Colorado’s legislature won’t resume Monday as planned. It’s an open question when they will return.

Top lawmakers at the Capitol are awaiting a Colorado Supreme Court ruling on how to proceed, but they’re also beginning to eye a special legislative session as a remedy to the coronavirus pause.
The Colorado General Assembly will not resume its lawmaking term next week as scheduled and may not return until the second half of April as the coronavirus pandemic worsens.

The legislature is scheduled to reconvene at 10 a.m. Monday after a two-week break imposed in response to the public health emergency. But legislative leaders told The Colorado Sun on Tuesday they will extend the recess and take steps to avoid asking all lawmakers to return.

When — and if — the session resumes remains uncertain.

“We will know a little bit more by (Monday) about the coronavirus, but no one is really going to know when it peaks,” said House Speaker KC Becker, a Boulder Democrat.

Democratic and Republican leaders are still negotiating how to proceed and whether the legislature can stand in an indeterminate recess, or whether it will need to vote on a resolution to set another date to reconvene. Either way, Becker said she doesn’t expect the legislature to return to the Capitol until the latter half of April at the earliest.
Sen. Chris Holbert, the chamber’s Republican minority leader, agrees with the need for an extended break. “I think taking another week or two away would be wise and in the interest of public health and safety,” the Parker lawmaker said in an interview. “There are people wanting at least two branches of government up and running. Because of the governor’s emergency powers under the constitution and statute, I don’t think he needs us there. So, what would we do?”

The 120-day legislative session came to an abrupt halt March 14 amid fears about the spread of COVID-19, the disease caused by the new coronavirus. In an overwhelming vote during a rare Saturday session, lawmakers approved a two-week shutdown, but at the time some worried the break wasn’t long enough.

The anxiety proved prophetic. The outbreak is accelerating by the hour with at least 914 people who are confirmed or considered positive cases through Tuesday evening, and likely thousands more in Colorado who haven’t been able to access testing. Gov. Jared Polis has warned the state to brace for the situation to dramatically decline.

“Where we are going to be on Monday is probably in a much worse situation than where we were two weeks ago,” Becker said, acknowledging that “right now, there are a lot of people who aren’t particularly happy about coming back on Monday.”
Colorado is one of 23 states with suspended sessions because of the pandemic, according to the Denver-based National Conference of State Legislatures.

The Colorado legislative term is scheduled to end May 6, but lawmakers are seeking legal guidance from the Colorado Supreme Court about whether they can recoup the lost calendar days and extend the session past the date. The court agreed to take up the question, but it’s not clear when it will render an opinion.

Top lawmakers are exploring whether “there is a creative way to not come back,” said Senate Majority Leader Steve Fenberg, including procedural actions to hold the recess in place.
If a vote on a resolution is needed, not all lawmakers or legislative employees would return to the Capitol on Monday, and those with health concerns or long distances to travel are being encouraged to stay home. The House and Senate only need a majority — 33 in the House and 18 in the Senate — to reach a quorum and the chambers plan to approve the adjournment resolution on a voice vote.

The Centers for Disease Control and Prevention has warned against events with 50 or more people through May 10, and the state has ordered that people not gather in groups of 10 or more until at least April 18.

The governor asked Coloradans not to leave their homes unless it’s absolutely necessary for an indefinite period of time, and Denver Mayor Michael Hancock on Monday went a step further by issuing a stay-at-home mandate that effectively closes the city down until at least April 10.

The legislature is exempt from the state and local orders.

MORE: The Capitol is shutdown, but Colorado lawmakers are crafting legislation to address coronavirus

What will happen when lawmakers eventually return

A myriad of factors are complicating the question of when lawmakers return. The legislature is required to approve a balanced budget each year but the initial two-week break came just as the lawmakers hoped to introduce the spending bill. In addition, lawmakers still hope to introduce the annual education funding bill known as the School Finance Act. The next fiscal year starts July 1.
The state’s finances are now projected to turn downward given the economic downturn related to the COVID-19 outbreak. That’s forcing lawmakers to revisit all major spending items and cut back. Becker said legislative forecasters plan to offer a new outlook when lawmakers resume work on the budget.

“Probably the longer the wait on the budget, the better,” Holbert said, acknowledging that the economic situation could worsen significantly.

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Other items on the agenda for when lawmakers return include any legislation to address the public health crisis and its impact on businesses and employment. In addition, hundreds of bills are still pending and some need a public hearing as required by the state constitution. It’s possible some priority bills could be pared back or cut altogether.

Among lawmakers, the opinions about when to come back, Becker said, “are all over the place.” Some are eager to finish their legislation. Others are wary of getting sick.

“When you’re close on a bill, you’ve done a lot of stakeholder work, and you’ve just gotten far enough along to see something slip away is hard,” she said.

The legislative leaders will need to balance “public health versus the need to address things going on with the coronavirus pandemic and needing to meet our constitutional requirements,” Becker concluded.
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House Speaker KC Becker on the opening day of the legislation session at the Colorado capitol on Jan. 8, 2020. (Kathryn Scott, Special to The Colorado Sun)

Looking ahead toward a potential special session

The prospect of an extended session — or even a special session — still looms.

“We’re going to come back to the legislature at some point this year to do more work,” said Fenberg. “The question is: Is it technically this session or is it a special session?”

Overshadowing it all is the forthcoming opinion from the state Supreme Court about whether legislative sessions must run consecutively under a constitutional amendment approved by voters in the

1980s. The legal briefs from interested parties were due to the court Tuesday in what’s become a partisan question.

All 40 Republican lawmakers, represented by former U.S. Attorney Troy Eid, an appointee of President George W. Bush, argue in a legal brief that voters were clear when they passed the amendment that the session can not last longer than 120 consecutive days.

This is how the session typically operates, but Democratic lawmakers believe the public health emergency gives them flexibility to count 120 accumulated calendar days. The premise doesn’t appear to have ever been litigated.

Colorado Attorney General Phil Weiser, who was asked by the court to offer an opinion, filed a brief with Polis in support of extending the legislative session saying the constitution was ambiguous. Weiser argued that forcing the legislature to return would hurt democracy by stifling public input on lawmaking because people would be afraid to go to the Capitol during a pandemic, not to mention put public health at risk. Former U.S. attorney John Walsh, a Democrat, echoed the point in a legal filing on behalf of the General Assembly.

**MORE: Read the briefs from Colorado Attorney General Phil Weiser and former U.S. Attorney Troy Eid.**

Both note that Colorado’s so-called “Give a Vote to Every Legislator amendment” requires that every bill introduced gets a hearing.

“A strict consecutive-only approach could require ... the General Assembly to either violate the constitution’s requirement that all bills receive a vote and consideration on the merits or to return within the 120-day period — but before it is actually safe to do so — solely to comply with this requirement. That cannot be what the constitution requires,” argued Weiser, a Demo
If the state Supreme Court sides with Republicans, there are still options that would allow the legislature to reconvene after May 6.

Polis could call a special legislative session at any time. He would have to outline what topics he’d like to see addressed, but lawmakers could also introduce other bills and broaden the span.

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Holbert said he would like to see the legislature use its powers to call a special session if the Supreme Court rules against allowing lawmaking to continue past May 6. That would require a two-thirds vote.

But first, Holbert said, Democrats would need to agree to abandon their most ambitious plans, including passage of a public health insurance plan and a paid parental and family medical leave program. “I really like the idea of us trying to come to an agenda for a special session,” he said. “If things like (paid leave) or public option were part of the agenda, no, we wouldn’t agree to that.”

Fenberg said those talks are still preliminary right now. “We haven’t talked through the special session piece a lot,” he said.
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