

STATE OF INDIANA ) IN THE MARION COUNTY CIRCUIT COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO.

ERIC J. HOLCOMB, GOVERNOR OF THE )  
STATE OF INDIANA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RODRIC BRAY, in his official capacity as the )  
President Pro Tempore of the Indiana State Senate, )  
and chairman of the Indiana Legislative Council, )  
TODD HUSTON, in his official capacity as the )  
Speaker of the Indiana State House of )  
Representatives, and vice-chairman of the Indiana )  
Legislative Council, THE LEGISLATIVE )  
COUNCIL, as established by Indiana Code )  
§ 2-5-1.1-1, and THE INDIANA GENERAL )  
ASSEMBLY, )  
 )  
Defendants. )  
 )

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff, Eric J. Holcomb, Governor of the State of Indiana, by counsel, for his Complaint for Declaratory Judgment and Injunctive Relief against the Defendants, alleges and states as follows:

**PARTIES AND VENUE**

1. Plaintiff, Eric J. Holcomb, is the Governor of the State of Indiana (“Governor Holcomb” or the “Governor”).
2. Defendant Rodric Bray (“President Bray”) is the President Pro Tempore of the Indiana State Senate. He is also the chairman of the Legislative Council codified at Ind. Code § 2-5-1.1-1 (“Legislative Council”).
3. Defendant Todd Huston (“Speaker Huston”) is the Speaker of the Indiana State House of Representatives. He is also the vice-chairman of the Legislative Council.

4. Pursuant to Ind. Code § 2-5-1.1-1, the Legislative Council is a 16-member committee of the General Assembly tasked with various responsibilities under the Indiana Code.

5. Pursuant to Ind. Const. Art. 4 § 1 (1851), the Indiana General Assembly (“General Assembly”) is the legislative authority of the State of Indiana.

6. Venue is proper in Marion County under Indiana Trial Rule 75(A)(5).

7. As set forth below, there is a dispute over the rights, status, and legal relationship between the parties to this constitutional controversy, in which Governor Holcomb and the other parties have a substantial present interest in the relief sought.

## **BACKGROUND**

### **A. OATH OF OFFICE**

8. On Inauguration Day in 2017, and again in 2021, Governor Holcomb took an oath, pursuant to the Constitution of the State of Indiana, Article 5 and Article 15, Section 4, where he swore and affirmed the following:

I, Eric J. Holcomb, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Indiana, and that I will faithfully and impartially discharge the duties of the office of *Governor of the State of Indiana*, to the best of my skill and ability, so help me God.

9. Consequently, consistent with and as demanded by his oath, Governor Holcomb has filed this declaratory judgment action in order to support and defend the constitutional right and authority of Indiana governors to call special sessions of the General Assembly.

10. By passing House Enrolled Act 1123, amending Ind. Code § 1-1-1-8.6, § 2-2.1-1-1, § 2-2.1-1-12, § 2-5-1.1-5, § 10-14-3-34, enacting Ind. Code § 2-2.1-1.2, § 2-6-1.5-0.7, § 4-12-18, and repealing Ind. Code § 35-52-10-4 (“HEA 1123”), the General Assembly has impermissibly attempted to give itself the ability to call special sessions, thereby usurping a power given exclusively to the governor under Article 4 § 9 of the Indiana Constitution. Indiana Code § 2-2.1-1-1, § 2-2.1-1.2-2, § 2-2.1-1.2-7 through Ind. Code § 2-2.1-1.2-10, and Ind. Code § 2-5-1.1-5(a)(9),

enacted under Sections 2, 4 and 5 of HEA 1123 (the “Disputed Provisions of HEA 1123”), impermissibly infringe upon and undermine the constitutional power to call special sessions which is vested exclusively with the governor.

11. The ramifications of any use of the Disputed Provisions of HEA 1123 by the General Assembly will be disruptive to the State of Indiana. HEA 1123’s very existence has created uncertainty and confusion. This controversy must be resolved as soon as possible or the consequences could be severe, including disruption to Indiana and the proper functioning of state government – something that concerns every Hoosier.

