LEGISLATURE OF THE STATE OF IDAHO
Sixty-sixth Legislature First Regular Session - 2021

IN THE SENATE

SENATE BILL NO. 1136

BY STATE AFFAIRS COMMITTEE

AN ACT
RELATING TO MARTIAL LAW; AMENDING SECTION 46-601, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE AUTHORITY OF THE GOVERNOR DURING A STATE OF EXTREME PERIL, TO DEFINE TERMS, TO PROVIDE THAT THE GOVERNOR MAY NOT ALTER, ADJUST, OR SUSPEND ANY PROVISION OF THE IDAHO CODE IN CERTAIN INSTANCES, TO PROVIDE THAT NOTHING SHALL PROHIBIT THE GOVERNOR FROM DEPLOYING THE NATIONAL GUARD, AND TO PROVIDE SEVERABILITY; AMENDING SECTION 46-602, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-604, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 46-607, IDAHO CODE, TO REVISE TERMINOLOGY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 46-601, Idaho Code, be, and the same is hereby amended to read as follows:

46-601. AUTHORITY OF GOVERNOR.
(1) (a) The governor shall have the power in the event of may proclaim a state of extreme emergency to peril and then order into the active service of the state, the national guard, or any part thereof, and or the organized militia, or any part thereof, or both as he may deem proper.
(b) "State of extreme emergency peril" means: (a) the
(i) The duly proclaimed existence of conditions of extreme peril to threatening the safety of persons and or property within the state, or any part thereof, caused by an enemy attack or threatened imminent enemy attack; or (b) the
(ii) The duly proclaimed existence of conditions of extreme peril to threatening the safety of persons and or property within the state, or any part thereof, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, violent insurrection, breach of the peace, violent revolt, or explosion, which conditions by reason of their magnitude are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any county, any city, or any city and county.
(c) "Enemy attack" means an actual attack by terrorists or a foreign nation by terrorism, hostile air raids, or other forms of warfare upon this state or any other state or territory of the United States.
(d) "Violent insurrection" means a violent movement or violent actions by persons intending to overthrow the lawful government.
(e) "Terrorism" is as defined in section 18-8102, Idaho Code.
(2) (a) During a period of a state of extreme emergency peril, the governor shall have complete authority over all agencies of the state government, including all separate boards and commissions, and the right to exercise within the area or regions wherein the state of extreme
emergency peril exists all, subject to the provisions of this section, police power vested in the state by the constitution and the laws of the state of Idaho. In the; provided, however, that the governor's exercise thereof he is authorized to promulgate, issue and enforce must be limited to promulgation, issuance, and enforcement of written rules, regulations and orders which he considers necessary for the protection of necessary to support the national guard or militia and that are essential to protect life and or property from violent destruction. Such rules, regulations and orders shall be essential to protect life or property from the existence of conditions threatening the safety of persons or property within the state. Because all jobs are essential, such rules and orders must not restrict the right of Idahoans to work, provide for their families, and otherwise contribute to the economy of Idaho and must be narrowly tailored to their purposes and not restrict jobholders by job type or classification. Such rules and orders must, whenever practicable, be prepared in advance of extreme emergency peril, and the governor shall cause widespread publicity and notice to be given of such rules, regulations and orders. Rules, regulations and orders issued under the authority of this section and prepared in advance of a state of extreme emergency shall must not become operative until the governor proclaims a state of extreme emergency peril. Such rules, regulations and orders shall be in writing and shall take effect upon their issuance. They shall be filed in the office of the secretary of state as soon as possible after their issuance. A copy of such rules, regulations and orders shall likewise be filed in the office of the county clerk of each county, any portion of which is included within the area wherein a state of extreme emergency peril has been proclaimed. Whenever the

(b) The state of extreme emergency has been ended by either peril must terminate by the expiration of the period for which it was proclaimed or when the need for said state of extreme emergency has ceased, the governor shall declare the period of the state of extreme emergency to be at an end. peril has ceased, whichever is sooner, and such state of extreme peril in no event shall exceed sixty (60) days unless the governor extends the state of extreme peril solely for the purpose of receiving federal funding, benefits, and resources as a result of the declared disaster emergency, in which case those provisions of the governor's proclamation necessary for receiving such funding, benefits, or resources shall continue in full force and effect. All other provisions of the proclamation shall expire unless the legislature by concurrent resolution extends the duration of the state of extreme peril. The governor may not circumvent the sixty (60) day limitation by redeclaring successive states of extreme peril for the same conditions threatening the safety of persons or property within the state in the absence of an extension by the legislature.

