

IN THE SENATE

SENATE BILL NO. 1080

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO COUNTY OFFICERS; AMENDING SECTION 31-1607, IDAHO CODE, TO REVISE PROVISIONS RELATING TO AN ACTION AGAINST COUNTY OFFICIALS, COUNTY COMMISSIONERS OR AUDITORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 20, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-2002, IDAHO CODE, TO PROVIDE FOR DUTIES OF THE ATTORNEY GENERAL RELATING TO PRELIMINARY INVESTIGATIONS AND ACTIONS AGAINST COUNTY ELECTED OFFICERS; AMENDING SECTION 31-2227, IDAHO CODE, TO PROVIDE A CERTAIN EXCEPTION RELATING TO THE PRIMARY RESPONSIBILITY FOR ENFORCING PENAL LAWS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-2347, IDAHO CODE, TO PROVIDE THAT THE ATTORNEY GENERAL SHALL HAVE THE DUTY TO ENFORCE A CERTAIN ACT WITH RESPECT TO CERTAIN VIOLATIONS COMMITTED BY MEMBERS OF A BOARD OF COUNTY COMMISSIONERS.

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

SECTION 1. That Section 31-1607, Idaho Code, be, and the same is hereby amended to read as follows:

31-1607. EXPENDITURES FINANCED BY BOND ISSUE -- EXPENDITURES IN EXCESS OF APPROPRIATIONS -- LIABILITY OF OFFICERS. (1) Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no such expenditures shall be made or incurred until such bonds have been duly authorized and the proceeds therefrom are available.

(2) Expenditures made, liabilities incurred or warrants issued in excess of any of the budget appropriations, or as revised by transfer as herein provided, shall not be a liability of the county, but the official making or incurring such liability, expenditure, or issuing such warrant shall be liable therefor personally and upon his official bond, as is hereinafter provided. The county auditor shall issue no warrant and the county commissioners shall approve no claim for any expenditure in excess of said budget appropriations or as revised under the provisions hereof, except upon an order of a court of competent jurisdiction, or for emergencies as hereinafter provided. Any county officer creating any liability or any county commissioner or commissioners, or county auditor approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall be liable to the county for the amount of such claim or warrant which amount shall be recovered by action against such county official, elective or appointive, county commissioner or commissioners or auditor, or all of them and their several sureties on their official bonds. It shall be the duty of the ~~prosecuting attorney of such county~~ attorney general to bring such action in the name of said county in any court of competent jurisdiction; provided, that no action shall be maintained or prosecuted for any liability heretofore or hereafter incurred under the provisions of chapter 232, ~~of the Idaho Session Laws, of~~ 1927, as amended by chapter 138, ~~of the Idaho Session~~

1 Laws, of 1929, upon any state of facts which will not support an action under
2 the provisions of this act.

3 SECTION 2. That Chapter 20, Title 31, Idaho Code, be, and the same is
4 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
5 ignated as Section 31-2002, Idaho Code, and to read as follows:

6 31-2002. PRELIMINARY INVESTIGATIONS AND ACTIONS AGAINST COUNTY
7 ELECTED OFFICERS -- DUTIES OF ATTORNEY GENERAL. (1) Notwithstanding any
8 provision of law to the contrary, the attorney general shall conduct a pre-
9 liminary investigation in the following circumstances:

10 (a) Upon any allegation of a violation of state law by a county elected
11 officer in his or her official capacity; and

12 (b) Upon any allegation of a violation of state law, civil or criminal,
13 brought against a county elected officer for violation of state law in
14 his or her official capacity.

15 (2) Upon completion of the preliminary investigation, the attorney
16 general may:

17 (a) Issue a finding of no further action necessary;

18 (b) Prescribe training or other nonjudicial remedies; or

19 (c) Issue a finding that further investigation or prosecution is war-
20 ranted, provided that:

21 (i) The attorney general shall perform such further investigation
22 and, if warranted, prosecute when local resources are unavailable
23 and adequate resources are available within the office of the at-
24 torney general; and

25 (ii) In all other matters, the attorney general may refer a rec-
26 ommendation for further investigation or prosecution back to the
27 county prosecutor who shall seek appointment of a special prosecu-
28 tor.

