

2021 - 2022 LEGISLATURE

# 2021 SENATE JOINT RESOLUTION 3

January 21, 2021 - Introduced by Senators NASS, BRADLEY, KAPENGA, STROEBEL, FELZKOWSKI, JACQUE, TESTIN, MARKLEIN and WANGGAARD, cosponsored by Representatives RAMTHUN, HORLACHER, SORTWELL, MAGNAFICI, WICHGERS, CABRAL-GUEVARA, BROOKS, JAGLER, GUNDRUM, MACCO, SKOWRONSKI, THIESFELDT, BRANDTJEN, ALLEN, DITTRICH, MOSES, KNOGL and SCHRAA. Referred to Committee on Senate Organization.

**Relating to:** terminating the COVID-19 public health emergency, including all emergency orders and actions taken pursuant to declaration of the public health emergency.

## *Analysis by the Legislative Reference Bureau*

This joint resolution resolves that the public health emergency declared by the governor in Executive Order #104 on January 19, 2021, in response to the COVID-19 coronavirus, is unlawful and is terminated. The termination of the public health emergency applies to all actions of the governor and all emergency orders issued pursuant to the declaration of the public health emergency.

Whereas, under the United States Constitution and the Wisconsin State Constitution, the structural separation and limitation of governmental powers is foundational to our republican form of government, in that it ensures the government exercises only that authority to which the governed have consented; and

Whereas, under section 323.10 of the statutes the governor may issue an executive order declaring the existence of a public health emergency; and

Whereas, section 323.12 of the statutes grants the governor certain powers that may be used in responding to the specified public health emergency, as defined in section 323.02 (16) of the statutes; and

Whereas, the governor's authority to use the powers granted under section 323.12 of the statutes automatically expires 60 days after the declaration of the emergency, unless the legislature extends the state of emergency by joint resolution, or at such time as the legislature rescinds the executive order declaring the emergency, whichever occurs first; and

Whereas, on March 12, 2020, Governor Tony Evers issued Executive Order #72 declaring a public health emergency for the COVID-19 coronavirus, which gave the governor access to the powers identified in section 323.12 of the statutes for the purpose of taking immediate action on the COVID-19 coronavirus emergency; and

Whereas, the legislature has not extended the state of emergency related to the COVID-19 coronavirus emergency identified in Executive Order #72, with the result that the governor's authority to address the COVID-19 coronavirus using the

17 emergency powers identified in section 323.12 of the statutes expired on May 11,  
18 2020; and

19 Whereas, given that legislative oversight is vital to ensuring the governor's  
20 proper exercise of the emergency powers granted by section 323.12 of the statutes,  
21 legislative oversight is rendered useless if the governor ignores the temporal  
22 limitations on the emergency powers by continuously reissuing emergency  
declarations for the same emergency; and

23 Whereas, under section 323.10 of the statutes, any extension of the declaration  
24 of emergency caused by the COVID-19 coronavirus requires a joint resolution of the  
25 legislature; and

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1 Whereas, the Wisconsin Supreme Court has already reaffirmed the  
2 legislature's constitutionally mandated participation in any further response to the  
3 COVID-19 coronavirus in *Wisconsin Legislature v. Palm*; and

4 Whereas, Executive Order #82 was unlawfully issued on July 30, 2020, to  
5 address the very same COVID-19 public health emergency that expired with  
6 Executive Order #72 on May 11, 2020; and

7 Whereas, Executive Order #90 was unlawfully issued on September 22, 2020,  
8 to address the very same COVID-19 public health emergency that expired with  
9 Executive Order #72 on May 11, 2020; and

10 Whereas, Executive Order #95 was unlawfully issued on November 20, 2020,  
11 to address the very same COVID-19 public health emergency that expired with  
12 Executive Order #72 on May 11, 2020; and

13 Whereas, it is incumbent upon the three branches of government to act as  
14 checks on one another's power in order to vigorously protect and defend the principle  
15 of structurally separated and limited power, so as to protect the governed from  
16 abusive government; and

17 Whereas, the legislature can and must take immediate action to protect the  
18 integrity of the legislative powers authorized under the Wisconsin Constitution and  
19 the integrity of this republican form of government; now, therefore, be it

20 ***Resolved by the senate, the assembly concurring, That*** the governor had  
21 no authority to issue Executive Order #104 on January 19, 2021, and it was therefore  
22 void from the date of its issuance, as were any and all of the governor's actions or  
23 orders related to the declared public health emergency to the extent the authority  
24 for those orders or actions depended on Executive Order #104, or sections 323.10 or  
25 323.12 of the statutes; and

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1 ***Be it further resolved, That*** regardless of whether Executive Order #104  
2 should ever be construed as having conferred on the governor any authority to  
3 exercise the powers granted by section 323.10 of the statutes, Executive Order #104  
4 is hereby terminated and revoked. The revocation of Executive Order #104  
5 terminates any and all of the governor's actions or orders related to the declared  
6 public health emergency to the extent the authority for those orders or actions  
7 depend on Executive Order #104, or sections 323.10 or 323.12 of the statutes.

8 **(END)**

