



May 20, 2020

The Honorable Edward Buchanan
Secretary of State
Herschler Building
East 122 W.25th Street, Suite 100
Cheyenne, Wyoming 82002

Re: Considerations in signing SEA1 Emergency appropriation-COVID-19 funds 2 and SEA2
Emergency Powers COVID-19-2

Dear Secretary Buchanan,

Senate Enrolled Act 1 / Senate File 1001 "Emergency appropriation -COVID-19 funds-2" and Senate Enrolled Act 2 / Senate File 1002 "Emergency powers-COVID-19-2" are historic pieces of legislation. Each has a unique purpose. They are both the product of a special legislative session called by the Governor, to align our two branches of government in expanding authorities and providing assistance to respond to a global pandemic and to direct extensive federal funding beyond the capacities already accessible to the Executive branch. The extent of the crisis brought on by COVID-19 has devastated global, national, and local economies by directly burdening healthcare systems, and by interrupting normal economic activity.

Senate Enrolled Act 1 ostensibly appropriates the federal relief funds the State of Wyoming received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act as well as providing a mechanism to collect "further federal stimulus aid" that "may be forthcoming to the states from the federal government to address this crisis." What is noteworthy about this act is that it sets out programs and pacing of how these federal funds can be used. The act is important in that it properly balances legislative and executive authorities in extraordinary times. The CARES Act is an unprecedented piece of federal legislation, which advances to the states extraordinary amounts of federal funds with vaguely strict guidelines. Although it is not necessary for the Legislature to meet in order for the executive branch to receive federal funds, in this specific circumstance it was important that the Legislature did meet to help direct the disposition of these federal funds. Even if these actions are unprecedented, they need not become precedent setting. I will note that these funds are federal funds not state

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monies and as such do not require the attention afforded them in Section 1 (a) (x) of the Act. Specifically, being federal funds intended to be used as directed in the Federal CARES Act, they do not need to meet the test applied to State of Wyoming Funds in Article 16 Section 6 of the Wyoming Constitution.

Senate Enrolled Act 2 addresses six seemingly unrelated legal topics which might cause one to question whether it complies with the single subject requirement in Article 3, Section 24 of the Wyoming Constitution; however, the prefatory clause in the title of this act states that the subject of this act is “emergency aid and emergency procedures in response to the COVID-19 novel coronavirus pandemic.” Although somewhat flimsy, the wording of the title defines the subject of the act broadly enough to cover these topics tangentially as all of the topics involve responses to the COVID-19 pandemic. Because addressing the effects of this pandemic are urgent and the intent of the legislation is for the most part laudable, I do not object to loose configuration of this legislation in this circumstance.

More controversial was the addition of certain immunities to Wyoming businesses designed to shield them from liabilities associated with COVID-19. This provision arrived at the last minute and thus was not afforded the transparency or the thoughtful public scrutiny such a far-reaching potential alteration of constitutional rights should receive. Ambush legislation rarely results in good legislation, but in this case, the resulting amendment was a reasonable extension of other protections already in statute. I am pleased the Joint Judiciary Committee has already set to work on reviewing liability protections for businesses. It is an important topic and well worth consideration.

Ultimately, I want to thank the Legislature for these two pieces of legislation which help to define how, when, and where these federal funds can be used as well as to provide the executive much needed flexibility beyond the scope of what already exists in statute as together we respond to constantly changing circumstances and needs.

Sincerely,



Mark Gordon
Governor

cc: Drew Perkins, President of the Senate
Steve Harshman, Speaker of the House
Matt Obrecht, Director of LSO