(c) If the legislature is in a regular session during a state of extreme peril or in an extraordinary session to address the state of extreme peril, the legislature may consider any legislation to respond to the extreme peril, including appropriating necessary emergency funds. The legislature may terminate the state of extreme peril by concurrent
resolution. Such termination will be binding on the governor, state agencies, governmental entities, and political subdivisions; provided that nothing in this section prohibits a city's ability to pass ordinances for the preservation of public health pursuant to section 50-304, Idaho Code. The legislature may extend the state of extreme peril for any number of days.

(d) Any orders that restrict the actions of citizens or rules issued by the governor under the authority of this subsection shall be considered administrative rules that may be rejected by concurrent resolution, in whole or in part, by the legislature pursuant to section 29, article III, of the constitution of the state of Idaho, where it is determined that the governor's rules are not consistent with the legislative intent of this section.

(e) Upon passage of a concurrent resolution under paragraph (c) or (d) of this subsection, the governor must then immediately notify the public that the state of extreme peril has terminated or that any rejected rules issued by the governor under the authority of this subsection have terminated. Such notice must be filed and publicized in the same manner that the rules or orders were filed and publicized under paragraph (a) of this subsection.

(3) During the continuance of any proclaimed state of extreme emergency, insurrection, peril or martial law, neither the governor nor any agency of any governmental entity or political subdivision of the state shall impose or enforce additional restrictions prohibited under Idaho law on the lawful manufacturing, possession, transfer, sale, transport, storage, display, or use of firearms or ammunition or otherwise limit or suspend any rights guaranteed by the United States constitution or the constitution of the state of Idaho, including but not limited to the right to peaceable assembly and free exercise of religion.

(4) During any state of extreme peril, the governor may not alter, adjust, or suspend any provision of the Idaho Code.

(5) Nothing in this section shall prohibit the governor from deploying the national guard, or any part thereof, or the militia, or any part thereof, or both as he may deem proper.

(6) The provisions of this section are hereby declared to be severable. If any provision of this section or the application of such provision to any person or circumstance is declared invalid by a court of competent jurisdiction for any reason, such declaration shall not affect the validity of the remaining portions of this section.

SECTION 2. That Section 46-602, Idaho Code, be, and the same is hereby amended to read as follows:

46-602. PROCLAMATION OF MARTIAL LAW. Whenever a state of extreme peril has been proclaimed by the governor, the governor, if in his judgment the maintenance of law and order will thereby be promoted, and in addition to the proclaiming of said state of extreme peril, may by proclamation declare the state, county, or city, or any specified portion thereof, to be in a state of insurrection extreme peril and may declare martial law therein.
SECTION 3. That Section 46-604, Idaho Code, be, and the same is hereby amended to read as follows:

46-604. COOPERATION OF MILITIA WITH CIVIL AUTHORITIES -- CALLING OUT MILITARY FORCES. When the national guard or the organized militia shall be ordered into the active service of the state during a state of emergency peril, or for any other cause, the commanding officer of the military personnel shall cooperate with the civil officers to the fullest extent, consistent with the accomplishment of the object, for which the military personnel were called; the civil officials may express to the commander of the military personnel the general or specific object which the civil officials desire to accomplish, but the tactical direction of the military personnel, the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil officers are left solely to the officers in charge of the military personnel. In case of any breach of the peace, tumult, riot, resistance to process of this state, or a state of extreme emergency peril, or imminent danger thereof, the sheriff of a county may call for aid upon the commander-in-chief of the national guard.

SECTION 4. That Section 46-607, Idaho Code, be, and the same is hereby amended to read as follows:

46-607. PAY ON ACTIVE DUTY -- STATE LIABLE FOR EXPENSES AND CLAIMS. All officers and enlisted personnel of the national guard not in the service of the United States, while on duty or assembled therefor, pursuant to the orders of the governor, or any other civil officer authorized by law to make such demand on the military forces of the state in case of a state of extreme emergency peril, or threats thereof, or whenever called upon in aid of civil authorities, shall receive the same pay and allowances for such service as that prescribed in section 46-605, Idaho Code; and such compensation and the necessary expenses incurred in quartering, caring for, warning for duty, and transporting and subsisting the military personnel as well as the expense incurred for pay, care and subsistence of officers and enlisted personnel shall be paid by the state.

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