chief clerk in the event that the assistant clerk is unable to serve as an acting chief clerk.

Resolution C — Concerning Technical Changes to Joint Rule 44 (c) (2).

This resolution amends Joint Rule 44 (c) (2), concerning rules of procedure during a declared disaster emergency. This is a technical amendment to clarify that there would be a limit on the number of bills House or Senate members may request or introduce during a declared disaster emergency.



Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-4900). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<http://www.colorado.gov/lcs/LEERC>

Meeting Date and Topics Discussed

April 30, 2009

- ◆ Selection of new committee chair
- ◆ Discussion of H1N1 outbreak
- ◆ Review of committee charge and response plan
- ◆ Discussion of interim schedule

May 19, 2009

- ◆ Review of 2008 committee report
- ◆ Discussion about continuity of government and the temporary relocation of the seat of state government
- ◆ Explanation of Joint Rule 44 from the Office of Legislative Legal Services
- ◆ Discussion about legislative vacancies in the event of emergencies
- ◆ Status report on state government continuity planning from the Governor's Office of Homeland Security
- ◆ Discussion of proposed legislation

June 16, 2009

- ◆ Tour of Colorado Department of Health and Environment (CDPHE) Emergency Operations Center
- ◆ Briefing regarding CDPHE emergency operations procedures and processes
- ◆ Tour of Colorado Department of Local Affairs, Division of Emergency Management Multi-agency Coordination Center
- ◆ Briefing regarding multi-agency coordinated emergency response process



July 30, 2009

- ◆ Discussion of legislative continuity planning efforts
- ◆ Presentation on legislative vacancy laws, regulations, and policies across the United States
- ◆ Explanation of Joint Rule 44 from the Office of Legislative Legal Services
- ◆ Discussion proposed legislation
- ◆ Briefing by CDPHE representatives regarding Colorado cases of H1N1 virus

October 30, 2009

- ◆ Review of 2009 annual report draft
- ◆ Discussion of draft legislation requested at previous meeting

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

RESOLUTION A

LLS NO. R10-0019.01 Debbie Haskins

SENATE Resolution

SENATE SPONSORSHIP

(None),

SENATE RESOLUTION

101 **CONCERNING AMENDMENTS TO THE RULES OF THE SENATE.**

1 *Be It Resolved by the Senate of the Sixty-seventh General Assembly*
2 *of the State of Colorado:*

3 That Rule No. 13 (b) of the Rules of the Senate is amended, and
4 the said Rule No. 13 is further amended BY THE ADDITION OF A
5 NEW SUBSECTION, to read:

6 **13. Secretary and Assistant Secretary**

7 (b) An assistant ~~to the~~ secretary of the Senate shall be appointed.
8 Appointments to such position shall be made without reference to
9 party affiliation and solely on the basis of ability to perform the
10 duties of the position.

11 (c) IN THE EVENT OF THE DEATH, RESIGNATION, DISABILITY, OR
12 ABSENCE FROM THE STATE OF THE SECRETARY OF THE SENATE, THE
13 ASSISTANT SECRETARY, AS ACTING SECRETARY OF THE SENATE,
14 SHALL EXERCISE ALL THE POWERS AND DUTIES OF THE SECRETARY
15 OF THE SENATE UNTIL A NEW SECRETARY OF THE SENATE IS
16 SELECTED OR UNTIL THE DISABILITY OR ABSENCE FROM THE STATE
17 OF THE SECRETARY OF THE SENATE IS REMOVED, WHICHEVER
18 SHALL OCCUR FIRST. IF THE ASSISTANT SECRETARY IS UNABLE TO
19 SERVE AS AN ACTING SECRETARY OF THE SENATE, THE PRESIDENT
20 OF THE SENATE SHALL APPOINT A NEW ACTING SECRETARY OF THE

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

1 SENATE, WHO SHALL EXERCISE ALL THE POWERS AND DUTIES OF
2 THE SECRETARY OF THE SENATE UNTIL A NEW SECRETARY OF THE
3 SENATE IS SELECTED OR UNTIL THE DISABILITY OR ABSENCE FROM
4 THE STATE OF THE SECRETARY OF THE SENATE IS REMOVED,
5 WHICHEVER SHALL OCCUR FIRST. APPOINTMENTS TO SUCH
6 POSITION SHALL BE MADE WITHOUT REFERENCE TO PARTY
7 AFFILIATION AND SOLELY ON THE BASIS OF ABILITY TO PERFORM
8 THE DUTIES OF THE POSITION.

9 That Rule No. 40 of the Rules of the Senate is amended to read:

10 **40. Parliamentary Authority**

11 (a) The latest edition of Mason's Manual of Legislative Procedure
12 shall govern the Senate in all cases in which it is not inconsistent
13 with these rules and the Joint Rules of the Senate and THE House
14 OF REPRESENTATIVES.

