

IN THE SENATE

SENATE RESOLUTION NO. 101

BY STATE AFFAIRS COMMITTEE

A SENATE RESOLUTION

STATING FINDINGS OF THE SENATE AND MAKING CERTAIN RESOLUTIONS REGARDING THE STATE OF EMERGENCY IN IDAHO.

Be It Resolved by the Senate of the State of Idaho:

WHEREAS, Section 1, Article II of the Idaho Constitution states that the "powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others . . ."; and

WHEREAS, the Idaho Legislature as representatives of the people of Idaho have a constitutional right as a separate and equal branch of government to exercise the power of appropriation and the making of laws; and

WHEREAS, the COVID-19 coronavirus outbreak in Idaho has resulted in an emergency response that includes the expenditure of public funds, administrative rulemaking, and changes to Idaho laws by the Idaho executive branch; and

WHEREAS, the Governor issued a Proclamation dated August 19, 2020, calling an extraordinary session of the Legislature with the only subjects for consideration being: 1) absentee voting during the pandemic; 2) in-person polling locations during the pandemic; and 3) civil liability relating to COVID-19; and

WHEREAS, during the course of the emergency, contradictions and shortcomings in the Constitution, statutes, and rules regarding emergencies have become clear; and

WHEREAS, Section 9, Article IV of the Idaho Constitution limits the topics the Legislature may consider during an extraordinary session to only those subjects set forth in the proclamation; and

WHEREAS, Section 46-1008, Idaho Code, states that the "Legislature by concurrent resolution may terminate a state of disaster emergency at any time" that conflicts with the subject limitation applicable to extraordinary sessions; and

WHEREAS, when the Constitution and a statute conflict, the Constitution prevails; and

WHEREAS, circumstances during the course of the declared emergency demonstrate the need for the greater ability of the Legislature to respond in a timely fashion to the concerns of the citizens of Idaho as they relate to the appropriate exercise of legislative authority; and

WHEREAS, the Senate desires to take steps to maintain the constitutional balance of powers in times of emergencies; and

WHEREAS, the Senate has considered whether terminating the emergency declaration is within the constitutional authority of the Legislature dur-

1 ing this extraordinary legislative session, along with the impacts to the
2 daily lives of Idaho citizens; and

3 WHEREAS, the Senate has acknowledged that any action terminating
4 the emergency declaration would not end the orders of the local health
5 districts, state administrative agencies, local government, and other un-
6 elected officials. Examples of local decisions that would not terminate by
7 ending the statewide emergency declaration include school closures, face
8 covering mandates, restrictions on group gatherings, business closures, and
9 church attendance; and

10 WHEREAS, the Senate has concluded that any action by the Legislature
11 beyond those subjects identified in the Governor's Proclamation, including
12 efforts to terminate any emergency declaration, during this extraordinary
13 session is unconstitutional; and

14 WHEREAS, the members of the Senate desire always to honor their oath of
15 office and uphold the Idaho Constitution.

16 NOW, THEREFORE, BE IT RESOLVED by the members of the Senate, assembled
17 in the First Extraordinary Session of the Sixty-fifth Idaho Legislature,
18 that the Senate of the State of Idaho calls on the Governor to end the state
19 of emergency, but in a manner that preserves financial support for Idaho's
20 hospitals and nursing homes and keeps the regulatory reductions in place for
21 Idaho citizens.

22 BE IT FURTHER RESOLVED by the Idaho Senate that in the next regular ses-
23 sion of the Idaho Legislature, the following matters be considered for leg-
24 islation:

- 25 1. A declaration that all Idahoans who work, provide for families,
26 pay taxes, and otherwise contribute to the Idaho economy must be
27 deemed essential in any declared emergency;
- 28 2. An amendment to the Idaho Constitution providing that, in lim-
29 ited circumstances, the Idaho Legislature may call itself back
30 into session while remaining a part-time, citizen Legislature;
- 31 3. A limitation on the length of any emergency declaration of the
32 Governor without the concurrence of the Legislature;
- 33 4. A limitation on the emergency powers and spending authority of
34 the executive branch without the approval of the Legislature;
- 35 5. A prohibition on quarantining healthy individuals;
- 36 6. The ending of orders prohibiting Idahoans from attending
37 places of worship;
- 38 7. Rescinding existing emergency declarations; and
- 39 8. A review of the authority of the public health districts and
40 local government subdivisions.

41 BE IT FURTHER RESOLVED by the Idaho Senate that all Idahoans have the
42 right to physically participate in elections by presenting themselves at lo-
43 cal polling stations to cast their ballots.

44 BE IT FURTHER RESOLVED that the Idaho Senate reaffirms the right of all
45 Idahoans to make health and safety decisions for themselves and their fami-
46 lies.

47 BE IT FURTHER RESOLVED that the Secretary of the Senate be and is hereby
48 authorized and instructed to send a copy of this resolution to the Governor
49 of the State of Idaho.