



2021 SENATE JOINT RESOLUTION 2

January 4, 2021 - Introduced by Senators LEMAHIEU, FEYEN and KAPENGA,
cosponsored by Representatives VOS and STEINEKE.

1 **Relating to:** public access to the state capitol building.

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

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

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

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

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

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

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

13 Whereas, the result of this Department of Administration action is that the
14 public does not have access to those areas of the state capitol building that are
15 reserved exclusively for legislative uses except when the legislature is in session or
16 its committees meet. In this way, the Department of Administration has determined,
17 without legislative approval, that these are the only legislative proceedings that
18 require the state capitol building to be open to the public; and

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

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

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

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

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

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

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