#### **B. PANDEMIC**

12. Beginning in early 2020, a deadly, highly infectious disease called Coronavirus 2019 (“COVID-19”), started spreading across the world, causing an ongoing pandemic which has affected the State of Indiana. COVID-19 is the gravest threat to public health in over a century.

13. As described by the United States Court of Appeals for the Seventh Circuit in *Mays v. Dart*, 974 F.3d 810, 814 (7th Cir. 2020):

At present, COVID-19 requires no introduction: the novel coronavirus causing this disease has spread around the world, resulting in an unprecedented global pandemic that has disrupted every aspect of public life. The virus, SARSCoV-2, causes symptoms ranging from fever to shortness of breath to loss of smell and can lead to serious health effects—including damage to internal organs and, in many cases, death.

14. Over a year ago, on March 6, 2020, Governor Holcomb issued Executive Order 20-02, which declared that a public health emergency existed throughout the State of Indiana as a result of the COVID-19 outbreak in the United States, and a confirmed report that a Hoosier had contracted this virus.

15. On March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic. Several days later, on March 13, 2020, the President of the United States declared a national emergency with respect to this dangerous virus.

16. Pursuant to Executive Order 21-08, issued by Governor Holcomb on March 31, 2021, the State of Indiana remains in a state of emergency due to COVID-19. To date, more than ten percent (10%) of Hoosiers have contracted this virus, and nearly 13,000 have died from it.

17. Governor Holcomb, Indiana State Department of Health, Indiana Department of Homeland Security, and other state agencies have taken measures during this pandemic – through the governor’s emergency powers and otherwise – to protect the residents of Indiana from COVID-19.

18. Governor Holcomb has acted, and continues to act, under his executive powers, including the Indiana Emergency Management & Disaster Law, Ind. Code § 10-14-3 *et seq.*

19. Since the beginning of the state of emergency, Governor Holcomb has been firmly committed to being open and transparent about his handling of this unprecedented threat to our State, including, but not limited to, holding regular statewide press conference broadcasts and having regular discussions, not only with Speaker Huston and President Bray, but also with community and business leaders, national and local officials, and others.

20. During this pandemic, the State of Indiana has maintained a comprehensive website with significant amounts of data and information available to the public, as well as links to helpful resources, all of which can be accessed at <https://www.coronavirus.in.gov/2393.htm>.

**FACTUAL ALLEGATIONS RELEVANT TO  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

**A. INDIANA CONSTITUTIONAL PROVISIONS**

21. Indiana has been governed by two constitutions since its founding in 1816: the 1816 Constitution, and the 1851 Constitution.

22. Since its founding, the State of Indiana has always had a part-time legislature that meets in regular session for a portion of the year.

23. What follows is a brief summary of applicable provisions pertaining to legislative sessions contained in both the 1816 and 1851 Constitutions:

**a. Article 3 § 25 of the 1816 Indiana Constitution:**

This provision sets forth the time for convening the regular session each year: “The first session of the General Assembly shall commence on the first Monday of November next, and forever after, the General Assembly shall meet on the first Monday in December, in every year, and at no other period, unless directed by law, or provided for by this Constitution.”

**b. Article 4 § 13 of the 1816 Indiana Constitution:**

This provision granted to the governor the exclusive right and authority to call a special session: “[The governor] may, in extraordinary occasions, convene the General Assembly at the seat of Government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders, and in case of a disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the time of their next annual session.”

**c. Article 4 § 9 of the 1851 Indiana Constitution:**

In 1851, the State of Indiana enacted a new Constitution which set forth the time for convening regular sessions and granted the exclusive right and authority for calling special sessions to the governor, as follows: “The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time by proclamation, call a special session.”

**d. Article 4 § 29 of the 1851 Indiana Constitution:**

This provision sets forth the length of the regular and special sessions: “The members of the General Assembly shall receive for their services, a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this

Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.”

e. **1970 Amendment to Article 4 § 9 of the Indiana Constitution:**

This amendment removed the biennial meeting requirement and added the third sentence making clear that the length and frequency of the regular sessions may be fixed by law: “The sessions of the General Assembly shall be held at the capitol of the State, commencing on the Tuesday next after the second Monday in January of each year in which the General Assembly meets unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time by proclamation, call a special session. The length and frequency of the sessions of the General Assembly shall be fixed by law.”

