

Senate Concurrent Resolution

No. 5

Introduced by Senator Melendez

(Coauthors: Senators Bates, Dahle, Grove, Jones, Nielsen, Ochoa Bogh, and Wilk)

(Coauthors: Assembly Members Megan Dahle, Gallagher, Nguyen, and Patterson)

December 22, 2020

Senate Concurrent Resolution No. 5—Relative to terminating the state of emergency proclaimed by the Governor on March 4, 2020.

LEGISLATIVE COUNSEL'S DIGEST

SCR 5, as amended, Melendez. State of emergency: COVID-19: termination.

This measure, in accordance with specified law, would declare that the state of emergency proclaimed by the Governor on March 4, 2020, is at an end, thereby terminating the emergency powers granted to the Governor as a result of that proclamation.

Fiscal committee: yes.

1 WHEREAS, On March 4, 2020, Governor Gavin Newsom
2 proclaimed a state of emergency in California to mitigate the spread
3 of COVID-19; and

4 WHEREAS, Since proclaiming a state of emergency on March
5 4, Governor Newsom has issued ~~over~~ *more than* 47 executive
6 orders, unilaterally changing 200 laws spanning most divisions of
7 the California codes; and

8 WHEREAS, Section 8629 of the Government Code, which is
9 part of the California Emergency Services Act (Chapter 7

1 (commencing with Section 8550) of Division 1 of Title 2 of the
2 Government Code), authorizes the State Legislature to terminate
3 a state of emergency “by concurrent resolution of the Legislature
4 declaring it at an end”; and

5 WHEREAS, A “state of emergency” in California is a legal
6 term describing not merely conditions of extreme peril, but also
7 the inadequacy of state and local institutions to combat the threat
8 within the constraints of the California Constitution; and

9 WHEREAS, On May 17, 2020, the nonpartisan Legislative
10 Analyst’s Office released a report stating that they are “very
11 troubled” by the authority the Governor seeks to take away from
12 the Legislature in the May Revision, and stated that “we urge the
13 Legislature to jealously guard its constitutional role and authority”;
14 and

15 WHEREAS, The California Emergency Services Act (Chapter
16 7 (commencing with Section 8550) of Division 1 of Title 2 of the
17 Government Code) (CESA) also provides local governments the
18 ability to proclaim a local emergency in response to COVID-19,
19 which authorizes the state to provide “mutual aid, including
20 personnel, equipment, and other available resources, to assist
21 political subdivisions during a local emergency or in accordance
22 with mutual aid agreements or at the direction of the Governor”;
23 and

24 WHEREAS, Nothing in this resolution prevents a local
25 jurisdiction from proclaiming a local emergency to mitigate the
26 spread of COVID-19; and

27 WHEREAS, On November 2, 2020, the Superior Court of the
28 County of Sutter issued a tentative ruling in the case of Gallagher
29 and Kiley v. Newsom (CVCS20-0912) that found all of the
30 following: (1) The Governor’s Executive Order N-67-20, issued
31 on June 3, 2020, which, among other things, required all
32 Californians registered to vote in the November 3, 2020, General
33 Election to receive vote-by-mail ballots and required all county
34 elections officials to use the Secretary of State’s vote-by-mail
35 ballot tracking system and Intelligent Mail Barcodes on all
36 vote-by-mail ballot envelopes, was not authorized by the CESA
37 because it improperly amended existing statutory law, exceeding
38 the Governor’s authority and violating the separation of powers;
39 (2) Executive Order N-67-20 was declared void and without further
40 force or effect as an unconstitutional exercise of legislative power

1 in that the CESA does not authorize or empower the Governor to
2 amend or make statutory law; and (3) the Governor was enjoined
3 and prohibited from exercising any power under the CESA that
4 amends, alters, or changes existing statutory law or makes new
5 statutory law or legislative policy. The final ruling was issued on
6 November 13, 2020; and

7 WHEREAS, An open-ended state of emergency, with boundless
8 powers vested in a chief executive, is incompatible with democratic
9 government; and

10 WHEREAS, It is critical that a proper balance be restored
11 between the legislative and executive branches; now, therefore,
12 be it

13 *Resolved by the Senate of the State of California, the Assembly*
14 *thereof concurring,* That the Legislature, in accordance with
15 Section 8629 of the Government Code, declares that the state of
16 emergency proclaimed by Governor Gavin Newsom on March 4,
17 2020, is at an end and that the emergency powers granted to the
18 Governor as a result of that proclamation are hereby terminated;
19 and be it further

20 *Resolved,* That the Secretary of the Senate transmit copies of
21 this resolution to the Governor of California.