15 (b) The secretary shall act as parliamentarian of the Senate and shall
16 advise the officers of the Senate on parliamentary procedure and
17 these rules when requested to do so.

18 (c) ANY MATTER NOT COVERED BY THE SENATE RULES OR BY MASON'S
19 MANUAL OF LEGISLATIVE PROCEDURE SHALL BE GOVERNED BY
20 THE DECISION OF THE PRESIDENT, SUBJECT TO THE RIGHT OF
21 APPEAL BY ANY MEMBER AS PROVIDED FOR IN THESE RULES.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

RESOLUTION B

LLS NO. R10-0095.01 Debbie Haskins

HOUSE Resolution

HOUSE SPONSORSHIP

(None),

HOUSE RESOLUTION

101 **CONCERNING THE LINE OF SUCCESSION FOR THE CHIEF CLERK OF THE**
102 **HOUSE OF REPRESENTATIVES.**

1 *Be It Resolved by the House of Representatives of the Sixty-seventh*
2 *General Assembly of the State of Colorado:*

3 That Rule No. 43 (n) of the Rules of the House of Representatives
4 is amended to read:

5 **43. Chief Clerk**

6 (n) In the event of the death, resignation, disability, or absence from
7 the state of the chief clerk, the assistant chief clerk, as acting chief
8 clerk, shall exercise all the powers and duties of the chief clerk
9 until a new chief clerk is selected or until the disability or absence
10 from the state of the chief clerk is removed, whichever shall occur
11 first. ~~In the event of the death, resignation, disability, or absence~~
12 ~~from the state of the assistant chief clerk, then the following~~
13 ~~persons shall succeed in the following order to the office of acting~~
14 ~~chief clerk. The journal clerk, the reading clerk, and the bill status~~
15 ~~clerk. IF THE ASSISTANT CHIEF CLERK IS UNABLE TO SERVE AS AN~~
16 ~~ACTING CHIEF CLERK, THE SPEAKER OF THE HOUSE SHALL APPOINT~~
17 ~~A NEW ACTING CHIEF CLERK, WHO SHALL EXERCISE ALL THE~~
18 ~~POWERS AND DUTIES OF THE CHIEF CLERK UNTIL A NEW CHIEF~~
19 ~~CLERK IS SELECTED OR UNTIL THE DISABILITY OR ABSENCE FROM~~

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

1
2
3
4

THE STATE OF THE CHIEF CLERK IS REMOVED, WHICHEVER SHALL
OCCUR FIRST. APPOINTMENTS TO SUCH POSITION SHALL BE MADE
WITHOUT REFERENCE TO PARTY AFFILIATION AND SOLELY ON THE
BASIS OF ABILITY TO PERFORM THE DUTIES OF THE POSITION.

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

RESOLUTION C

LLS NO. R10-0096.01 Troy Bratton

Joint Resolution

NO NAME JOINT RESOLUTION

101 **CONCERNING AN AMENDMENT TO THE JOINT RULES OF THE SENATE**
102 **AND THE HOUSE OF REPRESENTATIVES REGARDING CERTAIN**
103 **RULES OF PROCEDURES DURING A DECLARED DISASTER**
104 **EMERGENCY.**

1 *Be It Resolved by the House of Representatives/Senate of the*
2 *Sixty-seventh General Assembly of the State of Colorado, the House of*
3 *Representatives/Senate concurring herein:*

4 That Joint Rule No. 44 (c) (2) of the Joint Rules of the Senate and
5 the House of Representatives is amended to read:

6 **44. Rules of Procedure During a Declared Disaster Emergency**

7 (c) After receiving notification from the Governor that the state of
8 Colorado is in a declared disaster emergency, the Executive
9 Committee of the Legislative Council, referred to in this rule as
10 the "executive committee", shall meet and set forth the following

1

in writing:

2

(2) A limit on the number of bill requests that a member of the
House of Representatives ~~and~~ OR of the Senate may request

3

4

and a limit on the number of bills that a member of the
House of Representatives ~~and~~ OR of the Senate may

5

6

introduce;

2-3-1501. Legislative declaration.

The general assembly hereby finds and determines that in the event of an emergency epidemic in the state, the general assembly must be prepared to respond to the emergency and have a plan for ensuring the continuation of its operations in order to assist in the protection of the health, safety, and welfare of the public.

2-3-1502. Definitions.

As used in this part 15, unless the context otherwise requires:

(1) "Bioterrorism" means the intentional use of microorganisms or toxins of biological origin to cause death or disease among humans or animals.

