



C.L. "BUTCH" OTTER
GOVERNOR

Special Letters Accompanying Governor's Action on Bills

Occasionally Governor Otter will write a detailed letter to explain his action or inaction on a bill.

During the 2011 legislative session, Governor Otter wrote special letters to accompany the following bills. Those letters are attached at the end of this document.

Senate Bill 1071a - Adds to existing law relating to the POW/MIA flag to provide for the display of the POW/MIA flag. **(Bill became law without Governor's signature)**

House Bill 318 - Amends existing law relating to ground water districts to provide for the priority of certain liens, to clarify reference to certain liens, to provide that certain liens shall constitute such liens until paid and to provide that upon the sale of the property for payment of a lien the purchaser shall take the property subject to certain annual assessments and to provide that specified provisions shall not alter or affect certain liens. **(Bill became law with Governor's signature)**

House Bill 343 - Adds to and amends existing law relating to wolves to provide for declarations of emergency; to provide a procedure for issuance of Executive Orders and proclamations relating to certain disaster emergencies. **(Bill became law with Governor's signature)**

House Bill 298 - Amends and adds to existing law relating to health care law to revise provisions relating to a statement of public policy relating to health care services; to provide that certain provisions of certain public laws shall not be enforced by the state of Idaho; to provide provisions that certain entities shall not act to implement certain provisions of certain public laws and to provide for an Executive Order. **(Governor VETOED the bill)**



C. L. "BUTCH" OTTER
GOVERNOR

April 4, 2011

The Honorable Brad Little
President of the Senate
Idaho Legislature
State House
Boise, ID 83720

Dear Mr. President,

I am transmitting today to the Secretary of State the following Senate bill which was allowed to become law without my signature, pursuant to the Idaho Constitution:

S1071a

I appreciate the effort of the Legislature to codify the times and places when the POW/MIA flag is flown. We all share a deep sense of gratitude for those service members who have answered the call to defend freedom and have not yet returned home.

I stated in Executive Order 2007-16 that the POW/MIA flag shall fly over all state buildings 24 hours a day, seven days a week, 365 days a year or until such time as all our unaccounted for and missing members of the Armed Forces return.

I understand the intent behind this legislation was to codify that executive order. I believe the legislation is not broad enough. For example, it fails to mention locations such as the Veterans Cemetery, Veterans Hospital or other governmental buildings where the American flag is flown. I believe these shortcomings should be addressed and will bring legislation next session to allow the POW/MIA flag to be flown at the same time as the American flag at all governmental facilities.

As Always – Idaho, "Esto Perpetua"

A handwritten signature in black ink, appearing to read "C.L. Butch Otter".

C.L. "Butch" Otter
Governor of Idaho



C. L. "BUTCH" OTTER
GOVERNOR

April 14, 2011

The Honorable Ben Ysursa
Secretary of State
State Capitol
Boise, ID 83720

VIA HAND DELIVERY

Dear Mr. Secretary,

I hereby advise you that I have signed the following House Bill into law:

H 318

I have initiated actions over the past several years, through the Idaho Water Resource Board, to create a foundation to ensure the sustainability of one Idaho's most valuable resources – water. Every region of Idaho benefits from the continued flow of water in our rivers and aquifers. The Board was entrusted, through comprehensive management statutes and the assistance of water users, to formulate plans for sustaining the incredible and unique water resources we enjoy and on which we depend.

This legislation is another step towards achieving the goal of sustainability because it helps ground water districts secure funding at competitive rates. That capital can be used to implement measures to ensure a sustainable water supply. H 318 empowers ground water users to fund solutions and provides a great tool to ensure existing and future water users benefit from the continued sustainability of one of our greatest resources.

I appreciate the wisdom of the Legislature in providing this tool for ground water districts and commend Representative Bedke and Senator Bair for their hard work on this issue.

As Always – Idaho, "Esto Perpetua"

A handwritten signature in black ink, appearing to read "C.L. Butch Otter".

C.L. "Butch" Otter
Governor of Idaho

Cc: The Honorable Lawrence Denney
Speaker of the House



C. L. "BUTCH" OTTER
GOVERNOR

April 19, 2011

The Honorable Ben Ysursa
Secretary of State
State Capitol
Boise, ID 83720

VIA HAND DELIVERY

Dear Mr. Secretary,

I am transmitting to you today the following House Bill, which I signed into law as prescribed by the Constitution:

H 343

In the waning days of the session the Legislature passed H 343 which, among other things, declares a disaster emergency as defined in Idaho law because of the introduction of wolves. It also empowers the Governor to take action to reduce or eliminate the threats caused by wolves. My concerns with the legislation are not whether it is an appropriate response to the devastation that wolves have caused. I understand and share the frustration of Idahoans over the impact wolves have had across our state in the past 16 years. However, I am concerned that H 343 is largely unnecessary and it unintentionally infringes on the statutory authority of the Governor to declare disasters.

