

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

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 135, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

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

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

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

46-1008. THE GOVERNOR AND DISASTER EMERGENCIES. (1) Under this act, the governor may issue executive orders, or proclamations and amend or rescind them if he finds a disaster has occurred or the threat thereof is imminent. Executive orders and proclamations have the force and effect of law; provided, however, that any such orders or proclamations must be essential to protect life or property from the occurrence or imminent threat of the state of disaster emergency. Because all jobs are essential to the economy of the state of Idaho, any orders or proclamations that restrict citizens must be narrowly tailored to the purposes of the disaster emergency, include a specific and limited duration, and may not universally restrict jobholders by job type or classification.

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

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

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

2. The period for which the state of disaster emergency has 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 or proclamations issued by the governor under the authority
6 of this subsection are simultaneously terminated, and the gover-
7 nor must immediately issue a written notice that the state of dis-
8 aster emergency has terminated and that the orders or proclama-
9 tions issued by the governor have also terminated. The notice must
10 be immediately filed and disseminated in the same manner as the
11 executive order or proclamation was filed and disseminated under
12 paragraph (d) of this subsection.

13 (b) A declared state of disaster emergency may not continue or be ex-
14 tended by the governor for longer than sixty (60) days except for the
15 sole purpose of collection processes to receive federal funding, bene-
16 fits, and resources available for the declared disaster emergency. In
17 such a case, those provisions of the governor's order or proclamation
18 necessary for receiving such funding, benefits, or resources shall con-
19 tinue 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 or procla-
22 mation shall expire unless the legislature by concurrent resolution or
23 other legislative action extends the duration of the state of disaster
24 emergency for up to three hundred sixty-five (365) days. The governor
25 may not circumvent the sixty (60) day limitation by redeclaring succes-
26 sive states of disaster emergency for the same emergency in the absence
27 of an extension by the legislature.

28 (c) If, during a state of disaster emergency, the legislature is con-
29 vened in a regular session or has been convened in an extraordinary ses-
30 sion to address the disaster emergency, the legislature may consider
31 any legislation to respond to the disaster emergency, including appro-
32 priating necessary emergency funding. Any orders or proclamations is-
33 sued by the governor under the authority of this section may be termi-
34 nated by concurrent resolution or other legislative action by the leg-
35 islature. Such termination will be binding on the governor, state agen-
36 cies, governmental entities, and political subdivisions; provided that
37 nothing in this section prohibits a city's ability to pass ordinances
38 for the preservation of public health pursuant to section 50-304, Idaho
39 Code. The legislature may by concurrent resolution extend the state of
40 disaster emergency for up to three hundred sixty-five (365) days.

41 (d) All executive orders or proclamations issued under this subsection
42 shall indicate the nature of the disaster, the area or areas threatened,
43 the area subject to the proclamation, the facts establishing a threat
44 to life or property, and the conditions ~~which are~~ causing the disaster.
45 An executive order or proclamation shall be disseminated promptly by
46 means calculated to bring its contents to the attention of the general
47 public and, unless the circumstances attendant upon the disaster pre-
48 vent or impede, be promptly filed with the Idaho office of emergency
49 management, the office of the secretary of state, and the office of the
50 recorder of each county where the state of disaster emergency applies.

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

3 (3) An executive order or proclamation of a state of disaster emergency
 4 shall activate the disaster response and recovery aspects of the state, lo-
 5 cal, and intergovernmental disaster emergency plans applicable to the po-
 6 litical subdivision or area in question and be authority for the deployment
 7 and use of any national guard forces to which the plan or plans apply and for
 8 use or distribution of any supplies, equipment, and materials and facilities
 9 assembled, stockpiled, or arranged to be made available pursuant to this act
 10 or any other provision of law relating to disaster emergencies.

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

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

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

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

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

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

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

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

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

45 (h) Suspend or limit the sale, dispensing or transportation of alco-
 46 holic beverages, explosives except to the extent protected under sub-
 47 section (7) of this section in relation to firearms or ammunition, and
 48 combustibles; and

49 (i) Make provision for the availability and use of temporary emergency
 50 housing.

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

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

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

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

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

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

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

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

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