(2) "Council" means the governor's disaster emergency council created in section 24-32-2104 (3), C.R.S.

(3) "Department" means the department of public health and environment created in section 25-1-102, C.R.S.

(4) "Division" means the division of emergency management in the department of local affairs created in section 24-32-2105, C.R.S.

(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.

(6) "GEEERC" means the governor's expert emergency epidemic response committee created in section 24-32-2104 (8), C.R.S.

(7) "Legislative committee" means the legislative emergency epidemic response committee created in this part 15.

(8) "Legislative service agencies" means the legislative council staff, the office of legislative legal services, the joint budget committee staff, the office of the state auditor, the legislative information services, the senate services staff, and the staff of the house of representatives.

(9) "Pandemic influenza" means a widespread epidemic of influenza caused by a highly virulent strain of the influenza virus.

2-3-1503. Legislative emergency epidemic response committee - creation - membership - duties.

(1) (a) There is hereby created a legislative emergency epidemic response committee. The legislative committee shall develop a plan for the response by, and continuation of operations of, the general assembly and the legislative service agencies in the event of an emergency epidemic. The legislative committee shall cooperate and coordinate with the council, the division, the department, and the GEEERC in developing the plan. The legislative committee shall develop and submit the plan to the speaker of the house of representatives, the president of the senate, the governor, the executive director of the department, the council, the director of the division, and the GEEERC no later than July 1, 2008. The legislative committee shall meet at least annually to review and amend the plan as necessary and shall provide any updated plan to the persons or entities specified in this paragraph (a). The legislative committee shall provide information to and

fully cooperate with the council, the division, the department, and the GEEERC in fulfilling its duties under this section.

(b) The legislative committee shall consist of eleven members as follows:

(I) Two members of the senate, appointed by the president of the senate, with no more than one such member from the same political party;

(II) Two members of the house of representatives, appointed by the speaker of the house of representatives, with no more than one such member from the same political party;

(III) The secretary of the senate;

(IV) The chief clerk of the house of representatives;

(V) The staff director of the joint budget committee or the staff director's designee;

(VI) The director of research of the legislative council or the director's designee;

(VII) The director of the office of legislative legal services or the director's designee;

(VIII) The state auditor or the state auditor's designee; and

(IX) The director of legislative information services or the director's designee.

(2) In the event of an emergency epidemic that the governor declares to be a disaster emergency pursuant to section 24-32-2104, C.R.S., the legislative committee shall convene as rapidly and as often as necessary to advise the speaker of the house of representatives, the president of the senate, and the legislative service agencies regarding reasonable and appropriate measures to be taken by the general assembly and the legislative service agencies to respond to the emergency epidemic and protect public health. The legislative committee shall communicate, cooperate, and seek advice and assistance from the council, the division, the department, and the GEEERC in responding to the emergency epidemic.

(3) The members of the legislative committee shall serve without compensation, but the senators and representatives serving on the legislative committee shall be entitled to reimbursement of expenses incurred in serving on the legislative committee.

Legislative Continuity of Operations Plan (COOP)

This is the continuity of operations plan for the General Assembly and the Legislative Department. The response plan differs in some attributes based on whether the legislature is in or out of session at the time that an emergency disaster declaration is issued. Other variables, such as length and severity of the emergency or pandemic, impact the manner in which the plan is executed. The COOP is based on the following assumptions:

- 1) The General Assembly would continue to meet at the State Capitol and would not relocate to a pre-designated alternative site, unless the Capitol was declared uninhabitable by the CDPHE. The first choice for an alternative site would be in the Denver metro region.
- 2) A virtual electronic session too costly and has too many logistical difficulties for consideration at this time. A "last resort" option might include suspending restrictions on legislators participating in committee meetings via telephone or another electronic connection.
- 3) The length of the legislative session may need to be adjusted in the event of a pandemic occurrence.
- 4) Because of the expected absenteeism and the risk of further spreading the disease, one of the first questions to be resolved by the Executive Committee and the Governor is whether there is truly a reason for the General Assembly to meet and when it is safe to assemble in public during a legislative session.

COOP Planning

The Governor and the legislative leadership must decide if the General Assembly needs to meet during a disaster emergency declaration. If the General Assembly does need to meet, the Governor and the legislative leadership will have to determine how the timing of the legislative session can occur with the least risk to members, staff, and the general public. The two scenarios detailed below are contingent upon whether the General Assembly is in or out of session at the time of a disaster emergency declaration.

Scenario I: General Assembly in Session at the Time of a Disaster Emergency Declaration

If the General Assembly is in session at the time of notification of the Governor's declaration of a disaster emergency, the following protocols would ensue.

