

IN THE SENATE

SENATE BILL NO. 1104

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO MAGISTRATES; AMENDING SECTION 1-2205, IDAHO CODE, TO REMOVE A
2 CERTAIN POWER OF THE DISTRICT MAGISTRATES COMMISSION; AMENDING SEC-
3 TION 1-2206, IDAHO CODE, TO PROVIDE A CODE REFERENCE; AMENDING SECTION
4 1-2207, IDAHO CODE, TO PROVIDE FOR THE APPOINTMENT OF MAGISTRATES WHEN
5 CERTAIN VACANCIES OCCUR, TO PROVIDE FOR THE REASSIGNMENT OF CERTAIN
6 MAGISTRATES, TO PROVIDE THAT THE SUPREME COURT SHALL SUBMIT A CER-
7 TAIN REPORT AND TO PROVIDE THAT THE SUPREME COURT MAY REQUEST CERTAIN
8 APPROVAL AND APPROPRIATIONS AND TO MAKE A TECHNICAL CORRECTION; AND
9 AMENDING SECTION 1-2220, IDAHO CODE, TO PROVIDE A CORRECT CODE REFER-
10 ENCE.
11

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

13 SECTION 1. That Section 1-2205, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 1-2205. DISTRICT MAGISTRATES COMMISSION -- POWERS AND DUTIES. (1) The
16 district magistrates commission shall have the following powers and duties:

17 ~~(a) To determine the number and location of magistrate judges to be~~
18 ~~appointed within the judicial district, subject to appropriations by~~
19 ~~the legislature, pursuant to section 1-2215, Idaho Code; provided, that~~
20 ~~there shall be at least one (1) resident magistrate judge appointed~~
21 ~~in each county, except for those counties in which the board of county~~
22 ~~commissioners, at any time, has adopted by majority vote, without~~
23 ~~subsequent rescission, a resolution waiving the right to a resident~~
24 ~~magistrate judge, pursuant to section 31-879, Idaho Code;~~

25 ~~(b) To appoint the magistrate judges within the district on a nonparti-~~
26 ~~san merit basis, except as provided in section 1-2220, Idaho Code;~~

27 (e) To conduct studies for the improvement of the administration of
28 justice within the district and to make recommendations for improve-
29 ments therein to the legislature, the supreme court, the district court
30 and such other governmental agencies as may be interested in or affected
31 by such recommendations.

32 (2) The actions of the commission pursuant to subsections ~~(a)~~ and ~~(b)~~
33 of this section shall be subject to disapproval by a majority of the district
34 judges in the district within thirty (30) days after written notice to the
35 district judges of the commission's actions, unless such time be extended
36 for good cause by order of the supreme court.

37 SECTION 2. That Section 1-2206, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 1-2206. MAGISTRATES -- QUALIFICATIONS -- INSTITUTE -- EXCEPTIONS --
40 OFFICE APPOINTIVE. (1) A magistrate shall be an elector of the state of Idaho

1 and shall reside in the county for which the appointment is made, or in the
 2 county to which the magistrate is reassigned as provided in section 1-2207,
 3 Idaho Code, throughout the term of service as magistrate.

4 (2) To be appointed to the office of magistrate judge a person must, at
 5 the time of such appointment, meet all of the following qualifications:

6 (a) Be at least thirty (30) years of age;

7 (b) Be a citizen of the United States;

8 (c) Have been a legal resident of the state of Idaho for at least two (2)
 9 continuous years immediately preceding such appointment;

10 (d) Have been in good standing as an active or judicial member of the
 11 Idaho state bar for at least two (2) continuous years immediately pre-
 12 ceding such appointment; and

13 (e) Have held a license to practice law or held a judicial office in one
 14 (1) or more jurisdictions for at least five (5) continuous years immedi-
 15 ately preceding such appointment.

16 For purposes of this section, the following terms have the following
 17 meanings:

18 (a) "Active," "judicial" and "good standing" have the same definitions
 19 as those terms are given by rule 301 of the Idaho bar commission rules or
 20 any successors to those rules;

21 (b) "Jurisdiction" means a state or territory of the United States, the
 22 District of Columbia or any branch of the United States military; and

23 (c) "Elector" means one who is lawfully registered to vote.

24 (3) Magistrates shall not take office for the first time as magistrates
 25 until they have attended an institute on the duties and functioning of the
 26 magistrate's office to be held under the supervision of the supreme court,
 27 unless such attendance is waived by the supreme court. All magistrates shall
 28 be entitled to their actual and necessary expenses while attending insti-
 29 tutes. The supreme court will establish the institute to which this subsec-
 30 tion refers and will provide that the institute be held at such other times
 31 and for such other purposes as it deems necessary and may require the atten-
 32 dance of magistrates.

33 (4) Notwithstanding the provisions of subsection (2) of this section,
 34 all magistrates holding office on the effective date of this act shall be el-
 35 igible for appointment to the office of magistrate and for retention in of-
 36 fice pursuant to section 1-2220, Idaho Code.

37 SECTION 3. That Section 1-2207, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 1-2207. MAGISTRATES -- TERM -- REMOVAL -- VACANCIES -- REASSIGN-
 40 MENT. (1) The term of office of a magistrate shall be four (4) years. The term
 41 of office of a magistrate shall begin on the second Monday of January of the
 42 odd-numbered year next succeeding his election.

