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LEGISLATURE OF THE STATE OF IDAHO

Sixty-fifth Legislature

First Extraordinary Session - 2020

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

WHEREAS, the Senate has acknowledged that any action terminating the emergency declaration would not end the orders of the local health districts, state administrative agencies, local government, and other unelected officials. Examples of local decisions that would not

terminate by ending the statewide emergency declaration include school closures, face covering mandates, restrictions on group gatherings, business closures, and church attendance; and

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

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

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

BE IT FURTHER RESOLVED by the Idaho Senate that in the next regular session of the Idaho Legislature, the following matters be considered for legislation:

1. A declaration that all Idahoans who work, provide for families, pay taxes, and otherwise contribute to the Idaho economy must be deemed essential in any declared emergency;

2. An amendment to the Idaho Constitution providing that, in limited circumstances, the Idaho Legislature may call itself back into session while remaining a part-time, citizen Legislature;

3. A limitation on the length of any emergency declaration of the Governor without the concurrence of the Legislature;

4. A limitation on the emergency powers and spending authority of the executive branch without the approval of the Legislature;

5. A prohibition on quarantining healthy individuals;

6. The ending of orders prohibiting Idahoans from attending places of worship;

7. Rescinding existing emergency declarations; and

8. A review of the authority of the public health districts and local government subdivisions.

BE IT FURTHER RESOLVED by the Idaho Senate that all Idahoans have the right to physically participate in elections by presenting themselves at local polling stations to cast their ballots.

BE IT FURTHER RESOLVED that the Idaho Senate reaffirms the right of all Idahoans to make health and safety decisions for themselves and their families.

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

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