- 1) The Executive Committee of the Legislative Council shall meet and set forth the following:
 - A. The list of items or topics on which members of the General Assembly may submit requests for bills to address the particular disaster emergency and the prioritization of any pending legislation that the Executive Committee deems necessary to enact prior to adjournment or recess of the regular session.
 - B. The Executive Committee shall determine what budgetary issues still need to be addressed and identify the critical responsibilities of the General Assembly in light of the

declared emergency. Among the legislative items to be considered are:

- the revenue resolution specified in Section 24-75-201.3, C.R.S.;
 - the annual general appropriation act;
 - the annual legislative appropriation bill;
 - any supplemental appropriation bills;
 - the school finance bill; and
 - any other issues that, in the estimation of the Executive Committee are critical to address prior to recess or adjournment.
- C. The Executive Committee shall determine a limit on the number of bill requests that the members of the House or Senate may request and introduce.
- D. In addition, the Executive Committee shall adopt a deadline schedule including the dates when the General Assembly shall convene or resume meeting.
- E. If necessary, the President and the Speaker or their designees shall activate the critical information call tree of the General Assembly (if the legislature is in recess or adjourned for less than three days).
- 2) If it is determined that there is an increased health risk to the members of the General Assembly or to the public of meeting in the Capitol Building, the Executive Committee will make other arrangements to have the General Assembly meet on a temporary emergency basis at an alternate location within or outside the city and county of Denver.
- 3) Upon convening of the General Assembly, the House and Senate shall adopt by a simple majority vote the rules of the House and Senate and the joint rules as temporary rules.
- 4) New, smaller committees of reference shall be appointed by resolution to serve during the period of the disaster emergency in both the House and the Senate. The committees shall be in existence only during the period to the declared disaster emergency.
- 5) During the declared disaster emergency, rules prohibiting electronic participation in committees of reference may be suspended. Any member who participates in a committee of reference by telephone or other electronic connection shall be required to provide a password verification prior to being allowed to participate in the deliberations of the committee.
- 6) Nothing in the emergency rule shall change the constitutional requirements for the number of legislators required to pass a bill by majority vote.

- 7) The number of working days shall be counted as one hundred twenty separate calendar days as opposed to one hundred twenty consecutive days during a declared disaster emergency.
- 8) The Secretary of the Senate and the Chief Clerk of the House shall have additional powers and authority in a declared disaster emergency to implement new or streamlined methods of operation and may suspend requirements set forth in the rules of the Senate or House and the joint rules.

Scenario II: The General Assembly is not in Session at the Time of a Disaster Emergency Declaration

The primary difference between Scenario I and Scenario II is the use of the critical information call tree of the legislature to notify members of changes to the legislative schedule and the plan for modification of the legislative rules. Scenario II contemplates enough advance notice of a pandemic event to provide a planned response in conjunction with the Governor's Office and Department of Public Health and Environment.