24. Notably, what never changed in these constitutional provisions over the years is the sole and exclusive right and authority of the governor to call special sessions. Nowhere in these changes, or in the actual text of the Indiana Constitution itself, was the General Assembly ever given that same right, power, or ability.

25. The 1851 Constitution also contains, in Article 3 § 1, a separation-of-powers principle that is critical to the proper functioning of state government:

The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.

26. The separation-of-powers principle makes clear that no department (also known as a “branch”) of state government may exercise any of the functions of another branch, unless expressly permitted by the Indiana Constitution. As such, it protects the independence and integrity of each branch, not only from direct infringement by the other branches, but also from any indirect or even remote influence from those branches.

27. The right and authority to call a special session is clearly, unequivocally, and exclusively a function of the governor. As such, neither the General Assembly nor the Legislative Council can exercise this function since the Indiana Constitution does not expressly allow for it.

28. Article 4 § 9 of the Indiana Constitution, which establishes the governor's sole and exclusive right and authority to call special sessions, must be read and understood in the context of the separation-of-powers principle enshrined in Article 3 § 1 of the Indiana Constitution.

#### **B. LEGISLATIVE SESSIONS AND HEA 1123**

29. At the time of the adoption of the 1816 Constitution, the 1851 Constitution, and the 1970 Amendment, the only types of sessions evidenced by the records of those constitutional proceedings are the "regular session" and the "special session." No other type of session is mentioned or authorized.

30. Near the end of the 1850-1851 Constitutional Convention, the leaders prepared an official speech to explain the newly proposed Constitution to the people of Indiana, which included the following: "The regular sessions of the General Assembly are to be held only once every two years; but the Governor, if he thinks the public welfare requires it, may call special sessions."

31. The word "sessions," as used in Article 4 § 9 of the Indiana Constitution, includes only regular sessions and special sessions.

32. There is no authority in the 1851 Constitution (or the 1970 Amendment) that allows or empowers, in any way, the General Assembly to create a new type of legislative session, including, but not limited to, the so-called "emergency session" described in HEA 1123.

33. During the 2021 legislative session, HEA 1123 was introduced in the Indiana House of Representatives as House Bill 1123 (a true and accurate copy of which is attached hereto as **Exhibit A**).

34. The Disputed Provisions of HEA 1123 allow the General Assembly, through its Legislative Council, to call itself into an unconstitutional special session that it has labelled an “emergency session.” Regardless of the name given to it, this “emergency session” is functionally a special session, because they both share the same characteristic of being one-time and non-recurring in nature, as opposed to a regular session that occurs each and every year.

35. In particular, HEA 1123 amends the Indiana Code to allow the General Assembly, through its Legislative Council, to declare an “emergency session” of the General Assembly when a state of emergency has been declared by a governor. (Ex. A). Pursuant to Ind. Code §10-14-3-12(a), the governor has the sole authority to declare a state of emergency by executive order or proclamation “if the governor determines that a disaster has occurred or that the occurrence or threat of a disaster is imminent.”

36. During an unconstitutional HEA 1123 “emergency session,” the General Assembly may enact bills relating to the agenda set by the Legislative Council, as well as adopt concurrent or simple resolutions. (Ex. A).

37. Despite persistent questions about its constitutionality, and several constitutional law experts who testified at a legislative hearing that HEA 1123 is unconstitutional, the legislation nevertheless moved forward in the legislative process and ultimately passed.

38. Several legislators publicly acknowledged these serious questions, as well as the uncertainty and confusion that the proposed Act was creating, but said they would “let the courts decide” its constitutionality. *See e.g.*,

<https://www.indystar.com/story/news/politics/2021/04/05/indiana-covid-mask-mandate-governor-holcomb-emergency-powers-bill/7052905002/>

39. Other legislators indicated that the General Assembly passed HEA 1123 to wrest power away from Governor Holcomb.



40. Notwithstanding these serious questions and concerns, on April 5, 2021, HEA 1123 passed the General Assembly.

41. Governor Holcomb vetoed HEA 1123 on April 9, 2021. (A true and accurate copy of Governor Holcomb's statement issuing the veto is attached hereto as **Exhibit B**).