43 (2) Whenever a vacancy in the office of magistrate occurs in a county
 44 having less than four-tenths of one percent (0.4%) of the population of
 45 the state, as reported in the most recent decennial census conducted by
 46 the United States census bureau, the supreme court may determine whether
 47 the vacancy shall be filled by the appointment of a resident magistrate for
 48 the county where the vacancy occurred, or by the appointment of a resident
 49 magistrate for a different county within the judicial district. Such de-

1 termination shall be based on the population and caseloads in the counties
2 within the judicial district and shall reflect the allocation of judicial
3 resources that, in the supreme court's judgment, will best ensure the ef-
4 fective and timely administration of justice. The determination shall be
5 made following consultation with the district magistrates commission of the
6 judicial district and with the boards of county commissioners of the county
7 where the vacancy has occurred and the county to which the supreme court is
8 considering reassignment of the magistrate position.

9 (3) The supreme court may reassign a resident magistrate from a county
10 having less than four-tenths of one percent (0.4%) of the population of
11 the state, as reported in the most recent decennial census conducted by the
12 United States census bureau, to another county within the judicial district.
13 Such reassignment shall be based on the population and caseloads in the
14 counties within the judicial district and shall reflect the allocation of
15 judicial resources that, in the supreme court's judgment, will best ensure
16 the effective and timely administration of justice. The reassignment shall
17 be made following consultation with the district magistrates commission of
18 the judicial district, and with the boards of county commissioners of the
19 county where the vacancy has occurred and the county to which the supreme
20 court is considering reassignment of the magistrate position, and only with
21 the consent of the magistrate who is being reassigned. From the date on
22 which the reassignment becomes effective, the magistrate shall reside in the
23 county to which the magistrate has been reassigned and shall stand for any
24 subsequent retention election pursuant to section 1-2220, Idaho Code, in the
25 county to which the magistrate has been reassigned. Such reassignment shall
26 cause no alteration in the length of the term that the magistrate is serving.

27 (4) Not later than October 1 of the year preceding the first legislative
28 session following each decennial census conducted by the United States cen-
29 sus bureau, the supreme court shall submit a report to the senate judiciary
30 and rules committee and the house judiciary, rules and administration com-
31 mittee making recommendations regarding the provisions of subsections (2)
32 and (3) of this section allowing the supreme court to reassign magistrate po-
33 sitions existing only in those counties having less than four-tenths of one
34 percent (0.4%) of the population of the state, which shall include recommen-
35 dations as to whether those provisions best serve the timely and efficient
36 administration of justice, or whether a different percentage of the popula-
37 tion should be established for this purpose.

38 (5) Vacancies in the office of magistrate shall be filled by appoint-
39 ment pursuant to section 1-2205, Idaho Code.

40 (36) Any magistrate appointed pursuant to section 1-2205, Idaho Code,
41 and subsection (25) of this section, shall exercise the authority of a mag-
42 istrate from the date of taking office. A magistrate appointed after the
43 effective date of this act may be removed from office within eighteen (18)
44 months of his appointment by majority vote of all the voting members of the
45 district magistrates commission without cause in accordance with procedures
46 to be established by rules of the Ssupreme Ccourt.

47 (47) A magistrate may be removed from office before the expiration of
48 the term to which he was appointed or elected as provided by section 1-2103A,
49 Idaho Code.

1 (8) In addition to the other provisions of this chapter, the supreme
2 court may request approval and appropriations for additional magistrate po-
3 sitions.

4 SECTION 4. That Section 1-2220, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 1-2220. RETENTION OR NONRETENTION OF MAGISTRATE BY VOTE. Any magis-
7 trate appointed pursuant to the provisions of section 1-2205, Idaho Code,
8 and section 1-2207(25), Idaho Code, shall stand for office in the first
9 general election next succeeding the expiration of the eighteen (18) month
10 period established pursuant to section 1-2207, Idaho Code. Any magistrate
11 may, not less than ninety (90) days prior to the holding of the general elec-
12 tion next preceding the expiration of his term of office, file in the office
13 of the county clerk of the county for which he is a resident magistrate,
14 accompanied by a filing fee of forty dollars (\$40.00), a declaration of
15 candidacy to succeed himself. If a declaration is not so filed by any magis-
16 trate, the vacancy resulting from the expiration of his term of office shall
17 be filled by appointment as herein provided, except that any magistrate who
18 does not file shall be ineligible for appointment within the same judicial
19 district until two (2) years following the expiration of his last term of
20 office have expired. If such a declaration is filed, his name shall be sub-
21 mitted at the next general election to the voters eligible to vote within the
22 county for which he is appointed, on a nonpartisan judicial ballot, without
23 party designation, which shall read:

24 "Shall Magistrate (Here insert the name of the magistrate) of
25 (Here insert the name of the county) County of the (Here insert the ju-
26 dicial district number) Judicial District be retained in office?" (Here pro-
27 vision is to be made for voting "Yes" or "No.")

28 The votes shall be canvassed as provided in chapter 12, title 34, Idaho
29 Code.

30 If a majority of those voting on the question vote against retaining him
31 in office, upon the expiration of his term of office, a vacancy shall exist
32 which shall be filled by appointment as provided in section 1-2205, Idaho
33 Code, except that the magistrate not retained in office shall be ineligible
34 for appointment within the same judicial district until two (2) years fol-
35 lowing the expiration of his last term of office have expired.

36 If a majority of those voting on the question vote for retaining him in
37 office, the county clerk shall issue him a certificate of election as pro-
38 vided in section 34-1209, Idaho Code, and said magistrate shall, unless re-
39 moved for cause, remain in office for an additional term of four (4) years,
40 and at the expiration of each such four (4) year term shall be eligible for
41 retention in office by election in the manner herein prescribed.