

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

IN THE SENATE

SENATE BILL NO. 1136, As Amended, As Amended in the House

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO MARTIAL LAW; PROVIDING LEGISLATIVE INTENT; 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. LEGISLATIVE INTENT. Idaho Code grants the Governor the power to proclaim a state of extreme peril and provide the initial response thereto. As a co-equal branch of the government, the Legislature should assist the Governor during such times of extreme peril as a proper check and balance of power when restrictions are placed on Idahoans. When exercising such powers during a state of extreme peril, the government should:

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

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

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

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

(5) Prevent the delegation of government power to nonelected officials.

SECTION 2. 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, which violent 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 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 declared state of extreme emergency peril, the governor shall have complete 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 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 must be essential to protect life or property from the existence of conditions threatening the safety of persons or property within the state and must be narrowly tailored to effectively protect life or property 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. 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

1 ~~be at an end.~~ peril has ceased, whichever is sooner. Any state of ex-  
 2 ~~reme 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 ~~federally declared disaster emergency and if the receipt of such fund-~~  
 7 ~~ing, benefits, or resources does not require the imposition of any~~  
 8 ~~conditions or restrictions prescribed in the proclamation, then the~~  
 9 ~~governor's proclamation shall continue in effect solely for the purpose~~  
 10 ~~of receipt of federal funding, benefits, or resources, and any condi-~~  
 11 ~~tions or restrictions contained in the proclamation shall no longer be~~  
 12 ~~in effect. All other provisions of the proclamation shall expire un-~~  
 13 ~~less the legislature by concurrent resolution extends the duration of~~  
 14 ~~the state of extreme peril. The governor may not circumvent the sixty~~  
 15 ~~(60) day limitation by redeclaring successive states of extreme peril~~  
 16 ~~for the same conditions threatening the safety of persons or property~~  
 17 ~~within the 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 take legislative action 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 taking legislative action under paragraph (c) of this sub-  
 30 section, the governor must then immediately notify the public that the  
 31 state of extreme peril has been modified or terminated. Such notice  
 32 must be filed and publicized in the same manner that the rules or orders  
 33 were 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 additional or enforce federal restrictions prohibited under~~  
 38 ~~Idaho law on the lawful manufacturing, possession, transfer, sale, trans-~~  
 39 ~~port, storage, display, or use of firearms or ammunition or otherwise limit~~  
 40 ~~or suspend any rights guaranteed by the United States constitution or the~~  
 41 ~~constitution of the state of Idaho, including but not limited to the right to~~  
 42 ~~peaceable 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.