29 SECTION 3. That Section 31-2227, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 31-2227. ENFORCEMENT OF PENAL LAWS -- PRIMARY RESPONSIBILITY. (1) Ir-
32 respective of police powers vested by statute in state, county, and municipi-
33 pal officers, and except where otherwise provided in section 31-2002, Idaho
34 Code, it is hereby declared to be the policy of the state of Idaho that the
35 primary duty of enforcing all the penal provisions of any and all statutes of
36 this state, in any court, is vested in the sheriff and prosecuting attorney
37 of each of the several counties. When, in the judgment of such county offi-
38 cers, they need assistance from municipal peace officers within the county,
39 they are authorized and directed to call for such assistance and such local
40 officers shall render such assistance.

41 (2) When, in the judgment of such county officers, advice and/or as-
42 sistance is needed which is not available in the county, the sheriff and/or
43 the prosecuting attorney are directed to call upon the Idaho state police for
44 such advice and assistance and the department shall render such cooperative
45 service. Whenever in the opinion of the governor any peace officer of this
46 state refuses to offer assistance when requested to do so, or refuses to per-
47 form any duty enjoined upon him by the penal statutes of this state, the gov-

ernor shall direct the attorney general to commence action under chapter 41, title 19, Idaho Code, to remove such officer from office.

(3) When in the judgment of the governor the penal laws of this state are not being enforced as written, in any county, or counties, in this state, he may direct the director of the Idaho state police to act independently of the sheriff and prosecuting attorney in such county, or counties, to execute and enforce such penal laws. In such an instance, the attorney general shall exclusively exercise all duties, rights and responsibilities of the prosecuting attorney.

SECTION 4. That Section 67-2347, Idaho Code, be, and the same is hereby amended to read as follows:

67-2347. VIOLATIONS. (1) If an action, or any deliberation or decision making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed fifty dollars (\$50.00).

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners ~~or~~, then the attorney general shall have the duty to enforce this act. If for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of sections 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meet-

1 ing that failed to comply with the provisions of this act. Any other suit
2 brought under the provisions of this section shall be commenced within one
3 hundred eighty (180) days of the time of the violation or alleged violation
4 of the provisions of this act.

5 (7) (a) A violation may be cured by a public agency upon:

6 (i) The agency's self-recognition of a violation; or

7 (ii) Receipt by the secretary or clerk of the public agency of
8 written notice of an alleged violation. A complaint filed and
9 served upon the public agency may be substituted for other forms of
10 written notice. Upon notice of an alleged open meeting violation,
11 the governing body shall have fourteen (14) days to respond pub-
12 licly and either acknowledge the open meeting violation and state
13 an intent to cure the violation or state that the public agency
14 has determined that no violation has occurred and that no cure is
15 necessary. Failure to respond shall be treated as a denial of any
16 violation for purposes of proceeding with any enforcement action.

17 (b) Following the public agency's acknowledgment of a violation pur-
18 suant to paragraph (a) (i) or (a) (ii) of this subsection, the public
19 agency shall have fourteen (14) days to cure the violation by declaring
20 that all actions taken at or resulting from the meeting in violation of
21 this act void.

22 (c) All enforcement actions shall be stayed during the response and
23 cure period but may recommence at the discretion of the complainant af-
24 ter the cure period has expired.

25 (d) A cure as provided in this section shall act as a bar to the impo-
26 sition of the civil penalty provided in subsection (2) of this section.
27 A cure of a violation as provided in subsection (7) (a) (i) of this sec-
28 tion shall act as a bar to the imposition of any civil penalty provided
29 in subsection (4) of this section.