



March 13, 2020

Fate of Colorado Legislative Session Unclear in Midst of COVID-19

On Tuesday, Gov. Polis declared a disaster emergency due to the presence of COVID-19 in Colorado. The state has completed test results on more than 400 people and is currently reporting 49 presumptive positive cases. That same evening, leadership of the state legislature met to discuss whether, when and how to suspend, adjourn or otherwise recess the legislative session.

Since then, legislative leadership has indicated that it is a matter of when and not if they will suspend the session, but questions remain as to whether the constitutional 120-day limit must be counted as consecutive days or whether it may be counted as working days. No matter how the suspension is enacted, it appears clear the legislature will prioritize the budget bill, the school finance act, and other “mission-critical” bills.

For example, a bill was introduced late on Thursday to allow the state’s political parties to delay their post-caucus primary selection processes. The House rushed the bill to committee and then to the floor for its first two votes, allowing the bill to fast-track to the Senate and become law as soon as Saturday. Work on the budget bill continues, and it has been reported that the Joint Budget Committee may continue its work on the budget even if the rest of the legislature ceases operations.

The ultimate fate of other bills, including those addressing paid family and medical leave, a public health insurance option, and data privacy, remains uncertain. For instance, if the legislature suspends operations next week and returns sometime in April, it is unknown whether any bills beyond those that are deemed by legislative leadership to be “mission-critical” will even be heard.

Beyond suspension of the current regular session, the governor could call a special session in the future to address specific topics. Circumstances are changing quickly, but we believe the legislature will make a determination on suspension within the next couple of days.

Regarding the powers of the governor, Colorado law provides him with broad emergency management authority. Among other things, the governor is vested with the powers to suspend rules and statutes; utilize all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency; evacuate all or part of the population from any stricken or threatened area within the state; and transfer the direction, personnel or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services.

Historically, however, governors have deployed a soft touch in dealing with emergency situations and only using the

minimum tools necessary to address issues of public safety and health. His executive order follows this soft approach.

With regard to emergency preparedness, the executive order activates the National Guard to provide planning, logistics, personnel and facilities to authorities; encumbers \$4 million for response efforts; and triggers all state, local and interjurisdictional disaster emergency plans.

With regard to workers, the executive order directs emergency rulemaking to ensure workers in the following industries get paid sick leave if they exhibit flu-like symptoms and have to miss work while they await testing results for COVID-19: leisure and hospitality, food services, child care, education at all levels (including but not limited to cafeterias and transportation to, from, and on campuses), home health care (working with elderly, disabled, ill, or otherwise high-risk individuals), operating a nursing home, or operating a community living facility.

With regard to protecting the elderly, the executive order temporarily allows Coloradans over the age of 65 to renew their driver's licenses online to avoid having to congregate at a DMV.

By its term, the executive order expires on April 10, but Gov. Polis may extend it at his discretion.

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