42. In his veto statement, Governor Holcomb stated that he “firmly believe[s] a central part of [HEA 1123] is unconstitutional” because the bill “impermissibly attempts to give the General Assembly the ability to call itself into a special session, thereby usurping a power given exclusively to the governor under Article 4, Section 9 of the Indiana Constitution.” (Ex. B).

43. Also in his veto statement, Governor Holcomb made clear that if HEA 1123 becomes law, it “will create significant uncertainty and solidify the controversy over its constitutionality,” and that any legislative actions taken during such an unconstitutional session would be void and thus open and subject to legal challenges to set them aside. For that to occur during a state of emergency would be disruptive to Indiana and the proper functioning of state government.

44. Both chambers of the General Assembly voted to override Governor Holcomb's veto on April 15, 2021.

45. The General Assembly passed HEA 1123 on an “emergency” basis, making its provisions effective immediately, as opposed to the normal effective date of July 1 each calendar year for typical legislation. Accordingly, HEA 1123 went into effect on April 15, 2021.

46. The General Assembly adjourned its regular session on April 22, 2021.

**COUNT I – DECLARATORY JUDGMENT AND PERMANENT INJUNCTION TO  
DECLARE HEA 1123 AN UNCONSTITUTIONAL INFRINGEMENT OF ARTICLE 4 §  
9 OF THE INDIANA CONSTITUTION AND ENJOIN ITS ENFORCEMENT**

47. Governor Holcomb incorporates herein by reference all previous allegations.

48. A declaratory judgment action is the proper procedural vehicle to use to contest the constitutionality of a newly-enacted law.

49. This constitutional controversy fits squarely within the very purpose of declaratory judgment actions – to resolve a dispute or uncertainty before it progresses to the point where real harm occurs.

50. Under the 1851 Constitution, only the governor has the right and authority to call a special session of the General Assembly. Ind. Const. Art. 4 § 9 (1851).

51. The Disputed Provisions of HEA 1123 unconstitutionally grant the General Assembly, through its Legislative Council, the right and authority to call a special session, which it labels an “emergency session,” in direct contravention of the Art. 4 § 9 of the Indiana Constitution.

52. In construing constitutional provisions, a rule of general acceptance is that which is express makes that which is silent to cease.

53. The 1851 Constitution expressly grants the right and authority to call a special session to the governor, and the governor alone. There is no express mention of any power or authority of the General Assembly to do likewise. Nowhere in the 1851 Constitution does it expressly provide that the General Assembly, or its Legislative Council, has the right or authority to call a special session.

54. It would be inconsistent with the fundamentals of constitutional interpretation to find that the Indiana Constitution silently vests in the General Assembly (or its Legislative Council), the ability to call special sessions, when that power is exclusively and expressly given to the governor alone. Therefore, pursuant to the 1851 Constitution, neither the General Assembly, nor its Legislative Council, has the right or authority to call a special session, including, but not limited to, the so-called “emergency session” described in HEA 1123.

55. This controversy is ripe for judgment. The General Assembly enacted HEA 1123 on an “emergency” basis, making the law effective immediately upon passing. Indiana remains in a state of emergency wherein an “emergency session” may be called to create a new session of the recently adjourned General Assembly at any time through its Legislative Council. Any delay in addressing the constitutionality of the Disputed Provisions of HEA 1123 could result in severe disruption to Indiana and the proper functioning of state government. The Court should promptly resolve the significant uncertainty and confusion over the constitutional powers of the Executive and Legislative Branches created by HEA 1123, which a declaratory judgment can effectively resolve.

56. A declaratory judgment by which a court of law determines the constitutionality of the Disputed Provisions of HEA 1123 is necessary to resolve an existing dispute and to establish the rights and responsibilities of all parties to this action.

57. For the reasons set forth in Count I, Governor Holcomb respectfully requests that the Court declare that the Disputed Provisions of HEA 1123 represent an unconstitutional encroachment on the governor’s exclusive right and authority to call special sessions, and that all individuals and governmental bodies should be permanently enjoined from enforcing those provisions of HEA 1123.

