

State of Wisconsin



2021 Assembly Joint Resolution 1

ENROLLED JOINT RESOLUTION

Relating to: public access to the state capitol building.

Whereas, even though the Department of Administration has charge of, operates, and maintains the state capitol building, the Department of Administration does not control all spaces of the state capitol building; and

Whereas, there are spaces in the state capitol building controlled by the legislature that, according to the Wisconsin Administrative Code, are “reserved for use by the legislature, the use of which shall be as determined by the legislature”; and

Whereas, the Joint Committee on Legislative Organization may assign any space in the state capitol building for legislative offices that is not reserved for the governor, the lieutenant governor, the attorney general, the Wisconsin Supreme Court, and the press room located on the second floor; and

Whereas, Wisconsin law provides that control of the state capitol building is therefore a shared power of the executive branch and the legislative branch; and

Whereas, in exercising this shared power, the legislature and the executive branch are subject to the constitutional requirement, under article IV, section 10, of the Wisconsin Constitution, that “The doors of each house shall be kept open except when the public welfare shall require secrecy”; and

Whereas, under *State ex rel. Ozanne v. Fitzgerald*, the legislature may determine the kind and extent of in-person public access to legislative proceedings and business under this constitutional provision, subject to court review; and

Whereas, on March 26, 2020, the Department of Administration closed the state capitol building to the public on account of the COVID-19 pandemic. Since that time, the Department of Administration has reopened the state capitol building to the public when the legislature is in session and when legislative committees convene, but otherwise the building has been closed to the public; and

Whereas, the result of this Department of Administration action is that the public does not have access to those areas of the state capitol building that are reserved exclusively for legislative uses except

when the legislature is in session or its committees meet. In this way, the Department of Administration has determined, without legislative approval, that these are the only legislative proceedings that require the state capitol building to be open to the public; and

Whereas, if a legislator wishes to hold open office hours for constituents in the state capitol building, the constituents may not enter the building to attend these office hours; and

Whereas, if a legislator would like to meet in the state capitol building with constituents to discuss matters relating to the legislator's district or to receive suggestions or ideas for legislation, the constituents are not granted access to the building; and

Whereas, if a legislator intends to present a lecture or lead a discussion on a concern or matter of public importance in a legislative hearing room or other legislative space, members of the public are not freely permitted entrance to the state capitol building to attend or participate in the lecture or discussion; and

Whereas, the result of these restrictions on members of the public to meet with legislators in areas of the state capitol building reserved to the legislature may raise constitutional concerns; and

Whereas, the executive branch, by restricting public access to the state capitol building, may be impermissibly interfering with the ability of the legislative branch to carry out its legislative duties and exercise legislative powers, especially those relating to representation and delivery of constituent services. These legislative powers are reserved exclusively to the legislature under article IV, section 1, of the Wisconsin Constitution; and

Whereas, the Department of Administration's decision to close the state capitol building, including access to legislative spaces in the building, may restrict public access to legislators in ways not intended or permitted by the constitution. Under the current arrangement, the legislature does not control the uses of its spaces in the state capitol building because it cannot grant members of the public access to its spaces. In this respect, the executive branch is determining the manner in which members of the public may meet and confer with their senators and representatives to the assembly; now, therefore, be it

Resolved by the assembly, the senate concurring, That the Department of Administration's action to restrict public access to the state capitol building may impermissibly infringe on the legislature's core constitutional powers; and

Be it further resolved, That the Department of Administration is hereby directed immediately to provide free and open public access to the state capitol building.

Senator Chris Kapenga
President of the Senate

Representative Robin J. Vos
Speaker of the Assembly

Date

Kay Inabnet
Acting Assembly Chief Clerk