

IN THE SENATE

SENATE BILL NO. 1136

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; AMENDING SECTION 46-604, IDAHO CODE, TO REVISE TERMINOL-  
9 OGY; AMENDING SECTION 46-607, IDAHO CODE, TO REVISE TERMINOLOGY; AND  
10 DECLARING AN EMERGENCY.  
11

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

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

15 46-601. AUTHORITY OF GOVERNOR.

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

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

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

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

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

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

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

39 (2) (a) ~~During a period of a state of extreme emergency peril,~~ the gov-  
40 ernor shall have complete authority over all agencies of the state gov-  
41 ernment, including all separate boards and commissions, and the right  
42 to exercise within the area or regions wherein the state of extreme

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

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

46 (c) If the legislature is in a regular session during a state of extreme  
47 peril or in an extraordinary session to address the state of extreme  
48 peril, the legislature may consider any legislation to respond to the  
49 extreme peril, including appropriating necessary emergency funds. The  
50 legislature may terminate the state of extreme peril by concurrent

1 resolution. Such termination will be binding on the governor, state  
 2 agencies, governmental entities, and political subdivisions; pro-  
 3 vided that nothing in this section prohibits a city's ability to pass  
 4 ordinances for the preservation of public health pursuant to section  
 5 50-304, Idaho Code. The legislature may extend the state of extreme  
 6 peril for any number of days.

7 (d) Any orders that restrict the actions of citizens or rules issued by  
 8 the governor under the authority of this subsection shall be considered  
 9 administrative rules that may be rejected by concurrent resolution, in  
 10 whole or in part, by the legislature pursuant to section 29, article  
 11 III, of the constitution of the state of Idaho, where it is determined  
 12 that the governor's rules are not consistent with the legislative in-  
 13 tent of this section.

14 (e) Upon passage of a concurrent resolution under paragraph (c) or (d)  
 15 of this subsection, the governor must then immediately notify the pub-  
 16 lic that the state of extreme peril has terminated or that any rejected  
 17 rules issued by the governor under the authority of this subsection have  
 18 terminated. Such notice must be filed and publicized in the same manner  
 19 that the rules or orders were filed and publicized under paragraph (a)  
 20 of this subsection.

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

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

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

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

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

42 46-602. PROCLAMATION OF MARTIAL LAW. Whenever a state of extreme  
 43 ~~emergency~~ peril has been proclaimed by the governor, the governor, if in his  
 44 judgment the maintenance of law and order will thereby be promoted, and in  
 45 addition to the proclaiming of said state of extreme ~~emergency~~ peril, may by  
 46 proclamation declare the state, county, or city, or any specified portion  
 47 thereof, to be in a state of ~~insurrection~~ extreme peril and may declare mar-  
 48 tial law therein.

1 SECTION 3. That Section 46-604, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 46-604. COOPERATION OF MILITIA WITH CIVIL AUTHORITIES -- CALLING OUT  
4 MILITARY FORCES. When the national guard or the ~~organized~~ militia shall  
5 be ordered into the active service of the state during a state of extreme  
6 ~~emergency~~ peril, or for any other cause, the commanding officer of the  
7 military personnel shall cooperate with the civil officers to the fullest  
8 extent, consistent with the accomplishment of the object, for which the  
9 military personnel were called; the civil officials may express to the com-  
10 mander of the military personnel the general or specific object which the  
11 civil officials desire to accomplish, but the tactical direction of the mil-  
12 itary personnel, the kind and extent of force to be used, and the particular  
13 means to be employed to accomplish the object specified by the civil offi-  
14 cers are left solely to the officers in charge of the military personnel. In  
15 case of ~~any breach of the peace, tumult, riot, resistance to process of this~~  
16 ~~state,~~ or a state of extreme emergency peril, or imminent danger thereof,  
17 the sheriff of a county may call for aid upon the commander-in-chief of the  
18 national guard.

19 SECTION 4. That Section 46-607, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 46-607. PAY ON ACTIVE DUTY -- STATE LIABLE FOR EXPENSES AND CLAIMS. All  
22 officers and enlisted personnel of the national guard not in the service of  
23 the United States, while on duty or assembled therefor, pursuant to the or-  
24 ders of the governor, or any other civil officer authorized by law to make  
25 such demand on the military forces of the state in case of a state of extreme  
26 ~~emergency~~ peril, or threats thereof, or whenever called upon in aid of civil  
27 authorities, shall receive the same pay and allowances for such service as  
28 that prescribed in section 46-605, Idaho Code; and such compensation and the  
29 necessary expenses incurred in quartering, caring for, warning for duty, and  
30 transporting and subsisting the military personnel as well as the expense  
31 incurred for pay, care and subsistence of officers and enlisted personnel  
32 shall be paid by the state.

33 SECTION 5. An emergency existing therefor, which emergency is hereby  
34 declared to exist, this act shall be in full force and effect on and after its  
35 passage and approval.