COOP Implementation

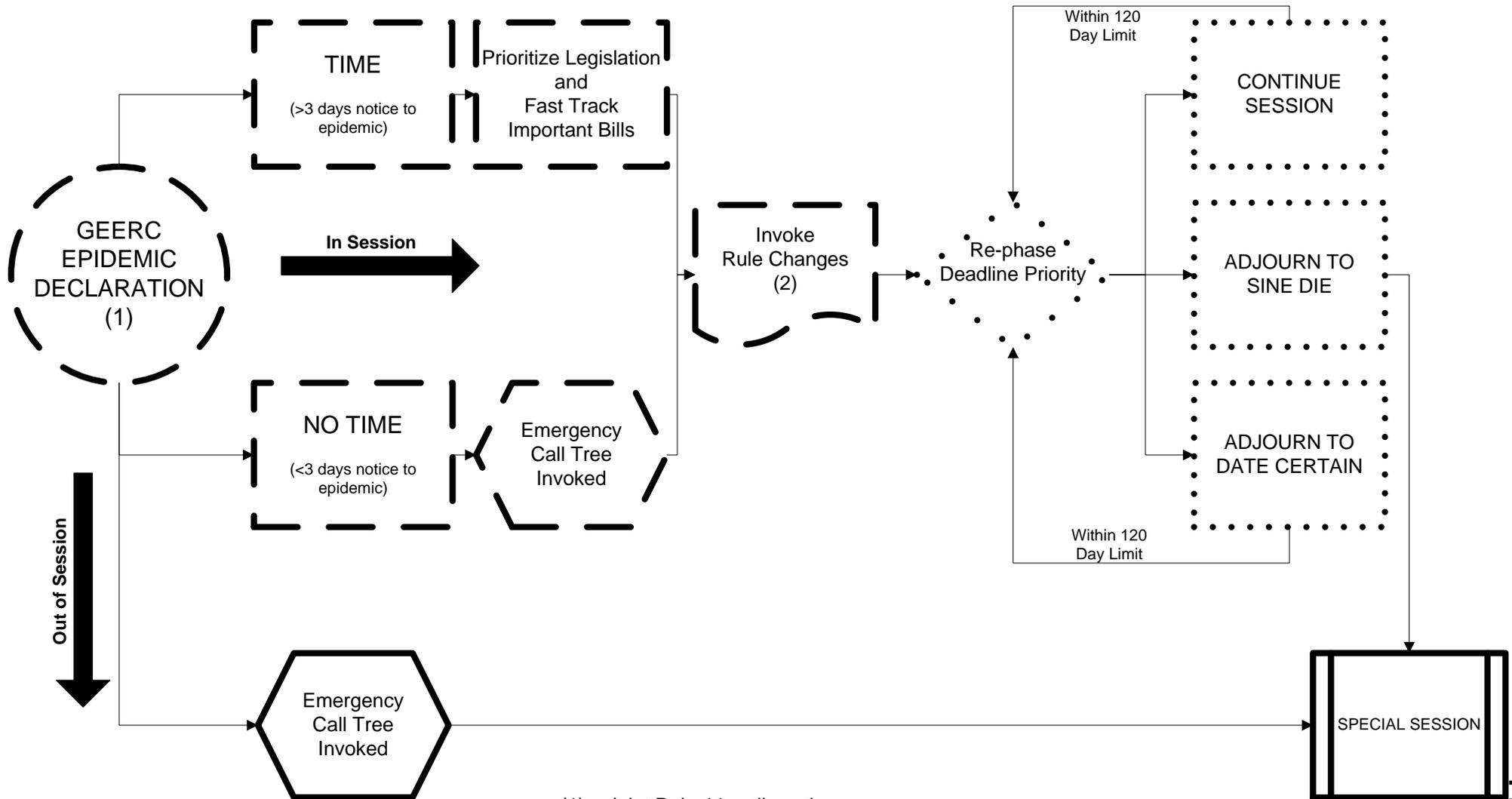
The implementation of the legislative Continuity of Operation Plan is dependent upon a high degree of cooperation between the executive and legislative branches of government and interagency cooperation among the staff agencies serving the General Assembly. In order to implement the COOP, each legislative agency would streamline methods of operation to reduce staffing in each agency to the minimum number of employees needed to conduct critical and essential business. Generally, staff agencies would enact their COOP as follows:

- ***Chief Clerk of the House and Secretary of the Senate:*** House and Senate staffing would be reduced to a minimum number of employees needed to complete the responsibilities of the Chief Clerk of the House and the Secretary of the Senate. Front desk staff would be reduced to the Chief Clerk and Assistant Clerk in the House and the Secretary of the Senate and Assistant Secretary in the Senate, as well as one sergeant-at-arms and one amendment clerk in each house. Most document production would be in electronic format, including the calendars and journals. The enrolling rooms in each House would be reduced to a minimum number, and the bill information center and the legislative print shop would be closed.
- ***Legislative Council and the Office of Legislative Legal Services:*** These agencies would reduce the number of committee staff, fiscal analysts, attorneys, and support personnel to staff the reduced number of committees and to draft the reduced number of bills. Legislative financial transactions would be processed by a reduced staff complement in the Legislative Council accounting section.
- ***The Joint Budget Committee staff, the Office of the State Auditor, and Legislative Information Services.*** These agencies would make similar assessments to determine the minimum number of staff needed to conduct essential business.

It should be noted that each individual agency has a continuity of operations plan that will provide staffing guidance in the event of a declared disaster emergency. In addition, practical guidance by the Department of Public Health and Environment would be employed in areas such as use of face masks and hand washing stations and methods of isolating members and staff to the degree possible. The key determinant in implementing the legislative continuity of operations plan would remain the Executive Committee's decision as to whether to call a legislative session, when to call a legislative session, what business to conduct, and how to assure that a majority of members are able to participate effectively.

LEERC DECISION TREE

Revised and Reviewed 07/30/09



- (1)a. Joint Rule 44 outlines the process
- (1)b. Review of Governor's emergency executive order powers has already occurred.
- (2)a. Rule Changes drafted and vetted in advance

29

 = In Session

 = Out of Session

Executive Summary: Continuity of Operations Plan (COOP) For Legislative Agencies

The Continuity of Operations Plan addresses the logical flow of events to respond to major disruptions in essential functions, mission critical services, and technology infrastructure. Specifically, each legislative agency (Legislative Council Staff, Office of Legislative Legal Services, Joint Budget Committee Staff, Office of the State Auditor, Legislative Information Services, the House, and the Senate) has a plan to address the events to:

- Continue or resume time-sensitive operations of the essential functions identified by the agency, including the identification of minimum staffing requirements needed to perform those essential functions.
- Activate the resumption and support of the essential functions, including the documentation of the agency's chain of command structure and the identification of the decision makers and the positions that will perform the work needed to resume the necessary work operations.
- Identify the responsibilities of the key staff members assigned to perform the essential functions and the steps necessary to progress towards resumption of the normal business operations of the agency.
- Describe how the agency will communicate and coordinate with its staff members through the use of agency-specific emergency contact lists and telephone call trees. In addition, the members of the Legislative Management Team will utilize their established procedure for communicating with each other in order to share information between the legislative service agencies and the House and the Senate.
- Achieve each of the above objectives in a timely, efficient, and cost-effective manner.
- Return to a permanent operating environment.

Adopted by the Legislative Management Team on June 4, 2009

OFFICE OF LEGISLATIVE LEGAL SERVICES
COLORADO GENERAL ASSEMBLY

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MEMORANDUM

TO: Legislative Emergency Epidemic Response Committee

FROM: Office of Legislative Legal Services

DATE: July 16, 2009

SUBJECT: Options for the emergency succession of legislators

Issue Addressed

Recently, the Legislative Emergency Epidemic Response Committee (LEERC or the "committee") requested research regarding options for the emergency succession of current legislators in the event of one or more vacancies arising out of a disaster. The intent of this memorandum is to give a brief overview of other states' laws addressing emergency succession in an attempt to provide LEERC members with several options so that the committee may recommend a plan to fill legislative vacancies arising out of a disaster. Please note: This memorandum does not provide information on every state that has an emergency succession plan, as many states have similar plans. Rather, this memorandum focuses on a handful of states that were chosen as examples of their respective types of plans.

Introduction

Though Colorado has a statutory process for filling routine legislative vacancies caused by circumstances such as the death or retirement of a member of the General Assembly, the state does not currently have a process in place for filling legislative vacancies arising out of a declared disaster emergency. Questions have been raised about whether the current process for filling vacancies, which is mostly driven by the state political parties, may be too cumbersome and time-consuming to be effective in the case of a disaster emergency. As such, it may be beneficial to create a separate process that allows for the appointment of temporary emergency successors in the event of the absence or death of a legislator during a declared disaster emergency. Such a process would allow the General Assembly to convene a quorum and conduct its business during such an emergency. The sections below provide a selection of legislation adopted in other states regarding legislative temporary emergency succession. While most of the states' laws listed below contain contingencies for

emergency succession in the event of an enemy attack, the succession provisions will suffice to provide guidance in cases of emergency epidemics as well.

Examples of Temporary Emergency Succession Acts in other States

Approximately fifteen states have enacted some type of temporary emergency succession act. As the examples below illustrate, the form of the different succession plans varies from a constitutional provision and a single statutory section to rather comprehensive acts that encompass entire emergency plans, which include provisions for legislative succession and changing the location of the legislature.

Among the states that have codified a succession plan, designation of temporary emergency successors by the legislator seems to be the most common procedure. Typically, pursuant to this type of succession plan, every state legislator is required to compile a list and designate the rank of a certain number of temporary emergency successors. This list is then filed with that state's secretary of state, who in turn gives notice of the filing to the governor and the designated officers of the state's legislative bodies.

A minority of states have chosen different designation methods. In California, if one-fifth of either house is unavailable, the remaining members choose emergency interim successors. In Kansas, political party committees of either the county or the senatorial district choose the successor to any unavailable legislator *after the legislator becomes unavailable*. Finally, New Mexico's plan calls for county commissioners to designate emergency interim successors for each legislator from that county.

Alabama

The act encompassing Alabama's statutory emergency succession plan is a comprehensive one; the act covers everything from legislative declarations and definitions to procedures that are to be followed once an emergency has been declared, including quorum and vote requirements.

Relevant to the committee's purposes, the Alabama act contains sections that specifically dictate how legislators' successors are designated; the status, qualifications, and terms of successors; and when the terms of successors become effective.

