

TITLE 46  
MILITIA AND MILITARY AFFAIRS

CHAPTER 6  
MARTIAL LAW AND ACTIVE DUTY

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

(ii) The duly proclaimed existence of conditions threatening persons or property within the state, or any part thereof, caused by such conditions as fire, flood, storm, epidemic, pandemic, volcano, earthquake, violent insurrection, riot, revolt, explosion, cyber attack on critical infrastructure, or other conditions that 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 or result in mass casualties.

(c) "Enemy attack" means an actual attack by terrorists or a foreign nation by terrorism, hostile air raids, or other form of warfare upon the 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 declared state of extreme emergency, the governor shall have authority over all executive agencies and departments 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 exists, subject to the provisions of this section, police power vested in the state by the constitution and the laws of the state of Idaho; provided, however, that the governor's exercise thereof must be limited to promulgation, issuance, and enforcement of written rules and orders necessary to support the national guard, essential to protect life or property, ensure the continuity of the constitutional form of government, or otherwise required to mitigate serious harm created by the conditions giving rise to the state of extreme emergency. Such rules and orders must be narrowly focused without placing unnecessary restrictions on the ability for a person or persons, regardless of job type or classification, to work, provide for their families, or otherwise contribute to the economy of the state of Idaho.

(b) Such rules and orders must, whenever practicable, be prepared in advance of extreme emergency, and the governor shall cause widespread publicity and notice to be given of such rules and orders. Rules and orders issued under the authority of this section must not become operative until the governor proclaims a state of extreme emergency. Such rules and orders shall be filed in the office of the secretary of state as soon as possible after their issuance. A copy of such rules 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 has been proclaimed.

(c) The state of extreme emergency must terminate by either the expiration of the period for which it was proclaimed or the need for said state of extreme emergency has ceased.

(d) Whenever the governor declares a state of extreme emergency encompassing twelve (12) or more counties, the powers granted by the legislature to the governor in paragraph (a) of this subsection shall be revoked on the ninetieth day of the proclaimed state of extreme emergency unless the legislature is in regular session or the governor issues a proclamation convening an extraordinary session of the legislature for the purpose of having the legislature vote on whether to revoke any or all powers granted to the governor in paragraph (a) of this subsection. If the governor elects to issue a proclamation convening an extraordinary session, such proclamation must identify a date for the legislature to convene that is no later than twenty-one (21) days after the issuance of the proclamation. The governor, consistent with section 9, article IV of the constitution of the state of Idaho, may identify additional subjects for legislation during the extraordinary session, including the appropriation of necessary emergency funds.

(e) In the event those conditions giving rise to the state of extreme emergency prevent or render it impracticable for a legislator to participate in the regular or extraordinary session, the legislator shall be replaced by an interim successor designated and qualified in accordance with the emergency interim legislative succession act, as provided in sections [67-413](#) through [67-426](#), Idaho Code.

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

(3) During any proclaimed state of extreme emergency, insurrection, or martial law, neither the governor nor any agency of any governmental entity or political subdivision of the state shall impose or enforce federal restrictions prohibited under Idaho law on the lawful possession, manufacturing, transfer, sale, transport, storage, display, or use of firearms or ammunition or otherwise suspend or unconstitutionally limit 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 emergency, the governor may not alter, adjust, or suspend any provision of the Idaho Code but for good cause may temporarily suspend enforcement of particular provisions that prevent, hinder, or delay necessary action to respond to the state of extreme emergency. The governor shall file a notice describing the temporary suspension of enforcement of any particular provisions with the office of the secretary of state as soon as possible after such suspension, and copies thereof shall be delivered to the speaker of the Idaho house of representatives, the president pro tempore of the Idaho senate, and the chief justice of the Idaho supreme court.

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

46-602. PROCLAMATION OF MARTIAL LAW. Whenever a state of extreme emergency 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 emergency, may by proclamation declare the state, county, or city, or any specified portion thereof, to be in a state of insurrection and may declare martial law therein.

[(46-602) 1927, ch. 261, sec. 4, p. 510; I.C.A., sec. 45-602; am. 1957, ch. 174, sec. 59, p. 312.]

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 extreme emergency, 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, or imminent danger thereof, the sheriff of a county may call for aid upon the commander-in-chief of the national guard.

[(46-604) 1927, ch. 261, sec. 87, p. 510; I.C.A., sec. 45-604; am. 1957, ch. 174, sec. 61, p. 312.]

46-605. PAY ON ACTIVE DUTY. When the national guard or any part thereof is ordered on active duty in the service of the state, the enlisted personnel, the commissioned officers and warrant officers so ordered shall be entitled to the same pay as enlisted personnel, officers and warrant officers of like grade and length of service in the armed forces of the United States and they shall be entitled to the same allowances as enlisted personnel, officers and warrant officers of like grade and length of service in the armed forces of the United States. All payments of pay and allowances under this section shall be made by the adjutant general. No deductions shall be made from the pay of officers or enlisted personnel in active service of the state for dues or other financial obligations imposed by any bylaw, rules or regulations of a civil character. When lodging or meals, or both, cannot be provided by the state, the adjutant general may pay a per diem in addition to the pay and allowances. Nothing in this section shall preclude officers or enlisted personnel in active service of the state from accepting, in lieu of the pay entitlement provided above, greater pay and allowances that may be available from any other government department or agency through cooperative agreement or otherwise.

[(46-605) 1927, ch. 261, sec. 71, p. 510; I.C.A., sec. 45-605; am. 1957, ch. 174, sec. 62, p. 312; am. 1974, ch. 135, sec. 1, p. 1339; am. 1996, ch. 411, sec. 1, p. 1372; am. 2003, ch. 70, sec. 1, p. 236; am. 2014, ch. 55, sec. 1, p. 133.]

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, 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.

[(46-607) 1927, ch. 261, sec. 73, p. 510; I.C.A., sec. 45-607; am. 1957, ch. 174, sec. 64, p. 312; am. 1999, ch. 118, sec. 2, p. 352.]

46-609. OFFICERS AND ENLISTED PERSONNEL ON SPECIAL DUTY -- COMPENSATION AND ALLOWANCES. Officers and enlisted personnel of the national guard may be ordered upon special duty at the direction of the adjutant general, if with their consent, for a period not to exceed seventy-two (72) hours without the approval of the governor, or at the direction of the governor as commander-in-chief, with or without their consent. They shall receive the pay and allowances provided in section [46-605](#), Idaho Code, during the time they may continue upon duty under such order.

[(46-609) 1927, ch. 261, sec. 32, p. 510; I.C.A., sec. 45-609; am. 1957, ch. 174, sec. 66, p. 312; am. 1998, ch. 98, sec. 1, p. 347; am. 2007, ch. 275, sec. 1, p. 805.]