



BRAD LITTLE
GOVERNOR

April 16, 2021

The Honorable Janice McGeachin
President of the Senate
Idaho State Senate

Dear Madam President:

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

Senate Bill 1136a

I cannot in good conscience approve any bill that will impair the ability of the Governor to protect Idaho and its people in future emergencies. Nor can I sign any bill that violates our constitutional commitment to the separation of powers. Like you, I swore an oath to faithfully discharge my duties and to uphold our constitution.

That is why I am vetoing Senate Bill 1136a today, and why I must also veto House Bill 135a when it is delivered.

The Idaho Constitution – like the U.S. Constitution – wisely divides the primary powers of our government between three co-equal branches. To the legislature, it gives the power to make laws. To the judiciary, it gives the power to interpret those laws. To the executive, it gives the power to enforce the laws.

With those powers come sobering responsibilities. The legislature must be deliberate in its lawmaking. The judiciary must be fair in administering justice. And the executive must, above all else, protect the people of Idaho.

Our constitution prohibits each branch from exercising powers assigned to the others. It also forbids one branch from preventing another from performing its constitutional powers. These prohibitions are necessary to prevent tyranny that can result from absolute power by any one branch. But there is also a more practical reason: no branch has the expertise and resources needed to effectively carry out the duties of the others.

Declaring and responding to emergencies are core executive functions, and our constitution gives the Governor broad powers to do what is necessary to protect the state and the people of Idaho.

The executive branch has the resources and can tap subject matter experts in emergency response to quickly and effectively deploy resources in fast-moving situations.

This last year has been difficult, but look where Idaho is today. Countless lives were saved and we avoided a crisis in healthcare. I listened to the experts, and Idaho was one of only a handful of states with the fewest COVID-19 restrictions. We now have the strongest economy in the nation.

I attribute our success to the spirit of the Idaho people. However, I cannot overlook the critical role played by Idaho's emergency statutes, namely sections 46-601 and 46-1008. Those statutes are not restrictive on people's rights. Rather, they complement the Governor's constitutional powers and provide additional resources and flexibility for the executive branch to do what is necessary to help Idahoans.

We know future emergencies will include floods, fires, and drought – the routine experiences of living in the West. Unfortunately, it is also likely Idaho will face future multi-state disasters involving major earthquakes, enormous flooding, or devastating fires. We could experience a massive, sustained power grid failure. The full list of potential devastating disasters is simply unknown.

That is why any legislative changes to our emergency statutes must be done carefully and collaboratively to avoid unintended consequences that will harm the state's ability to act timely and effectively for the benefit of Idahoans in future emergencies.

Regrettably, there are serious concerns with the process that led to these bills. Numerous stakeholders felt ignored including our National Guard, the cities, the counties, FEMA, state emergency managers, and business.

As a result, these two bills pose serious practical and constitutional consequences for the future.

First, the bills are overly restrictive and will handcuff the Governor's ability to take timely and necessary action to help Idahoans during future emergencies. The bills will prevent a Governor from taking steps unless it is "essential to protect life and property." Imposing such a narrow standard will unwisely prohibit actions necessary to restore services and infrastructure, ensure the continuity of government, save jobs, help schools reopen, and protect the economy at large. For example, the Governor will be unable to suspend regulations that impair agriculture and industry from operating or minimizing financial loss during a drought, flood, or other disaster. Nor will the Governor be able to deploy the National Guard to take any and all action necessary following a massive earthquake including, but not limited to, removing debris, repairing infrastructure, and assisting businesses and government offices with reopening.

The bills further prohibit the state, as well as counties and cities, from taking any action that "limit" a constitutional right. Idahoans value our freedoms and I agree that our constitutional rights can never be outright suspended, especially during emergencies. However, temporary limitations on our rights are necessary in some circumstances to effectively combat emergency conditions. For example, we need the ability to evacuate and cordon a town in advance of a dam

break even if doing so temporarily limits our rights to travel, work, or assemble. This unqualified restriction will complicate efforts to save lives and mitigate emergencies, and will put public safety personnel at risk. The one common denominator of a disaster is that the no-action or slow-action alternative is unacceptable and not what our citizens expect and deserve.

Alarming, Senate Bill 1136a will also prevent future Governors from declaring an extreme emergency under section 46-601 for any natural disaster, even large-scale earthquakes that result in massive loss of life and infrastructure. This is unacceptable. While I applaud the Legislature for including cyberattacks, limiting the statute's application only to violent and intentional human acts is dangerous and shortsighted. Had emergency managers been adequately consulted, I am confident the Legislature would have understood that natural disasters can and do – far more frequently than an enemy attack – rise to an extreme emergency requiring the additional flexibility section 46-601 provides.

Second, Senate Bill 1136a and House Bill 135a unnecessarily politicize the state's emergency response efforts and will jeopardize critical funding for local governments. Disasters often worsen and spread over time requiring supplemental declarations and orders. Very few, if any, emergencies are extended “solely” for the purpose of receiving funding. Thus, the bills will more than likely require the Legislature to convene every sixty days to approve those emergency declarations with conditions or restrictions. In large-scale emergencies, such as an earthquake, volcanic eruption, or attack, it may not be physically possible for the full body of the Legislature to convene or maintain a quorum. Yet, Senate Bill 1136a provides no backup plan. That is irresponsible. On the other end of the spectrum, it will be unnecessary and costly to convene the Legislature to extend smaller emergencies that impact only one or a few communities.

If the Legislature is unable or unwilling to extend an emergency declaration, the state will no longer meet the criteria to be eligible to receive federal disaster funding. Nor will the Governor be authorized to utilize the disaster emergency account, which is only available during a declared emergency. The change in House Bill 135a allowing disaster expenses incurred “arising out of” an emergency does not go the necessary distance to make the disaster emergency account available after a declaration is terminated.

I agree that there is a time and place for the Legislature to be involved during future emergencies. That is why I came to you early in this session and offered tangible solutions and a path forward. I encouraged the Legislature to consider appointing a smaller group of legislators – such as the duly elected Legislative Council – to take on the role of representing the full legislative body when convening 105 members is impracticable or unnecessary. Further, the Legislature was encouraged to explore legislation specific to statewide public health emergencies.

Third, Senate Bill 1136a and House Bill 135a violate the separation of powers doctrine and are unconstitutional. The bills limit the Governor's constitutional powers to respond to emergencies as is necessary and to utilize the National Guard. The bills attempt to reassign to the Legislature the core executive powers to extend, modify, and terminate emergency declarations and orders. The bills also attempt to give the Legislature the ability to dictate the subjects of an extraordinary session, which is a constitutional power assigned solely to the Governor in Article IV, Section 9.

Finally, it is well settled that the Legislature lacks the constitutional power to extend, modify, or terminate an emergency declaration by concurrent resolution. Yet, the bills double down on that legally ineffective procedure, further jeopardizing the state's ability to timely and effectively respond to future emergencies for the protection of Idaho, our people, and our livelihoods.

We can do better!

I remain willing and committed to working with all of you in the Legislature to improve and modernize Idaho's emergency statutes. But, we will need to involve all of the stakeholders and focus on how any changes will impact Idaho's ability to respond to future emergencies.

I am extremely grateful to the members of the Legislature who have taken the time to hear me out. You know who you are, and I appreciate you more than you know.

I also urge my partners in the Legislature who voted for House Bill 135a and Senate Bill 1136a to reconsider their votes on the override.

It's time to get back on track. The people of Idaho deserve our best.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Little". The signature is fluid and cursive, with a prominent initial "B" and "L".

Brad Little
Governor of Idaho