**COUNT II – DECLARATORY JUDGMENT AND PERMANENT INJUNCTION TO  
DECLARE HEA 1123 AN UNCONSTITUTIONAL INFRINGEMENT OF ARTICLE 3 §  
1 OF THE INDIANA CONSTITUTION AND ENJOIN ITS ENFORCEMENT**

58. Governor Holcomb incorporates herein by reference all previous allegations.

59. A declaratory judgment action is the proper procedural vehicle to use to contest the constitutionality of a newly-enacted law.

60. This constitutional controversy fits squarely within the very purpose of declaratory judgment actions – to resolve a dispute or uncertainty before it progresses to the point where real harm occurs.

61. The Disputed Provisions of HEA 1123 grant unconstitutional power to the Legislative Branch at the expense of the Executive Branch in violation of the separation-of-powers principle enshrined in Article 3 § 1 of the Indiana Constitution. The new law impermissibly grant the right and authority to call a special session, labelled an “emergency session,” to the General Assembly, through its Legislative Council.

62. The Indiana Constitution makes clear that no branch of government is allowed to exercise any of the functions of another, unless expressly permitted by the Indiana Constitution: “The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial; **and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.**” Ind. Const. Art. 3 § 1 (emphasis added).

63. Regardless of the name given to it, this “emergency session” is functionally a special session, because they both share the same characteristic of being one-time and non-recurring in nature, as opposed to a regular session that occurs each and every year.

64. The right and authority to call a special session is clearly, unequivocally, and exclusively a function of the governor and the Executive Branch. As such, neither the General

Assembly nor its Legislative Council can exercise this function since the Indiana Constitution does not expressly allow for it.

65. The separation-of-powers principle exists to protect the independence and integrity of each branch of state government. The Disputed Provisions of HEA 1123 unconstitutionally interfere with that proper separation-of-powers enshrined in the Indiana Constitution.

66. The Indiana Constitution allows only the governor to call special sessions of the General Assembly. Ind. Const. Art. 4 § 9. Granting the General Assembly, through its Legislative Council, the same right and authority to call special sessions would usurp the governor's exclusive power and authority in this regard. Such an attempted infringement by the Legislative Branch on the constitutional power and authority of the Executive Branch would be repugnant to the doctrine of separation-of-powers.

67. This controversy is ripe for judgment. The General Assembly enacted HEA 1123 on an "emergency" basis, making the law effective immediately upon passing. Indiana remains in a state of emergency wherein an "emergency session" may be called to create a new session the recently adjourned General Assembly at any time through its Legislative Council. Any delay in addressing the constitutionality of the Disputed Provisions of HEA 1123 could result in severe disruption to Indiana and the proper functioning of state government. The Court should promptly resolve the significant uncertainty and confusion over the constitutional powers of the Executive and Legislative Branches created by HEA 1123, which a declaratory judgment can effectively resolve.

68. A declaratory judgment by which a court of law determines the constitutionality of the Disputed Provisions of HEA 1123 is necessary to resolve an existing dispute and to establish the rights and responsibilities of all parties to this action.

69. For the reasons set forth in Count II, Governor Holcomb respectfully requests that the Court declare that the Disputed Provisions of HEA 1123 represent an unconstitutional encroachment on the governor's exclusive right and authority to call special sessions, and that all individuals and governmental bodies should be permanently enjoined from enforcing those provisions of HEA 1123.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Eric J. Holcomb, Governor of the State of Indiana, respectfully requests that this honorable Court declare that the Disputed Provisions of HEA 1123, which purport to grant the General Assembly, through its Legislative Council, the right and authority to call an “emergency session” of the General Assembly, are unconstitutional; to permanently enjoin the enforcement of the Disputed Provisions of HEA 1123 by any individuals or governmental bodies; and for all other proper relief in the premises.

