

IN THE SENATE

SENATE BILL NO. 1217

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO A STATE OF EXTREME EMERGENCY; PROVIDING LEGISLATIVE INTENT; REPEALING SECTION 46-601, IDAHO CODE, RELATING TO AUTHORITY OF THE GOVERNOR; AMENDING CHAPTER 6, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-601, IDAHO CODE, TO AUTHORIZE THE GOVERNOR TO PROCLAIM A STATE OF EXTREME EMERGENCY, TO DEFINE TERMS, TO PROVIDE THAT THE GOVERNOR SHALL HAVE CERTAIN POWERS, DUTIES, AND LIMITATIONS DURING A DECLARED STATE OF EXTREME EMERGENCY, AND TO PROVIDE THAT NOTHING SHALL PROHIBIT THE GOVERNOR FROM DEPLOYING THE NATIONAL GUARD AS HE MAY DEEM PROPER; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. Idaho Code grants the Governor the power to proclaim a state of extreme emergency and provide the initial response thereto. As a co-equal branch of the government, the Legislature should assist the Governor during such times of extreme emergency as a proper check and balance of power when restrictions are placed on Idahoans. When exercising such powers during a state of extreme emergency, the government should:

(1) Recognize that all Idahoans who work, provide for their families, and pay taxes are essential to Idaho;

(2) Assure that the Idaho Legislature exercises its constitutional powers to appropriate funds;

(3) Prohibit the quarantine or isolation of healthy individuals who are not at risk of contaminating others with a biological, chemical, or nuclear agent;

(4) Protect Idahoans' respective constitutional rights, including the right to keep and bear arms and the right to free exercise of religion; and

(5) Prevent the delegation of government power to nonelected officials.

SECTION 2. That Section [46-601](#), Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 6, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-601, Idaho Code, and to read as follows:

46-601. AUTHORITY OF GOVERNOR.

(1) (a) The governor may proclaim a state of extreme emergency and then order into the active service of the state the national guard, as he may deem proper.

(b) "State of extreme emergency" means:

(i) The duly proclaimed existence of conditions threatening the safety of persons or property within the state, or any part thereof, caused by an enemy attack or threatened attack; or

1 (ii) The duly proclaimed existence of conditions threatening per-  
2 sons or property within the state, or any part thereof, caused by  
3 such conditions as fire, flood, storm, epidemic, pandemic, vol-  
4 cano, earthquake, violent insurrection, riot, revolt, explosion,  
5 cyber attack on critical infrastructure, or other conditions that  
6 by reason of their magnitude are or are likely to be beyond the con-  
7 trol of the services, personnel, equipment, and facilities of any  
8 county, any city, or any city and county or result in mass casual-  
9 ties.

10 (c) "Enemy attack" means an actual attack by terrorists or a foreign na-  
11 tion by terrorism, hostile air raids, or other form of warfare upon the  
12 state or any other state or territory of the United States.

13 (d) "Violent insurrection" means a violent movement or violent actions  
14 by persons intending to overthrow the lawful government.

15 (e) "Terrorism" is as defined in section 18-8102, Idaho Code.

16 (2) (a) During a declared state of extreme emergency, the governor  
17 shall have authority over all executive agencies and departments of the  
18 state government, including all separate boards and commissions, and  
19 the right to exercise within the area or regions wherein the state of  
20 extreme emergency exists, subject to the provisions of this section,  
21 police power vested in the state by the constitution and the laws of the  
22 state of Idaho; provided, however, that the governor's exercise thereof  
23 must be limited to promulgation, issuance, and enforcement of written  
24 rules and orders necessary to support the national guard, essential to  
25 protect life or property, ensure the continuity of the constitutional  
26 form of government, or otherwise required to mitigate serious harm cre-  
27 ated by the conditions giving rise to the state of extreme emergency.  
28 Such rules and orders must be narrowly focused without placing unnec-  
29 essary restrictions on the ability for a person or persons, regardless  
30 of job type or classification, to work, provide for their families, or  
31 otherwise contribute to the economy of the state of Idaho.

