

IN THE SENATE

SENATE BILL NO. 1136, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO MARTIAL LAW; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION  
2 46-601, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE AUTHORITY OF THE  
3 GOVERNOR DURING A STATE OF EXTREME PERIL, TO DEFINE TERMS, TO PROVIDE  
4 THAT THE GOVERNOR MAY NOT ALTER, ADJUST, OR SUSPEND ANY PROVISION OF THE  
5 IDAHO CODE IN CERTAIN INSTANCES, TO PROVIDE THAT NOTHING SHALL PROHIBIT  
6 THE GOVERNOR FROM DEPLOYING THE NATIONAL GUARD, AND TO PROVIDE SEVER-  
7 ABILITY; AMENDING SECTION 46-602, IDAHO CODE, TO REVISE TERMINOLOGY AND  
8 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-604, IDAHO CODE,  
9 TO REVISE TERMINOLOGY; AMENDING SECTION 46-607, IDAHO CODE, TO REVISE  
10 TERMINOLOGY; AND DECLARING AN EMERGENCY.  
11

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

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

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

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

23 (3) Prohibit the quarantine or isolation of healthy individuals;

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

26 (5) Prevent the delegation of government power to nonelected offi-  
27 cials.

28 SECTION 2. That Section 46-601, Idaho Code, be, and the same is hereby  
29 amended to read as follows:

30 46-601. AUTHORITY OF GOVERNOR.

31 (1) (a) The governor shall have the power in the event of may proclaim a  
32 state of extreme emergency to peril and then order into the active ser-  
33 vice of the state, the national guard, or any part thereof, and or the  
34 organized militia, or any part thereof, or both as he may deem proper.

35 (b) "State of extreme emergency peril" means: (a) the

36 (i) The duly proclaimed existence of conditions of extreme peril  
37 to threatening the safety of persons and or property within the  
38 state, or any part thereof, caused by an enemy attack or threatened  
39 imminent enemy attack; or (b) the

40 (ii) The duly proclaimed existence of conditions of extreme  
41 peril to threatening the safety of persons and or property within

1 the state, or any part thereof, caused by ~~such conditions as air~~  
 2 ~~pollution, fire, flood, storm, epidemic, riot or earthquake,~~  
 3 ~~violent insurrection, breach of the peace, which violent revolt,~~  
 4 ~~explosion, cyber attack on critical infrastructure, or other con-~~  
 5 ~~ditions that by reason of their magnitude are or are likely to be~~  
 6 ~~beyond the control of the services, personnel, equipment, and fa-~~  
 7 ~~ilities of any county, any city, or any city and county or result~~  
 8 ~~in mass casualties.~~

9 (c) "Enemy attack" means an actual attack by terrorists or a foreign  
 10 nation by terrorism, hostile air raids, or other forms of warfare upon  
 11 this state or any other state or territory of the United States.

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

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

15 (2) (a) During a period of a declared state of extreme emergency peril,  
 16 the governor shall have complete authority over all executive agencies  
 17 and departments of the state government, including all separate boards  
 18 and commissions, and the right to exercise within the area or regions  
 19 wherein the state of extreme emergency peril exists all, subject to the  
 20 provisions of this section, police power vested in the state by the con-  
 21 stitution and the laws of the state of Idaho. In the; provided, however,  
 22 that the governor's exercise thereof he is authorized to promulgate,  
 23 issue and enforce must be limited to promulgation, issuance, and en-  
 24 forcement of written rules, regulations and orders which he considers  
 25 necessary for the protection of necessary to support the national guard  
 26 or militia and that are essential to protect life and or property from  
 27 violent destruction. Such rules, regulations and orders shall must be  
 28 essential to protect life or property from the existence of conditions  
 29 threatening the safety of persons or property within the state and must  
 30 be narrowly tailored to effectively protect life or property without  
 31 placing unnecessary restrictions on the ability for a person or per-  
 32 sons, regardless of job type or classification, to work, provide for  
 33 their families, or otherwise contribute to the economy of the state of  
 34 Idaho. Such rules and orders must, whenever practicable, be prepared  
 35 in advance of extreme emergency peril, and the governor shall cause  
 36 widespread publicity and notice to be given of such rules, regulations  
 37 and orders. Rules, regulations and orders issued under the authority  
 38 of this section and prepared in advance of a state of extreme emergency  
 39 shall must not become operative until the governor proclaims a state of  
 40 extreme emergency peril. Such rules, regulations and orders shall be in  
 41 writing and shall take effect upon their issuance. They shall be filed  
 42 in the office of the secretary of state as soon as possible after their  
 43 issuance. A copy of such rules, regulations and orders shall likewise  
 44 be filed in the office of the county clerk of each county, any portion of  
 45 which is included within the area wherein a state of extreme emergency  
 46 peril has been proclaimed. Whenever the

47 (b) The state of extreme emergency has been ended by either peril must  
 48 terminate by the expiration of the period for which it was proclaimed  
 49 or when the need for said state of extreme emergency has ceased, the  
 50 governor shall declare the period of the state of extreme emergency to