Respectfully submitted,

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*Attorneys for Plaintiff*

**A**



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1123

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AN ACT to amend the Indiana Code concerning public safety.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 1-1-1-8.6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.6. The provisions of HEA 1123-2021 are severable in the manner provided by section 8(b) of this chapter.**

SECTION 2. IC 2-2.1-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The following definitions apply throughout this chapter:

- (1) "Bill" includes a bill and a joint resolution.
- (2) "Term of the general assembly" means that two (2) year period of time extending from the first Wednesday after the first Monday in November of any even-numbered year until, but not including, the first Wednesday after the first Monday in November of the next even-numbered year.
- (3) "Session" refers to **any of the following:**
  - (A) A regular session **of the general assembly.**
  - (B) A regular technical session ~~or of the general assembly.~~
  - (C) **An emergency session of the general assembly convened under IC 2-2.1-1.2.**
  - (D) A special session of the general assembly.
- (4) "Special session" means that period of time during which the general assembly is convened in session upon the proclamation and call of the governor under Article 4, Section 9 of the



Constitution of the State of Indiana.

SECTION 3. IC 2-2.1-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies only to those bills or joint resolutions which pass during the two (2) days before the sine die adjournment of a ~~regular or special~~ session of the general assembly. This section does not apply to bills passed during a regular technical session.

(b) The presiding officers of the house of representatives and the senate shall sign each bill or joint resolution passed under Article 4, Section 25 of the Constitution of the State of Indiana as soon as practicable, but not later than seven (7) calendar days after sine die adjournment of the session of the general assembly at which the bill was passed.

(c) A bill that has been signed under subsection (b) must be presented to the governor as soon as practicable, but not later than seven (7) calendar days after sine die adjournment of the session of the general assembly at which the bill was passed.

SECTION 4. IC 2-2.1-1.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 1.2. Emergency Sessions**

**Sec. 1. As used in this chapter, "advisory group" refers to the legislative state of emergency advisory group established by section 11 of this chapter.**

**Sec. 2. As used in this chapter, "emergency session" refers to a session of the general assembly convened under this chapter.**

**Sec. 3. As used in this chapter, "legislative council" refers to the legislative council created under IC 2-5-1.1-1.**

**Sec. 4. As used in this chapter, "presiding officer" refers to the following:**

- (1) For the house of representatives, the speaker of the house.**
- (2) For the senate, the president pro tempore of the senate.**

**Sec. 5. As used in this chapter, "records" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with the advisory group and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.**

**Sec. 6. As used in this chapter, "state of emergency" refers to an emergency declared by the governor under IC 10-14-3.**

**Sec. 7. (a) The general assembly shall convene under this**



chapter if the legislative council adopts a resolution that finds all of the following:

- (1) The governor has declared a state of emergency that the legislative council determines has a statewide impact.
- (2) It is necessary for the general assembly to address the state of emergency with legislative action.
- (3) It is necessary for the general assembly to convene an emergency session, in accordance with its authority to determine the length and frequency of legislative sessions under Article 4, Section 9 of the Constitution of the State of Indiana.

(b) A resolution of the legislative council adopted under this section must state all of the following:

- (1) The reasons that it is necessary for the general assembly to convene to address the state of emergency.
- (2) The date, time, and place that each house of the general assembly will convene.
- (3) The general assembly's agenda for addressing the state of emergency.

(c) The legislative services agency shall file a copy of the legislative council's resolution with the secretary of state.

Sec. 8. The presiding officers shall convene their respective houses in session on the date, time, and place specified in the legislative council's resolution.

Sec. 9. (a) An emergency session may not continue for more than forty (40) calendar days after the day the session first convenes.

(b) The general assembly must adjourn sine die not later than ten (10) calendar days following the day upon which the state of emergency ends as provided in IC 10-14-3.

Sec. 10. (a) The general assembly may enact only bills relating to the agenda stated in the legislative council's resolution during an emergency session.

(b) The general assembly may adopt concurrent resolutions during an emergency session.

(c) Each house may adopt simple resolutions during an emergency session.

Sec. 11. (a) The legislative state of emergency advisory group is established. The advisory group consists of the following members:

- (1) The president pro tempore of the senate or the president pro tempore's designee, who must be a member of the general assembly.
- (2) The senate majority floor leader or the floor leader's



designee, who must be a member of the general assembly.

(3) The senate minority floor leader or the floor leader's designee, who must be a member of the general assembly.

(4) The chairperson of the senate majority caucus or the chairperson's designee, who must be a member of the general assembly.

(5) The chairperson of the senate minority caucus or the chairperson's designee, who must be a member of the general assembly.

(6) The speaker of the house of representatives or the speaker's designee, who must be a member of the general assembly.