32 (b) Such rules and orders must, whenever practicable, be prepared in  
33 advance of extreme emergency, and the governor shall cause widespread  
34 publicity and notice to be given of such rules and orders. Rules and or-  
35 ders issued under the authority of this section must not become opera-  
36 tive until the governor proclaims a state of extreme emergency. Such  
37 rules and orders shall be filed in the office of the secretary of state  
38 as soon as possible after their issuance. A copy of such rules and or-  
39 ders shall likewise be filed in the office of the county clerk of each  
40 county, any portion of which is included within the area wherein a state  
41 of extreme emergency has been proclaimed.

42 (c) The state of extreme emergency must terminate by either the expira-  
43 tion of the period for which it was proclaimed or the need for said state  
44 of extreme emergency has ceased.

45 (d) Whenever the governor declares a state of extreme emergency encom-  
46 passing twelve (12) or more counties, the powers granted by the legis-  
47 lature to the governor in paragraph (a) of this subsection shall be re-  
48 voked on the ninetieth day of the proclaimed state of extreme emergency  
49 unless the legislature is in regular session or the governor issues a  
50 proclamation convening an extraordinary session of the legislature for

1 the purpose of having the legislature vote on whether to revoke any or  
2 all powers granted to the governor in paragraph (a) of this subsection.  
3 If the governor elects to issue a proclamation convening an extraordi-  
4 nary session, such proclamation must identify a date for the legisla-  
5 ture to convene that is no later than twenty-one (21) days after the is-  
6 suance of the proclamation. The governor, consistent with section 9,  
7 article IV of the constitution of the state of Idaho, may identify addi-  
8 tional subjects for legislation during the extraordinary session, in-  
9 cluding the appropriation of necessary emergency funds.

10 (e) In the event those conditions giving rise to the state of extreme  
11 emergency prevent or render it impracticable for a legislator to par-  
12 ticipate in the regular or extraordinary session, the legislator shall  
13 be replaced by an interim successor designated and qualified in accord-  
14 ance with the emergency interim legislative succession act, as pro-  
15 vided in sections 67-413 through 67-426, Idaho Code.

16 (f) The governor may not circumvent the ninety (90) day limitation by  
17 redeclaring successive states of extreme emergency for the same condi-  
18 tions that gave rise to the proclaimed state of extreme emergency.

19 (3) During any proclaimed state of extreme emergency, insurrection, or  
20 martial law, neither the governor nor any agency of any governmental entity  
21 or political subdivision of the state shall impose or enforce federal re-  
22 strictions prohibited under Idaho law on the lawful possession, manufactur-  
23 ing, transfer, sale, transport, storage, display, or use of firearms or am-  
24 munition or otherwise suspend or unconstitutionally limit any rights guar-  
25 anteed by the United States constitution or the constitution of the state of  
26 Idaho, including but not limited to the right to peaceable assembly and free  
27 exercise of religion.

28 (4) During any state of extreme emergency, the governor may not alter,  
29 adjust, or suspend any provision of the Idaho Code but for good cause may tem-  
30 porarily suspend enforcement of particular provisions that prevent, hinder,  
31 or delay necessary action to respond to the state of extreme emergency. The  
32 governor shall file a notice describing the temporary suspension of enforce-  
33 ment of any particular provisions with the office of the secretary of state  
34 as soon as possible after such suspension, and copies thereof shall be de-  
35 livered to the speaker of the Idaho house of representatives, the president  
36 pro tempore of the Idaho senate, and the chief justice of the Idaho supreme  
37 court.

38 (5) Nothing in this section shall prohibit the governor from deploying  
39 the national guard as he may deem proper.

40 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared  
41 to be severable. If any provision of this section or the application of such  
42 provision to any person or circumstance is declared invalid by a court of  
43 competent jurisdiction for any reason, such declaration shall not affect the  
44 validity of the remaining portions of this section.

45 SECTION 5. An emergency existing therefor, which emergency is hereby  
46 declared to exist, this act shall be in full force and effect on and after its  
47 passage and approval.