

Moved by         Anthon        

Seconded by         Lee        

IN THE SENATE  
SENATE AMENDMENT TO S.B. NO. 1136

AMENDMENT TO THE BILL

1  
2       On page 1 of the printed bill, delete lines 13 through 42; delete page 2;  
3 on page 3, delete lines 1 through 39, and insert:

4       "SECTION 1. LEGISLATIVE INTENT. Idaho Code grants the Governor the  
5 power to proclaim a state of extreme peril and provide the initial response  
6 thereto. As a co-equal branch of the government, the Legislature should  
7 assist the Governor during such times of extreme peril as a proper check and  
8 balance of power when restrictions are placed on Idahoans. When exercising  
9 such powers during a state of extreme peril, the government should:

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

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

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

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

17       (5) Prevent the delegation of government power to nonelected offi-  
18 cials.

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

21       46-601. AUTHORITY OF GOVERNOR.

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

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

27       (i) The duly proclaimed existence of conditions of extreme peril  
28 ~~to threatening~~ the safety of persons ~~and or~~ property within the  
29 state, or any part thereof, caused by an enemy attack or ~~threatened~~  
30 ~~imminent enemy attack; or (b) the~~

31       (ii) The duly proclaimed existence of conditions of extreme  
32 ~~peril to threatening~~ the safety of persons ~~and or~~ property within  
33 the state, or any part thereof, caused by ~~such conditions as air~~  
34 ~~pollution, fire, flood, storm, epidemic, riot or earthquake,~~  
35 violent insurrection, breach of the peace, which violent revolt,  
36 explosion, cyber attack on critical infrastructure, or other con-  
37 ditions that by reason of their magnitude are or are likely to be  
38 beyond the control of the services, personnel, equipment, and fa-

1           cilities of any county, any city, or any city and county or result  
2           in mass casualties.

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

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

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

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

41           (b) The state of extreme emergency has been ended by either peril ~~must~~  
42           terminate by the expiration of the period for which it was proclaimed  
43           or ~~when~~ the need for said state of extreme emergency has ceased, ~~the~~  
44           governor shall declare the period of the state of extreme emergency to  
45           be ~~at an end.~~ peril has ceased, whichever is sooner. Any state of ex-  
46           trême peril in no event shall exceed sixty (60) days without concurrence  
47           of the legislature; provided, however, if the governor ~~must~~ maintain  
48           the proclamation of the state of extreme peril solely for the purpose  
49           of receiving federal funding, benefits, or resources as a result of a  
50           declared disaster emergency and if the receipt of such funding, bene-

1 fits, or resources does not require the imposition of any conditions  
2 or restrictions prescribed in the proclamation, then the governor's  
3 proclamation shall continue in effect solely for the purpose of receipt  
4 of federal funding, benefits, or resources, and any conditions or re-  
5 strictions contained in the proclamation shall no longer be in effect.  
6 All other provisions of the proclamation shall expire unless the leg-  
7 islature by concurrent resolution extends the duration of the state of  
8 extreme peril. The governor may not circumvent the sixty (60) day lim-  
9 itation by redeclaring successive states of extreme peril for the same  
10 conditions threatening the safety of persons or property within the  
11 state in the absence of an extension by the legislature.

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

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

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

37 (4) During any state of extreme peril, the governor may not alter, ad-  
38 just, or suspend any provision of the Idaho Code but for good cause may tem-  
39 porarily suspend enforcement of particular provisions that prevent, hinder,  
40 or delay necessary action to respond to the state of extreme peril. The gov-  
41 ernor shall file a notice describing the temporary suspension of enforcement  
42 of any particular provision with the office of the secretary of state as soon  
43 as possible after such suspension, and copies thereof shall be delivered to  
44 the speaker of the Idaho house of representatives, the president pro tempore  
45 of the Idaho senate, and the chief justice of the Idaho supreme court.

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

49 (6) The provisions of this section are hereby declared to be severable.  
50 If any provision of this section or the application of such provision to any