(7) The house majority floor leader or the floor leader's designee, who must be a member of the general assembly.

(8) The house minority leader or the minority leader's designee, who must be a member of the general assembly.

(9) The chairperson of the house majority caucus or the chairperson's designee, who must be a member of the general assembly.

(10) The chairperson of the house minority caucus or the chairperson's designee, who must be a member of the general assembly.

If a member is unable to serve, a replacement shall be selected by the member's caucus.

(b) The chairperson of the legislative council shall select a member of the advisory group, including the chairperson of the legislative council, to serve as the chairperson of the advisory group. The advisory group shall meet:

(1) during a state of emergency that the legislative council has determined has statewide impact; and

(2) upon the call of the chairperson.

The advisory group may meet in any location, including electronically or remotely, as determined by the chairperson of the advisory group.

(c) A majority of the members appointed to the advisory group constitutes a quorum. Any formal recommendation made by the advisory group:

(1) must be in writing; and

(2) requires the affirmative vote of a majority of the members of the advisory group.

Except for any formal written recommendation made by the advisory group, all records of the advisory group are confidential.



**(d) Due to the advisory group's role in responding to a disaster emergency, IC 5-14 does not apply to the advisory group.**

**(e) The advisory group has the following duties:**

**(1) The advisory group shall make itself available to consult with, receive information from, and advise the governor concerning the state of emergency and any executive orders issued in response to the state of emergency.**

**(2) The advisory group shall review, evaluate, and make recommendations with respect to a state of emergency and any executive orders issued in response to the state of emergency.**

**(3) The advisory group shall inform the members of the general assembly concerning its work, the state of emergency, and executive orders issued in response to the state of emergency.**

**(f) Each member of the advisory group is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative members of interim study committees established by the legislative council.**

**(g) All funds necessary for the advisory group to carry out its functions shall be paid from appropriations to the legislative council and the legislative services agency.**

SECTION 5. IC 2-5-1.1-5, AS AMENDED BY P.L.84-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The council may **do any of the following:**

(1) On its own initiative or at the direction of the general assembly or of the senate or house of representatives, study subjects of interest and concern, and based on such a study, recommend such legislation as the welfare of the state may require.

(2) Direct standing committees of the senate or house of representatives, or appoint committees and subcommittees subject to the authority of the council, to carry out studies on subjects of interest and concern.

(3) Recommend such codification and general revision of the constitution and the laws of the state as may from time to time be necessary.

(4) Require any officer or agency, board, commission, committee or other instrumentality of the state or of a political subdivision of the state to provide information bearing on subjects under consideration by the council or by standing committee or any of



its committees or subcommittees.

(5) By an affirmative vote of two-thirds (2/3) of its members present and voting:

(A) administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony and have the deposition of witnesses taken in the manner prescribed by law for taking depositions in civil actions bearing on subjects under consideration by the council or by any of its committees or subcommittees; and

(B) petition, through the presiding officer of the council, any circuit court, superior court, or probate court of the appropriate county for an order for compliance with any order or subpoenas issued under this section.

(6) Adopt such rules and procedures and organize such agencies as may be necessary or appropriate to carry out its duties.

(7) Receive appropriations and make allocations for the reasonable and necessary expenditures of the council and the standing and interim committees of the house of representatives, senate and general assembly.

(8) Enter into whatever contracts or other arrangements deemed by it to be necessary or appropriate to exercising its rights, privileges, and powers and performing its duties under this chapter and IC 2-6-1.5 and to carrying out the intent, purposes, and provisions of this chapter and IC 2-6-1.5. ~~and~~

**(9) Initiate sessions of the general assembly under IC 2-2.1-1.2.**

~~(9)~~ **(10)** Do all other things necessary and proper to perform the functions of the legislative department of government and to carry out the intent, purposes and provisions of this chapter.

(b) The council may authorize its executive director to act on its behalf and with its authority on any matter of administration under this chapter and under IC 2-6-1.5, including executing and implementing any contract or other arrangement under which it agrees to be bound.