Last week, thanks to the efforts of Congressman Mike Simpson, Congress passed and the president signed into law language requiring the Secretary of Interior to delist wolves within 60 days in Idaho and other states. This new federal law will restore state management in Idaho under our approved management plan, which will provide flexibility for the Idaho Department of Fish and Game (IDFG) to address the impacts of wolves and alleviate the need for emergency measures.

Many people expressed concerns about public safety during the Senate committee hearing and legislative debate on H 343. Idahoans should know they have always been able to kill a wolf in self defense or in the defense of other humans. That has not changed, nor is this legislation or a disaster declaration necessary for anyone to protect themselves or other people from wolves in any part of the state. People also should know they can legally kill wolves that are attacking (killing, wounding, or biting) or in the act of attacking (actively chasing, molesting, harassing) their livestock, stock animals and pets upon delisting without a declared disaster or emergency.

The Honorable Ben Yursa
Secretary of State
April 19, 2011
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House Bill 343 also is unnecessary because the Legislature already has provided the Governor with broad authority to declare a disaster or emergency pursuant to the State Disaster Preparedness Act, title 46, chapter 10 of Idaho Code. The definition of a disaster includes the “occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including but not limited to fire, flood, earthquake, windstorm, wave action, volcanic activity, explosion, riot, or hostile military or paramilitary action.” IDAHO CODE 46-1002 (3). Moreover, an emergency is defined as the “occurrence or threat of a disaster or condition threatening life or property which requires state emergency assistance to supplement local efforts to save lives and protect property or to avert or lessen the threat of a disaster.” IDAHO CODE 46-1002 (4).

The Legislature passed the State Disaster Preparedness Act in 1975. In doing so, the Legislature vested authority in the Governor alone to declare disasters or emergencies pursuant to executive order or proclamation. The pertinent code section states that:

A disaster emergency *shall* be declared by executive order or proclamation of the governor if *he* finds a disaster has occurred or that the occurrence or the threat thereof is imminent. (IDAHO CODE 46-1008. Emphasis added).

The Legislature did not change the authority of the Governor in H 343 or provide itself with comparable authority; instead it usurped the Governor’s statutory authority by declaring a disaster unilaterally under the terms of the State Disaster Preparedness Act. This portion of the bill infringes on the authority of the executive branch and violates the separation of powers provision outlined in the Idaho Constitution.

I signed this legislation into law despite the aforementioned reservations because: (1) the Legislature has agreed to work with me next session to fix the provisions that infringe on the authority vested in the Governor to declare disasters; and (2) unfortunately we have been here before – only to have state management overturned and federal protection restored. Portions of this bill may prove useful in the future if state management is revoked or the species is relisted under the Endangered Species Act. In the meantime, however, I have asked the IDFG to focus on resuming state management of wolves pursuant to our state management plan. Part of that focus includes immediately reducing depredations on wildlife and livestock as state management is restored.

As Always – Idaho, “Esto Perpetua”



C.L. “Butch” Otter
Governor of Idaho

Cc: The Honorable Lawrence Denney
Speaker of the House



C. L. "BUTCH" OTTER
GOVERNOR

April 20, 2011

The Honorable Ben Ysursa
Secretary of State
State Capitol
Boise, ID 83720

VIA HAND DELIVERY

Dear Mr. Secretary,

I hereby advise you that I have returned without my approval, disapproved and vetoed, the following House Bill, to wit:

H 298

within the time limited by law, the same having arrived in the Office of the Governor following the adjournment of the Legislature at the hour of 12:10 p.m. on April 8, 2011.

No one has opposed Obamacare more vehemently than me. I truly believe the insurance mandate for individuals is an unconstitutional overreach by Congress and the President. That is why I signed House Bill 391, "The Health Care Freedom Act," into law in 2010. The purpose of the Health Care Freedom Act was to oppose any national effort to force citizens to buy health insurance and to protect the rights of Idaho citizens to choose their own mode of securing healthcare coverage, or decline to obtain that coverage, without the threat of federal penalty.

As part of my opposition, I also sued the national government in federal court, challenging the constitutionality of requiring individuals to purchase healthcare coverage. I was pleased with the federal court decision out of Florida overturning Obamacare. Obviously that decision will not be the last word, but it confirms my concerns that Congress overstepped its authority. Unfortunately, the President has done his best to frustrate the appeal process and it is uncertain when a final ruling might be issued. As a result, we have to seriously question and reexamine the wisdom of any further efforts in Idaho to implement an act that two separate federal courts have struck down.

