

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 98

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE STATE DISASTER PREPAREDNESS ACT; AMENDING SECTION 46-1008,  
2 IDAHO CODE, TO REVISE PROVISIONS REGARDING THE GOVERNOR'S POWERS DUR-  
3 ING A DISASTER EMERGENCY, TO PROVIDE SEVERABILITY, AND TO MAKE TECHNICAL  
4 CORRECTIONS; AND DECLARING AN EMERGENCY.  
5

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

7 SECTION 1. That Section 46-1008, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 46-1008. THE GOVERNOR AND DISASTER EMERGENCIES. (1) Under this act,  
10 the governor may issue executive orders, rules, or proclamations and amend  
11 or rescind them if he finds a disaster has occurred or the threat thereof is  
12 imminent. Executive orders, rules, and proclamations have the force and ef-  
13 fect of law; provided, however, that any such orders, rules, or proclama-  
14 tions must be essential to protect life or property from the occurrence or  
15 imminent threat of the state of disaster emergency. Because all jobs are  
16 essential, declared emergencies must not restrict the right of Idahoans to  
17 work, provide for their families, and otherwise contribute to the economy of  
18 Idaho. Such orders, rules, and proclamations must be narrowly tailored to  
19 their purposes and not restrict jobholders by job type or classification.

20 (2) ~~A disaster emergency shall be declared by executive order or~~  
21 ~~proclamation of the governor if he finds a disaster has occurred or that the~~  
22 ~~occurrence or the threat thereof is imminent. The state of disaster emer-~~  
23 ~~gency shall continue until the governor finds that the threat or danger has~~  
24 ~~passed, or the disaster has been dealt with to the extent that emergency con-~~  
25 ~~ditions no longer exist, and when either or both of these events occur, the~~  
26 ~~governor shall terminate the state of disaster emergency by executive order~~  
27 ~~or proclamation; provided, however, that no state of disaster emergency may~~  
28 ~~continue for longer than thirty (30) days unless the governor finds that it~~  
29 ~~should be continued for another thirty (30) days or any part thereof. The~~  
30 ~~legislature by concurrent resolution may terminate a state of disaster emer-~~  
31 ~~gency at any time. Thereupon, the governor shall issue an executive order or~~  
32 ~~proclamation ending the state of disaster emergency.~~

33 (a) (i) A state of disaster emergency must be declared by executive  
34 order or proclamation of the governor. The state of disaster emer-  
35 gency must terminate as soon as:

36 1. The governor finds that the threat or danger has passed  
37 or that the disaster has been dealt with to the extent that  
38 emergency conditions no longer exist;

39 2. The period for which the state of disaster emergency has  
40 been declared terminates; or

1           3. The legislature terminates the state of disaster emer-  
2           gency prior to the end of the period for which it was declared  
3           as provided in paragraph (c) of this subsection.

4           (ii) When any of these termination events occur, any executive or-  
5           ders, rules, or proclamations issued by the governor under the au-  
6           thority of this subsection are simultaneously terminated, and the  
7           governor must immediately issue a written notice that the state of  
8           disaster emergency has terminated and that the orders, rules, or  
9           proclamations issued by the governor have also terminated. The  
10           notice must be immediately filed and disseminated in the same man-  
11           ner as the executive order, rule, or proclamation was filed and  
12           disseminated under paragraph (d) of this subsection.

13           (b) A declared state of disaster emergency may not continue or be ex-  
14           tended for longer than sixty (60) days except for the sole purpose of  
15           collection processes to receive federal funding, benefits, and re-  
16           sources available for the declared disaster emergency. In such a case,  
17           those provisions of the governor's order, rule, or proclamation neces-  
18           sary for receiving such funding, benefits, or resources shall continue  
19           in full force and effect as long as any conditions associated with  
20           accepting such funding, benefits, or resources do not violate any pro-  
21           vision of this section. All other provisions of the order, rule, or  
22           proclamation shall expire unless the legislature by concurrent res-  
23           olution extends the duration of the state of disaster emergency. The  
24           governor may not circumvent the sixty (60) day limitation by redeclar-  
25           ing successive states of disaster emergency for the same emergency in  
26           the absence of an extension by the legislature.

27           (c) If, during a state of disaster emergency, the legislature is con-  
28           vened in a regular session or has been convened in an extraordinary ses-  
29           sion to address the disaster emergency, the legislature may consider  
30           any legislation to respond to the disaster emergency, including appro-  
31           propriating necessary emergency funding. Any orders, rules, or proclama-  
32           tions issued by the governor under the authority of this section shall  
33           be considered administrative rules that may be rejected by concurrent  
34           resolution, in whole or in part, by the legislature pursuant to section  
35           29, article III, of the constitution of the state of Idaho, where it is  
36           determined that the governor's rules, orders, or proclamations are not  
37           consistent with the legislative intent of this section. Such termina-  
38           tion will be binding on the governor, state agencies, governmental en-  
39           tities, and political subdivisions; provided that nothing in this sec-  
40           tion prohibits a city's ability to pass ordinances for the preservation  
41           of public health pursuant to section 50-304, Idaho Code. The legisla-  
42           ture may extend the state of disaster emergency for any number of days.

43           (d) All executive orders, rules, or proclamations issued under this  
44           subsection shall indicate the nature of the disaster, the area or areas  
45           threatened, the area subject to the proclamation, the facts establish-  
46           ing a threat to life or property, and the conditions which are causing  
47           the disaster. An executive order, rule, or proclamation shall be dis-  
48           seminated promptly by means calculated to bring its contents to the at-  
49           tention of the general public and, unless the circumstances attendant  
50           upon the disaster prevent or impede, be promptly filed with the Idaho

1 office of emergency management, the office of the secretary of state,  
2 and the office of the recorder of each county where the state of disaster  
3 emergency applies.