SECTION 6. IC 2-6-1.5-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 0.7. As used in this chapter, "session" has the meaning set forth in IC 2-2.1-1-1.**

SECTION 7. IC 4-12-18 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:**

**Chapter 18. Federal Economic Stimulus Funds**

**Sec. 1. This chapter does not apply to federal economic stimulus**



funds obligated or expended by written agreement, contract, or encumbrance before April 29, 2021.

Sec. 2. As used in this chapter, "discretionary funds" means federal economic stimulus funds received under federal legislation granting the state authority to determine the amounts and manner in which the federal economic stimulus funds may be expended.

Sec. 3. As used in this chapter, "federal economic stimulus funds" means federal money received by the state under federal legislation enacted in response to a recession or nationwide disaster.

Sec. 4. (a) There is created the economic stimulus fund. Within the economic stimulus fund the auditor of state shall create a separate account for each separate federal stimulus legislation enacted. All discretionary funds received by the state must be deposited in the corresponding account within the economic stimulus fund unless prohibited by federal law.

(b) The economic stimulus fund is separate from the state general fund and all other state funds and accounts.

Sec. 5. Discretionary funds deposited into the economic stimulus fund during a period in which the general assembly is convened in a regular session, an emergency session under IC 2-2.1-1.2, or a special session may not be allotted or expended unless appropriated by the general assembly or reviewed by the budget committee.

Sec. 6. Before discretionary funds deposited into the economic stimulus fund during a period in which the general assembly is not convened in a regular session, an emergency session under IC 2-2.1-1.2, or a special session may be allotted to or expended by a state agency or instrumentality, the allotment or expenditure must be reviewed by the budget committee.

Sec. 7. Discretionary funds deposited into the economic stimulus fund may not be expended, transferred, assigned, or otherwise removed from the economic stimulus fund by the state board of finance, the budget agency, or any other state agency except as permitted under the provisions of this chapter.

SECTION 8. IC 10-14-3-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 34. A person who knowingly, intentionally, or recklessly violates this chapter **or an order authorized by this chapter** commits a ~~Class B misdemeanor~~: **Class B infraction**.

SECTION 9. IC 35-52-10-4 IS REPEALED [EFFECTIVE UPON PASSAGE]. Sec. 4: ~~IC 10-14-3-34~~ defines a crime concerning



~~emergency management.~~

**SECTION 10. An emergency is declared for this act.**





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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

HEA 1123 — CC 1



**B**



STATE OF INDIANA  
OFFICE OF THE GOVERNOR  
State House, Second Floor  
Indianapolis, Indiana 46204

Eric J. Holcomb  
Governor

April 9, 2021

The Honorable Todd Huston  
Speaker  
Indiana House of Representatives  
Statehouse  
Indianapolis, IN 46204

Dear Speaker Huston:

By the authority vested in me as governor of the State of Indiana pursuant to the provisions of Article 5, Section 14, of the Constitution of the State of Indiana, I do hereby veto House Enrolled Act No. 1123 (HEA 1123), enacted during the regular session of the 122<sup>nd</sup> General Assembly.

I am vetoing HEA 1123 because I firmly believe a central part of this bill is unconstitutional. The legislation impermissibly attempts to give the General Assembly the ability to call itself into a special session, thereby usurping a power given exclusively to the governor under Article 4, Section 9 of the Indiana Constitution. As such, it seeks to accomplish that which the Indiana Constitution clearly prohibits.

This part of the bill also violates the separation of powers principle enshrined in Article 3, Section 1, of the Indiana Constitution because it constitutes a legislative encroachment on the governor's power as head of the executive branch. In addition, well-established Indiana case law zealously protects each branch of state government from intrusion by another.

If HEA 1123 becomes law and can be used by the General Assembly, it will create significant uncertainty and solidify the controversy over its constitutionality. This is a matter of immediate and substantial public interest. In addition, any legislative actions taken during an unconstitutional special session will be void and thus open and subject to legal challenges to set them aside. Government should serve as a steady foundation during a time of crisis. Avoidable legal challenges during a state of emergency will only serve to be disruptive to our state.

I do want to be clear that I support efforts to increase partnership and collaboration between the legislative and executive branches during states of emergency. I remain willing to work with the General Assembly to address their concerns to represent our shared constituents during declared states of emergency.

Sincerely,

Eric J. Holcomb  
Governor