Designation: Each legislator is required to designate at least three emergency interim successors and specify their order of succession. It is the legislator's duty to review and revise the list of designations from time to time to ensure there are at least three qualified successors at any given time. The lists are filed with the secretary of state

who in turn notifies the governor, the state's emergency management agency, the secretary of the senate, and the clerk of the house of representatives. *Ala. Code 1975 § 29-3-4, 29-3-6*

Status, qualifications, and terms: An emergency interim successor may assume the powers and duties, but not the office, of a legislator, although the successor must be *qualified* to hold the office of a legislator. The interim successor serves at the pleasure of the designating legislator in the event of the legislator's absence or at the pleasure of any subsequent incumbent of the legislative office in the event of a vacancy. *Ala. Code 1975 § 29-3-5*

Assumption of powers and duties by successor: If, in the event of an attack (as defined in an earlier section in the act), a legislator is unavailable, the highest available emergency interim successor on the list of designees exercises the powers and assumes the duties of the legislator (except for the power and duty to appoint emergency interim successors). The successor continues to exercise the powers and duties of the legislator until the incumbent legislator, an emergency successor higher in order of succession, or a legally qualified legislator appointed or elected to the vacant office can act. *Ala. Code 1975 § 29-3-11*

California

California law relating to the emergency succession of legislators is located in both the California Constitution and state statutes; the constitutional provision is the enabling authority that allows the legislature to mandate how legislative vacancies will be filled in the event of a "war-caused or enemy-caused disaster in California". Pursuant to the state's constitution, at least one-fifth of the membership of either house must be killed, missing, or disabled in order to trigger the emergency succession process. The statute then specifies the process for filling such legislative vacancies as follows.

Appointment by majority vote: Whenever a war or enemy-caused disaster creates vacancies to the extent that one-fifth of the members of either house are unable to serve, the remaining members of the house in which the vacancies exist, regardless of whether such members constitute a quorum, appoint by majority vote a qualified person as a *pro tempore* member to fill each vacancy. *CA GOVT § 9004*

Qualifications of pro tempore members: To the extent possible, the person appointed as a *pro tempore* member must be, as of the date of the disaster, a resident of the same district and a registered elector of the same political party as the last duly-elected member from such district. *CA GOVT § 9004*

Terms of pro tempore members: In cases where the original elected member is temporarily disabled or unable to serve, the elected member shall resume office when able, and the *pro tempore* member's duties and powers cease at that point. In all other cases, each *pro tempore* member shall serve until the next election of a member to such office as provided by law. *CA GOVT § 9004*

Kansas

Kansas' succession plan is included here because of its unique party-driven process. Unlike the other plans listed, emergency interim successors in Kansas are not chosen by legislators or by county commissioners, but rather by political parties. If the LEERC members wish to keep the political parties involved as they are in the vacancy process, Kansas' plan may be a good option.

Designation: If, in the event of an attack, a legislator is unavailable, an emergency interim successor is designated by either the *county committee* of the political party of which such legislator is a member (in cases where the legislator is from a representative or senatorial district that comprises only one county) or the *senatorial district committee* of the political party of which the legislator is a member (in cases where the senatorial district comprises more than one county). *KS ST § 48-1304*

Assumption of duties by emergency interim successor: If a legislator is unavailable in the event of an attack, the emergency interim successor assumes all powers and duties until the incumbent legislator or a legislator duly appointed or elected to the vacant office can act. *KS ST § 48-1310*

New Mexico

Not unlike Alabama, New Mexico's legislature has enacted a more comprehensive "Legislative Disaster Succession Act" consisting of eight comprehensive statutory sections ranging from legislative declarations to quorum and voting requirements. The sections of the act concerning legislative succession are summarized below.

Designation: The county commissioners of each county designate and rank five disaster successors for each legislator elected or appointed from that county. The commissioners have the power to change the designations, or the designees' order of succession, at will. The commissioners file the list of the designees with the secretary of state. *NM ST § 12-11-14, 12-11-15*

When disaster successors may act: Four conditions must be met before a disaster successor may act as a member of the legislature: 1) A disaster emergency must have been declared by either the President of the United States or the Governor of New Mexico; 2) the original legislator must be and remain unavailable; 3) all disaster

successors with higher seniority on the designation list must be and remain unavailable; and 4) a successor to the office must not have been selected and qualified as provided by law other than the "Legislative Disaster Succession Act". *NM ST § 12-11-18*

Term of the disaster successor: The term of a disaster successor lasts as long as a state of martial law is declared to exist or until a duly elected or appointed legislature declares by joint resolution that the disaster emergency period has ended. The term also ceases upon the availability of the original legislator or a higher ranked successor. *NM ST § 12-11-18*

South Carolina

South Carolina has also enacted a broad "Emergency Interim Legislative Succession Act" that includes contingencies for changing the location of a session as well as procedures for designating emergency interim successors. Though South Carolina's process for designating emergency interim successors is similar to the process employed by Alabama (where the legislator is responsible for compiling a ranked list of potential emergency successors), it is included here because South Carolina's act also contains a clause described below that provides for the designation of emergency interim successors should the legislator fail to designate the adequate number of successors.

