



**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

August 20, 2020

TRANSMITTED VIA EMAIL

The Honorable Brent Hill  
President Pro Tempore  
Idaho State Senate  
Idaho State Capitol  
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The Honorable Todd Lakey  
Idaho State Senate  
Idaho State Capitol  
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Boise, Idaho 83702  
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Re: Request for AG Analysis

Dear Mr. Pro Tem and Senator Lakey:

This e-mail is in response to your inquiry regarding the Governor's Proclamation calling for an extraordinary session. Specifically you have asked whether the Legislature is bound to only consider the RS's identified within the proclamation, or is bound by the subjects identified within the RS. As explained below, the Legislature has the authority to legislate on the subjects identified within the RS's and Proclamation.

**The Governor Identifies the Purposes and Subjects of the Extraordinary Legislative Session.**

Article IV, § 9 provides:

The governor may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it; but when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation; but may provide for the expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the senate in extraordinary session for the transaction of executive business.

Within his proclamation, the Governor identified the following purposes for the convening of the legislature:

To consider the passage of RS28046 regarding absentee voting during the pandemic, RS28045 regarding in person polling locations during the pandemic, and RS28049 regarding civil liability,....

Governor's Proclamation, p. 2, August 19, 2020. Although specific RS's are identified, the **subjects** of those RS's are also identified. This call allows the Idaho Legislature to address these subjects in any manner it sees fit. RS # is short for "Routing Slip #." This routing slip is a proposed piece of legislation that has not been introduced into either chamber of the Legislature. The only way for an RS to be introduced is through a print hearing within a germane committee. Under Article IV, § 9 the Governor's Proclamation's reference to specific RS #s are best interpreted as suggestions by the Governor as to how the Legislature could address the subjects identified in the Proclamation. The Legislature is not bound to them, nor reduced to a simple yes or no vote on only those RS #s. Under Article IV, § 9, the Legislature still retains its authority and processes under Article III, even though the subjects of those processes may be limited by the Article IV, § 9 Proclamation.

**The Legislature is Vested with the Authority to Address the Purposes and Subjects Identified by the Governor.**

This conclusion is reinforced by Article III, § 1 of the Idaho Constitution which vests the Legislative power of the state in the Senate and House of Representatives. The Governor exercises the executive authority of identifying the timing and purpose(s) of an extraordinary session of the Legislature, but Article IV, § 9 conveys no legislative authority upon the Governor. That authority remains wholly with the Idaho Legislature through the Senate and House of Representatives.

Absent a constitutional grant of legislative authority to the Governor, Article II, § 1 prevents the executive branch from exercising any power properly belonging to the legislative branch. Interpreting Article IV, § 9's authority to authorize the Governor to limit the Legislature to a specific piece of legislation would likely violate Article II, § 1 as well as improperly invade the province of Article III, § 1. The Legislature has the ability to propose its own legislation<sup>1</sup> as long that legislation falls within the purpose and subjects of the Governor's Proclamation.

Importantly, all other aspects associated with the legislative process remain in place for purposes of an extraordinary session. If the Governor disagrees with the legislation adopted to address the

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<sup>1</sup> Routing slips are administrative tools for legislators and the Legislative Services Office to track and organize legislative ideas that may or may not become actual pieces of legislation. An RS is not a piece of legislation and will not become one unless it is printed through a committee and assigned a bill number. Legally, an RS has no status.

Pro Tem Brent Hill  
Senator Todd Lakey  
August 20, 2020  
Page 3

purpose and subject of the Proclamation, the Governor retains his ability to veto that legislation under Article IV, § 10. Equally, the Legislature retains its ability to override a gubernatorial veto.

As explained above, the Governor identifies the purpose and subject for the extraordinary session. The Governor may also propose a potential piece of legislation to address the identified subject, but the Legislature is not bound to only the Governor's proposal. The Legislature is only bound to addressing the subjects identified within the Proclamation. The Legislature may fulfill the call of the Governor's Proclamation through its independent legislative authority under Article III of the Idaho Constitution.

I hope that you find this analysis helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BK', with a long horizontal line extending to the right.

BRIAN KANE  
Assistant Chief Deputy

BK:kw