1 ~~be at an end.~~ peril has ceased, whichever is sooner. Any state of ex-  
2 trême peril in no event shall exceed sixty (60) days without concurrence  
3 of the legislature; provided, however, if the governor must maintain  
4 the proclamation of the state of extreme peril solely for the purpose  
5 of receiving federal funding, benefits, or resources as a result of a  
6 declared disaster emergency and if the receipt of such funding, bene-  
7 fits, or resources does not require the imposition of any conditions  
8 or restrictions prescribed in the proclamation, then the governor's  
9 proclamation shall continue in effect solely for the purpose of receipt  
10 of federal funding, benefits, or resources, and any conditions or re-  
11 strictions contained in the proclamation shall no longer be in effect.  
12 All other provisions of the proclamation shall expire unless the leg-  
13 islature by concurrent resolution extends the duration of the state of  
14 extreme peril. The governor may not circumvent the sixty (60) day lim-  
15 itation by redeclaring successive states of extreme peril for the same  
16 conditions threatening the safety of persons or property within the  
17 state in the absence of an extension by the legislature.

18 (c) If the legislature is in a regular session during a state of extreme  
19 peril or in an extraordinary session to address the state of extreme  
20 peril, the legislature may consider any legislation to terminate or  
21 modify emergency orders of general applicability or to respond to the  
22 extreme peril, including appropriating necessary emergency funds. The  
23 legislature may terminate the state of extreme peril, in whole or in  
24 part. Such termination will be binding on the governor, state agen-  
25 cies, governmental entities, and political subdivisions; provided that  
26 nothing in this section prohibits a city's ability to pass ordinances  
27 for the preservation of public health pursuant to section 50-304, Idaho  
28 Code.

29 (d) Upon passage of legislation under paragraph (c) of this subsection,  
30 the governor must then immediately notify the public that the state  
31 of extreme peril has been modified or terminated. Such notice must be  
32 filed and publicized in the same manner that the rules or orders were  
33 filed and publicized under paragraph (a) of this subsection.

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

43 (4) During any state of extreme peril, the governor may not alter, ad-  
44 just, or suspend any provision of the Idaho Code but for good cause may tem-  
45 porarily suspend enforcement of particular provisions that prevent, hinder,  
46 or delay necessary action to respond to the state of extreme peril. The gov-  
47 ernor shall file a notice describing the temporary suspension of enforcement  
48 of any particular provision with the office of the secretary of state as soon  
49 as possible after such suspension, and copies thereof shall be delivered to

1 the speaker of the Idaho house of representatives, the president pro tempore  
 2 of the Idaho senate, and the chief justice of the Idaho supreme court.

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

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

11 SECTION 3. That Section 46-602, Idaho Code, be, and the same is hereby  
 12 amended to read as follows:

13 46-602. PROCLAMATION OF MARTIAL LAW. Whenever a state of extreme  
 14 ~~emergency peril~~ has been proclaimed by the governor, the governor, if in his  
 15 judgment the maintenance of law and order will thereby be promoted, and in  
 16 addition to the proclaiming of said state of extreme ~~emergency peril~~, may by  
 17 proclamation declare the state, county, or city, or any specified portion  
 18 thereof, to be in a state of ~~insurrection~~ extreme peril and may declare mar-  
 19 tial law therein.

20 SECTION 4. That Section 46-604, Idaho Code, be, and the same is hereby  
 21 amended to read as follows:

22 46-604. COOPERATION OF MILITIA WITH CIVIL AUTHORITIES -- CALLING OUT  
 23 MILITARY FORCES. When the national guard or the ~~organized~~ militia shall  
 24 be ordered into the active service of the state during a state of extreme  
 25 emergency peril, or for any other cause, the commanding officer of the  
 26 military personnel shall cooperate with the civil officers to the fullest  
 27 extent, consistent with the accomplishment of the object, for which the  
 28 military personnel were called; the civil officials may express to the com-  
 29 mander of the military personnel the general or specific object which the  
 30 civil officials desire to accomplish, but the tactical direction of the mil-  
 31 itary personnel, the kind and extent of force to be used, and the particular  
 32 means to be employed to accomplish the object specified by the civil offi-  
 33 cers are left solely to the officers in charge of the military personnel. In  
 34 case of ~~any breach of the peace, tumult, riot, resistance to process of this~~  
 35 ~~state, or~~ a state of extreme emergency peril, or imminent danger thereof,  
 36 the sheriff of a county may call for aid upon the commander-in-chief of the  
 37 national guard.

38 SECTION 5. That Section 46-607, Idaho Code, be, and the same is hereby  
 39 amended to read as follows:

40 46-607. PAY ON ACTIVE DUTY -- STATE LIABLE FOR EXPENSES AND CLAIMS. All  
 41 officers and enlisted personnel of the national guard not in the service of  
 42 the United States, while on duty or assembled therefor, pursuant to the or-  
 43 ders of the governor, or any other civil officer authorized by law to make  
 44 such demand on the military forces of the state in case of a state of extreme  
 45 emergency peril, or threats thereof, or whenever called upon in aid of civil

1 authorities, shall receive the same pay and allowances for such service as  
2 that prescribed in section 46-605, Idaho Code; and such compensation and the  
3 necessary expenses incurred in quartering, caring for, warning for duty, and  
4 transporting and subsisting the military personnel as well as the expense  
5 incurred for pay, care and subsistence of officers and enlisted personnel  
6 shall be paid by the state.

7 SECTION 6. An emergency existing therefor, which emergency is hereby  
8 declared to exist, this act shall be in full force and effect on and after its  
9 passage and approval.