

IN THE SENATE

SENATE BILL NO. 1080, As Amended in the House

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO COUNTY OFFICERS; AMENDING SECTION 31-1607, IDAHO CODE, TO RE-
2 VISE PROVISIONS RELATING TO AN ACTION AGAINST COUNTY OFFICIALS, COUNTY
3 COMMISSIONERS OR AUDITORS AND TO MAKE TECHNICAL CORRECTIONS; AMEND-
4 ING CHAPTER 20, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
5 31-2002, IDAHO CODE, TO PROVIDE FOR DUTIES OF THE ATTORNEY GENERAL
6 RELATING TO PRELIMINARY INVESTIGATIONS AND ACTIONS AGAINST COUNTY
7 ELECTED OFFICERS; AMENDING SECTION 31-2227, IDAHO CODE, TO PROVIDE A
8 CERTAIN EXCEPTION RELATING TO THE PRIMARY RESPONSIBILITY FOR ENFORC-
9 ING PENAL LAWS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION
10 67-2347, IDAHO CODE, TO PROVIDE THAT THE ATTORNEY GENERAL SHALL HAVE THE
11 DUTY TO ENFORCE A CERTAIN ACT WITH RESPECT TO CERTAIN VIOLATIONS COMMIT-
12 TED BY MEMBERS OF A BOARD OF COUNTY COMMISSIONERS.
13

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

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

17 31-1607. EXPENDITURES FINANCED BY BOND ISSUE -- EXPENDITURES IN EX-
18 CESS OF APPROPRIATIONS -- LIABILITY OF OFFICERS. (1) Where any budget shall
19 contain an expenditure program to be financed from a bond issue to be autho-
20 rized thereafter, no such expenditures shall be made or incurred until such
21 bonds have been duly authorized and the proceeds therefrom are available.

22 (2) Expenditures made, liabilities incurred or warrants issued in ex-
23 cess of any of the budget appropriations, or as revised by transfer as herein
24 provided, shall not be a liability of the county, but the official making or
25 incurring such liability, expenditure, or issuing such warrant shall be li-
26 able therefor personally and upon his official bond, as is hereinafter pro-
27 vided. The county auditor shall issue no warrant and the county commission-
28 ers shall approve no claim for any expenditure in excess of said budget ap-
29 propriations or as revised under the provisions hereof, except upon an order
30 of a court of competent jurisdiction, or for emergencies as hereinafter pro-
31 vided. Any county officer creating any liability or any county commissioner
32 or commissioners, or county auditor approving any claim or issuing any war-
33 rant in excess of any such budget appropriation, except as above provided,
34 shall be liable to the county for the amount of such claim or warrant which
35 amount shall be recovered by action against such county official, elective
36 or appointive, county commissioner or commissioners or auditor, or all of
37 them and their several sureties on their official bonds. It shall be the duty
38 of the ~~prosecuting attorney of such county~~ attorney general to bring such ac-
39 tion in the name of said county in any court of competent jurisdiction; pro-
40 vided, that no action shall be maintained or prosecuted for any liability
41 heretofore or hereafter incurred under the provisions of chapter 232, ~~of the~~
42 ~~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 the attorney general shall refer a recommendation
21 for further investigation or prosecution back to the county prosecutor
22 who shall seek appointment of a special prosecutor.

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

25 31-2227. ENFORCEMENT OF PENAL LAWS -- PRIMARY RESPONSIBILITY. (1) Ir-
26 respective of police powers vested by statute in state, county, and municip-
27 al officers, and except where otherwise provided in section 31-2002, Idaho
28 Code, it is hereby declared to be the policy of the state of Idaho that the
29 primary duty of enforcing all the penal provisions of any and all statutes of
30 this state, in any court, is vested in the sheriff and prosecuting attorney
31 of each of the several counties. When, in the judgment of such county offi-
32 cers, they need assistance from municipal peace officers within the county,
33 they are authorized and directed to call for such assistance and ~~such~~ local
34 officers shall render ~~such~~ assistance.

35 (2) When, in the judgment of such county officers, advice and/or as-
36 sistance is needed which is not available in the county, the sheriff and/or
37 the prosecuting attorney are directed to call upon the Idaho state police for
38 such advice and assistance and the department shall render such cooperative
39 service. Whenever in the opinion of the governor any peace officer of this
40 state refuses to offer assistance when requested to do so, or refuses to per-
41 form any duty enjoined upon him by the penal statutes of this state, the gov-
42 ernor shall direct the attorney general to commence action under chapter 41,
43 title 19, Idaho Code, to remove such officer from office.

44 (3) When in the judgment of the governor the penal laws of this state are
45 not being enforced as written, in any county, or counties, in this state, he
46 may direct the director of the Idaho state police to act independently of the
47 sheriff and prosecuting attorney in such county, or counties, to execute and

1 enforce such penal laws. In such an instance, the attorney general shall ex-
 2 clusively exercise all duties, rights and responsibilities of the prosecut-
 3 ing attorney.

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

6 67-2347. VIOLATIONS. (1) If an action, or any deliberation or decision
 7 making that leads to an action, occurs at any meeting which fails to comply
 8 with the provisions of sections 67-2340 through 67-2346, Idaho Code, such
 9 action shall be null and void.

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

14 (3) Any member of a governing body who knowingly violates the provi-
 15 sions of this act shall be subject to a civil penalty not to exceed five hun-
 16 dred dollars (\$500).

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

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

33 (6) Any person affected by a violation of the provisions of this act may
 34 commence a civil action in the magistrate division of the district court of
 35 the county in which the public agency ordinarily meets, for the purpose of
 36 requiring compliance with provisions of this act. No private action brought
 37 pursuant to this subsection shall result in the assessment of a civil penalty
 38 against any member of a public agency and there shall be no private right of
 39 action for damages arising out of any violation of the provisions of sections
 40 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of
 41 having an action declared or determined to be null and void pursuant to sub-
 42 section (1) of this section shall be commenced within thirty (30) days of the
 43 time of the decision or action that results, in whole or in part, from a meet-
 44 ing that failed to comply with the provisions of this act. Any other suit
 45 brought under the provisions of this section shall be commenced within one
 46 hundred eighty (180) days of the time of the violation or alleged violation
 47 of the provisions of this act.

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

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

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

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

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

19 (d) A cure as provided in this section shall act as a bar to the impo-
20 sition of the civil penalty provided in subsection (2) of this section.
21 A cure of a violation as provided in subsection (7) (a) (i) of this sec-
22 tion shall act as a bar to the imposition of any civil penalty provided
23 in subsection (4) of this section.