4 (e) Nothing in this section hinders the governor's ability to activate  
5 and use the national guard to respond to a declared emergency.

6 (3) An executive order, rule, or proclamation of a state of disaster  
7 emergency shall activate the disaster response and recovery aspects of the  
8 state, local, and intergovernmental disaster emergency plans applicable to  
9 the political subdivision or area in question and be authority for the de-  
10 ployment and use of any national guard forces to which the plan or plans apply  
11 and for use or distribution of any supplies, equipment, and materials and fa-  
12 cilities assembled, stockpiled, or arranged to be made available pursuant to  
13 this act or any other provision of law relating to disaster emergencies.

14 (4) During the continuance of any state of disaster emergency, the  
15 governor is commander-in-chief of the militia and may assume command of all  
16 ~~other~~ national guard forces available for emergency duty. To the greatest  
17 extent practicable, the governor shall delegate or assign command au-  
18 thority by prior arrangement embodied in appropriate executive orders or  
19 ~~regulations~~ rules, but nothing herein restricts his authority to do so by  
20 orders issued at the time of the disaster emergency.

21 ~~In addition to any other powers conferred upon~~ If essential to pro-  
22 tect the life or property of the people of Idaho, the governor by law, he may:

23 (a) Suspend the provisions of any ~~regulations~~ rules prescribing the  
24 procedures for conduct of public business that would in any way prevent,  
25 hinder, or delay necessary action in coping with the emergency;

26 (b) Utilize all state and federal resources of available to the state,  
27 including, but not limited to, those sums in the disaster emergency  
28 account as he shall deem necessary to pay obligations and expenses  
29 ~~incurred during~~ arising out of a declared state of disaster emergency,  
30 subject to the one percent (1%) limitation on the revenues made avail-  
31 able by section 46-1005A(2) (b) and (c), Idaho Code, as set forth in  
32 section 46-1005A(3), Idaho Code;

33 (c) Transfer the direction, personnel, or functions of state depart-  
34 ments and agencies or units thereof for the purpose of performing or fa-  
35 cilitating emergency services;

36 (d) Subject to any applicable requirements for compensation under sec-  
37 tion 46-1012, Idaho Code, commandeer or utilize any private property,  
38 real or personal, if he finds this necessary to cope with the disaster  
39 emergency;

40 (e) Direct and compel the evacuation of all or part of the population  
41 from any stricken or threatened area within the state if he deems this  
42 action necessary for the preservation of life or other disaster mitiga-  
43 tion, response, or recovery;

44 (f) Prescribe routes, and modes of transportation, and recommend des-  
45 tinations in connection with evacuation;

46 (g) Control ingress and egress to and from a disaster area, the movement  
47 of persons within the area, and the occupancy of premises therein;

48 (h) Suspend or limit the sale, dispensing or transportation of alco-  
49 holic beverages, explosives except to the extent protected under sub-

1 section (7) of this section in relation to firearms or ammunition, and  
2 combustibles; and

3 (i) Make provision for the availability and use of temporary emergency  
4 housing.

5 (6) Whenever an emergency or a disaster has been declared to exist in  
6 Idaho by the president of the United States under the provisions of the dis-  
7 aster relief act of 1974 (public law 93-288, 42 U.S.C. 5121), as amended, the  
8 governor must declare a state of disaster emergency pursuant to this section  
9 and may:

10 (a) Enter into agreements with the federal government for the sharing  
11 of disaster recovery expenses involving public facilities;

12 (b) Require as a condition of state assistance that a local taxing dis-  
13 trict be responsible for paying forty percent (40%) of the nonfederal  
14 share of costs incurred by the local taxing district that have been de-  
15 termined to be eligible for reimbursement by the federal government,  
16 provided that the total local share of eligible costs for a taxing dis-  
17 trict shall not exceed ten percent (10%) of the taxing district's tax  
18 charges authorized by section 63-802, Idaho Code;

19 (c) Obligate the state to pay the balance of the nonfederal share of el-  
20 igible costs within local taxing entities qualifying for federal assis-  
21 tance; and

22 (d) Enter into agreements with the federal government for the sharing  
23 of disaster assistance expenses to include individual and family grant  
24 programs.

25 (7) During the continuance of any state of disaster emergency, neither  
26 the governor nor any agency of any governmental entity or political subdi-  
27 vision of the state shall impose or enforce any additional restrictions on  
28 the lawful manufacturing, possession, transfer, sale, transport, storage,  
29 display or use of firearms or ammunition or otherwise limit or suspend any  
30 rights guaranteed by the United States constitution or constitution of the  
31 state of Idaho, including but not limited to the right to peaceable assembly  
32 or free exercise of religion.

33 (8) During any state of disaster emergency, the governor may not alter,  
34 adjust, or suspend any provision of the Idaho Code.

35 (9) The provisions of this section are hereby declared to be severable.  
36 If any provision of this section or the application of such provision to any  
37 person or circumstance is declared invalid by a court of competent jurisdic-  
38 tion, such declaration shall not affect the validity of the remaining por-  
39 tions of this section.

40 SECTION 2. An emergency existing therefor, which emergency is hereby  
41 declared to exist, this act shall be in full force and effect on and after its  
42 passage and approval.