Every alternative that could lead to reversal of Obamacare was worth trying – Congress repealing the law, a court throwing it out or Idaho nullifying it. House Bill 298 and the other bills this session were part of a growing chorus of dissent in Idaho and around the country opposing

Obamacare. However, ending Obamacare by whatever means does not alleviate the need for Idaho to develop its own solutions to healthcare issues in our state.

The Legislature passed H 298 this session to prevent the implementation of Obamacare in Idaho. House Bill 298 not only prohibits the State from implementing Obamacare, but it also prevents the State from, among other things, creating an insurance exchange. While I agree that the State should not implement Obamacare, this legislation has the unintended consequence of eliminating a possible opportunity for Idaho and ceding control to the national government. Under Obamacare, individual states retain control of the creation of an insurance exchange. The fact is, the federal government will develop and operate an exchange for us if Idaho elects to forego the creation of our own exchange as H 298 would require.

I have always believed that the answers to our healthcare concerns should come from the State, not Washington, D.C. That is why I formed a Select Committee on Health Care (Committee) in 2007 to examine our healthcare issues and needs. The recommendations from the Committee have focused our efforts in key areas, including: expanding insurance coverage for adults through an exchange; expanding residency opportunities; addressing the shortage of healthcare professionals in Idaho; developing primary care medical homes, and encouraging prevention and personal responsibility. The Committee's recommendations led to creation of the Governor's Idaho Health Professions Education Council and the Idaho Medical Home Collaborative, which address the growing need for medical professionals and create a multi-layer pilot to test the efficacy of patient-centered medical homes, respectively. Just last year I also created the Idaho Health Care Council to develop additional solutions in healthcare delivery, health information technology and health insurance affordability and accessibility.

That is why I also see value in evaluating an Idaho Health Insurance Exchange and have been an advocate for doing so before the concept was co-opted by the national government. It is clear to me that Idaho can use state money to help evaluate and develop an Idaho Health Insurance Exchange without going further and implementing Obamacare.

There are many benefits of exchanges and there are important reasons why I believe Idaho should evaluate developing an Idaho Health Insurance Exchange regardless of Obamacare:

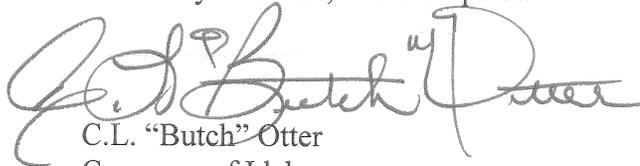
1. Again, if Idaho is unable to demonstrate to the U.S. Department of Health and Human Services by January 1, 2013 that we will have a viable exchange in place by 2014, we will lose the opportunity to run a State exchange. Instead, the federal government will operate the Health Insurance Exchange for Idaho. In short, health insurance coverage options available to individuals and small employers through the exchange will be decided entirely by federal bureaucrats in Washington, D.C.
2. If we default to the federal government to run the exchange, it can impose regulations and requirements that discourage or make it impossible for insurers to offer affordable health coverage to individuals and small employers in Idaho. If Idaho operates its own exchange, we can preserve the private marketplace for health insurance and look for ways

to help it function more efficiently. Moreover, Idaho residents will have a voice in what the exchange looks like and how it will be run.

3. The work done on developing an insurance exchange will not be wasted if the U.S. Supreme Court rules that Obamacare is unconstitutional, as we believe it will. The information developed through the planning process will enable Idaho leaders to make an informed decision as to whether some type of Health Insurance Exchange will be useful in providing better access to coverage options for employers and individuals.

The Legislature clearly wanted to send a message to the national government this session, expressing its frustration with Obamacare. I agree with the message and know the debate about Obamacare would be vastly different, if not completely unnecessary, if the national government adhered to the Tenth Amendment. I also agree with the Legislature and sponsors of this bill that now is not the time to implement Obamacare. However, it is equally unacceptable to forego exploring viable state solutions to our healthcare needs and allowing the national government to assert more control over Idahoans. Even though I vetoed the bill today, I have issued an executive order, which is attached, prohibiting State agencies and departments from implementing Obamacare, while allowing us to develop our own health care solutions. That avoids the unintended consequences of this legislation and strikes an appropriate balance between achieving the spirit of H 298 – which I support – and my desire to not capitulate to the national government.

As Always – Idaho, “Esto Perpetua”



C.L. “Butch” Otter
Governor of Idaho

Cc: The Honorable Lawrence Denney
Speaker of the House