

IN THE SENATE

SENATE BILL NO. 1054

BY STATE AFFAIRS COMMITTEE

AN ACT

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

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

11 SECTION 1. That Section 46-601, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 46-601. AUTHORITY OF GOVERNOR.

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

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

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

23 (ii) The duly proclaimed existence of conditions of extreme  
24 peril to threatening the safety of persons and property within the  
25 state, or any part thereof, caused by such conditions as air pol-  
26 lution, fire, flood, storm, epidemic, riot or earthquake, violent  
27 insurrection, breach of the peace, violent revolt, or explosion,  
28 which conditions by reason of their magnitude are or are likely to  
29 be beyond the control of the services, personnel, equipment, and  
30 facilities of any county, any city, or any city and county.

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

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

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

37 (2) (a) ~~During a period of a state of extreme emergency peril,~~ the gov-  
38 ernor shall have complete authority over all agencies of the state gov-  
39 ernment, including all separate boards and commissions, and the right  
40 to exercise within the area or regions wherein the state of extreme  
41 emergency peril exists all police power vested in the state by the con-  
42 stitution and the laws of the state of Idaho. In the; provided, however,

1 that the governor's exercise thereof ~~he is authorized to promulgate,~~  
2 ~~issue and enforce~~ must be limited to promulgation, issuance, and en-  
3 ~~forcement of written rules, regulations and orders which he considers~~  
4 ~~necessary for the protection of necessary to support the national guard~~  
5 ~~or militia and that are essential to protect life and property from~~  
6 ~~violent destruction. Such rules, regulations and orders shall must be~~  
7 ~~essential to protect life or property from the existence of conditions~~  
8 ~~threatening the safety of persons and property within the state. Be-~~  
9 ~~cause all jobs are essential, such rules and orders must not restrict~~  
10 ~~the right of Idahoans to work, provide for their families, and other-~~  
11 ~~wise contribute to the economy of Idaho and must be narrowly tailored~~  
12 ~~to their purposes and not restrict jobholders by job type or classifi-~~  
13 ~~cation. Such rules and orders must, whenever practicable, be prepared~~  
14 ~~in advance of extreme emergency peril, and the governor shall cause~~  
15 ~~widespread publicity and notice to be given of such rules, regulations~~  
16 ~~and orders. Rules, regulations and orders issued under the authority~~  
17 ~~of this section and prepared in advance of a state of extreme emergency~~  
18 ~~shall must not become operative until the governor proclaims a state of~~  
19 ~~extreme emergency peril. Such rules, regulations and orders shall be in~~  
20 ~~writing and shall take effect upon their issuance. They shall be filed~~  
21 ~~in the office of the secretary of state as soon as possible after their~~  
22 ~~issuance. A copy of such rules, regulations and orders shall likewise~~  
23 ~~be filed in the office of the county clerk of each county, any portion of~~  
24 ~~which is included within the area wherein a state of extreme emergency~~  
25 ~~peril has been proclaimed. Whenever the~~

26 (b) The state of extreme emergency has been ended by either peril must  
27 terminate by the expiration of the period for which it was proclaimed or  
28 when the need for said state of extreme emergency has ceased, the gov-  
29 ernor shall declare the period of the state of extreme emergency to be  
30 at an end. peril has ceased, whichever is sooner, and such state of ex-  
31 treame peril in no event shall exceed sixty (60) days unless the governor  
32 extends the state of extreme peril solely for the purpose of receiving  
33 federal funding, benefits, and resources as a result of the declared  
34 disaster emergency, in which case those provisions of the governor's  
35 proclamation necessary for receiving such funding, benefits, or re-  
36 sources shall continue in full force and effect. All other provisions  
37 of the proclamation shall expire unless the legislature by concurrent  
38 resolution extends the duration of the state of extreme peril. The gov-  
39 ernor may not circumvent the sixty (60) day limitation by redeclaring  
40 successive states of extreme peril for the same conditions threatening  
41 the safety of persons and property within the state in the absence of an  
42 extension by the legislature.

43 (c) If the legislature is in a regular session during a state of extreme  
44 peril or in an extraordinary session to address the state of extreme  
45 peril, the legislature may consider any legislation to respond to the  
46 extreme peril, including appropriating necessary emergency funds. The  
47 legislature may terminate the state of extreme peril by concurrent  
48 resolution. Such termination will be binding on the governor, state  
49 agencies, governmental entities, and political subdivisions; pro-  
50 vided that nothing in this section prohibits a city's ability to pass

1 ordinances for the preservation of public health pursuant to section  
 2 50-304, Idaho Code. The legislature may extend the state of extreme  
 3 peril for any number of days.

4 (d) Any rules and orders issued by the governor under the authority  
 5 of this subsection shall be considered administrative rules that may  
 6 be rejected by concurrent resolution, in whole or in part, by the leg-  
 7 islature pursuant to section 29, article III, of the constitution of  
 8 the state of Idaho, where it is determined that the governor's rules or  
 9 orders are not consistent with the legislative intent of this section.  
 10 Upon passage of such concurrent resolution, the governor must then  
 11 immediately notify the public that the state of extreme peril has termi-  
 12 nated and that any rejected rules or orders issued by the governor under  
 13 the authority of this subsection have also terminated. Such notice must  
 14 be filed and publicized in the same manner that the rules or orders were  
 15 filed and publicized under this subsection.

16 (3) During ~~the continuance of~~ any proclaimed state of extreme  
 17 emergency, ~~insurrection, peril~~ or martial law, neither the governor  
 18 nor any agency of any governmental entity or political subdivision of  
 19 the state shall impose or enforce additional restrictions on the lawful  
 20 manufacturing, possession, transfer, sale, transport, storage, display, or  
 21 use of firearms or ammunition or otherwise limit or suspend any rights guar-  
 22 anteed by the United States constitution or the constitution of the state of  
 23 Idaho, including but not limited to the right to peaceable assembly and free  
 24 exercise of religion.

25 (4) During any state of extreme peril, the governor may not alter, ad-  
 26 just, or suspend any provision of the Idaho Code.

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

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

35 SECTION 2. That Section 46-602, Idaho Code, be, and the same is hereby  
 36 amended to read as follows:

37 46-602. PROCLAMATION OF MARTIAL LAW. Whenever a state of extreme  
 38 ~~emergency~~ peril has been proclaimed by the governor, the governor, if in his  
 39 judgment the maintenance of law and order will thereby be promoted, and in  
 40 addition to the proclaiming of said state of extreme ~~emergency~~ peril, may  
 41 by proclamation declare the state, county, or city, or any specified por-  
 42 tion thereof, to be in a state of insurrection and may declare martial law  
 43 therein.

44 SECTION 3. An emergency existing therefor, which emergency is hereby  
 45 declared to exist, this act shall be in full force and effect on and after its  
 46 passage and approval.