Designation: Each member of the General Assembly is responsible for designating no fewer than three nor more than seven emergency interim successors. Legislators must review and revise the list of successors as necessary to ensure that there are at least three successors at all times. *SC ST § 2-5-30*

Designation of successors when legislator fails to designate a sufficient number: Prior to an attack, if a legislator fails to designate the required minimum number of emergency interim successors or, if for any reason, the number of successors falls below the minimum and remains below the minimum for a period of thirty days, the presiding officer of the same house as the legislator must promptly designate as many successors as are required to achieve the minimum number. No successor designated by the presiding officer may achieve a rank higher on the list than a successor designated by the legislator. Any successor designated by the presiding officer serves at the pleasure of the presiding officer, but the legislator for whom the successor is designated may change the rank of or replace the successor at the legislator's pleasure. *SC ST § 2-5-50*

When successors may act: If, in the event of an attack, a legislator is unavailable, the next available emergency interim successor highest in order of succession assumes the powers and duties of the legislator (except for the power and duty to appoint an

emergency interim successor). The successor carries out the powers and duties of the legislator until the incumbent legislator, a successor higher in order of succession, or a duly-appointed or elected and legally qualified legislator can act. *SC ST § 2-5-110*

Current Law and Options

Current state of Colorado vacancy law

As mentioned above, neither the Colorado Constitution nor the Colorado Revised Statutes contain provisions that specify how legislative vacancies could be filled in the event of a declared disaster emergency. In the absence of any such guidance, should a disaster emergency occur, legislative vacancies could only be filled according to current vacancy law, which is contained in section 1-12-203, Colorado Revised Statutes.

Section 1-12-203, C.R.S., specifies that any legislative vacancy is to be filled by either the representative district or senatorial district vacancy committee of the political party of which the legislator was a member. However, it is important to note that subsection (1) states that this process is only to be used for filling vacancies caused by the death or resignation of a member. There is no mention of, and the statute does not seem to envision, temporary vacancies occasioned by the unavailability of a member following a declared disaster emergency. Thus, it is doubtful that section 1-12-203, C.R.S., would apply in a situation where a member is temporarily unavailable following a disaster or epidemic, meaning the legislator's seat would remain unoccupied until the legislator returned to office or until a vacancy was declared due to the death or resignation of the unavailable legislator.

Because section 1-12-203, C.R.S., only applies to vacancies caused by death or resignation, any vacancy caused by the unavailability of a legislator after a declared emergency could not be filled until one of those two qualifying events occurs. In the event of a pandemic, attack, or natural disaster, the whereabouts or status of a missing legislator may not be known for some time. If a large number of members of either house is missing, quorum and vote requirements could be adversely affected, effectively disabling the general assembly.

Even if section 1-12-203, C.R.S., is triggered by the resignation or death of an absent member following a declared disaster emergency, it may be that the time process for filling such vacancies is too lengthy to be effective in an emergency situation. As the statute indicates, no vacancy committee may meet to appoint a successor until ten days after notice of the meeting is mailed to each member of the vacancy committee. Upon the selection of a qualified replacement at a meeting, the vacancy committee has thirty days to certify the selection to the secretary of state. The secretary of state then has two days to certify the name of the successor to the appropriate house of the general assembly which, in turn, has another thirty days to administer the oath of office to the designated replacement. Although it is doubtful that all the entities involved would take the full amount of time allotted by the

statute to act, especially in an emergency situation, it is possible that the process could take up to two weeks.

Because of the above complications involved in applying current vacancy law to emergency succession following a declared emergency, the committee may wish to consider the options listed below.

Comprehensive act containing all provisions related to a disaster emergency

Of the states that have enacted some type of emergency succession act, the majority have codified a comprehensive plan that encompasses all legislative procedures related to an attack or emergency. The committee may wish to draft such a comprehensive plan that contains provisions concerning, among other things: legislative declarations; definitions; designation, status, qualifications, and terms of successors; changing the location of the legislative session; and quorum and vote requirements. The benefit of such a comprehensive plan would be that all relevant legislation would be located in one place in the statute, eliminating the need to search for the necessary provisions during a declared disaster emergency. Even if a comprehensive plan is pursued, however, LEERC members would still have to determine how the emergency successors would be designated. The sample measures from the different states contained above may help in this determination.

Single statutory section speaking to the designation of emergency interim successors

Alternatively, LEERC members may wish to draft a single statutory section that specifies only how emergency successors are to be designated, whether by individual legislators, political parties, county commissioners, or the remaining members of the General Assembly. Such an approach would leave all other current laws regarding quorum and vote requirements, location of legislative session, etc., in place. These other contingencies could be handled in later bills, by changes to the Joint Rules, or not at all.

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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 session¹

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 pandemic². 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,

¹ 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.

² 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.³ A rough draft of such a statute is attached in Attachment B. The

³ 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 it so 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 are 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

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.

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.