

IN THE SENATE

SENATE BILL NO. 1362

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO OPEN MEETINGS; AMENDING SECTION 31-2002, IDAHO CODE, TO PROVIDE  
2 AN EXCEPTION; AMENDING SECTION 67-1401, IDAHO CODE, TO PROVIDE THAT THE  
3 ATTORNEY GENERAL SHALL HAVE A CERTAIN DUTY REGARDING OPEN MEETINGS;  
4 AND AMENDING SECTION 74-208, IDAHO CODE, TO PROVIDE THAT THE PROSECUT-  
5 ING ATTORNEY OR BOARD OF COUNTY COMMISSIONERS SHALL PROVIDE WRITTEN  
6 NOTICE REGARDING OPEN MEETING VIOLATIONS IN CERTAIN INSTANCES AND TO  
7 PROVIDE FOR A PETITION TO THE OFFICE OF THE ATTORNEY GENERAL IN CERTAIN  
8 INSTANCES.  
9

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

11 SECTION 1. That Section 31-2002, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 31-2002. INVESTIGATIONS AND ACTIONS AGAINST COUNTY ELECTED OFFICERS  
14 -- DUTIES OF ATTORNEY GENERAL. (1) Notwithstanding any provision of law to  
15 the contrary, the attorney general may conduct an investigation of any alle-  
16 gation of a violation of state criminal law, against a county officer occu-  
17 pying an elective office for violation of state criminal law in his official  
18 capacity.

19 (2) Upon completion of the investigation, the attorney general shall:

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

21 (b) Suggest training or other nonjudicial remedies; or

22 (c) Determine that further investigation or prosecution is warranted  
23 and retain the matter and act as special prosecutor.

24 (3) In furtherance of the duty to conduct investigations set forth in  
25 the provisions of this section, the attorney general shall have the author-  
26 ity to issue subpoenas for the production of documents or tangible things  
27 that may be relevant to such investigations.

28 (4) Except as provided in section 74-208, Idaho Code, tThe provisions  
29 of this section shall not apply to any alleged violations of the open meet-  
30 ings law as codified in chapter 2, title 74, Idaho Code.

31 (5) For purposes of this section, a county officer occupying an elec-  
32 tive office shall be deemed to have performed an act in his "official capac-  
33 ity" when such act takes place while the officer is working or claims to be  
34 working on behalf of his employer at his workplace or elsewhere, while the  
35 officer is at his workplace whether or not he is working at the time, involves  
36 the use of public property or equipment of any kind or involves the expendi-  
37 ture of public funds.

38 SECTION 2. That Section 67-1401, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

1           67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in  
2 this chapter, it is the duty of the attorney general:

3           (1) To perform all legal services for the state and to represent the  
4 state and all departments, agencies, offices, officers, boards, commis-  
5 sions, institutions and other state entities, in all courts and before all  
6 administrative tribunals or bodies of any nature. Representation shall be  
7 provided to those entities exempted pursuant to the provisions of section  
8 67-1406, Idaho Code. Whenever required to attend upon any court or adminis-  
9 trative tribunal, the attorney general shall be allowed necessary and actual  
10 expenses, all claims for which shall be audited by the state board of exam-  
11 iners.

12           (2) To advise all departments, agencies, offices, officers, boards,  
13 commissions, institutions and other state entities in all matters involving  
14 questions of law.

15           (3) After judgment in any of the causes referred to in this chapter, to  
16 direct the issuing of such process as may be necessary to carry the same into  
17 execution.

18           (4) To account for and pay over to the proper officer all moneys re-  
19 ceived which belong to the state.

20           (5) To supervise nonprofit corporations, corporations, charitable or  
21 benevolent societies, person or persons holding property subject to any pub-  
22 lic or charitable trust and to enforce whenever necessary any noncompliance  
23 or departure from the general purpose of such trust and, in order to accom-  
24 plish such purpose, said nonprofit corporations, corporations, charitable  
25 or benevolent societies, person or persons holding property subject to any  
26 public or charitable trust are subject at all times to examination by the at-  
27 torney general, on behalf of the state, to ascertain the condition of its af-  
28 fairs and to what extent, if at all, said trustee or trustees may have failed  
29 to comply with trusts said trustee or trustees have assumed or may have de-  
30 parted from the general purpose for which it was formed. In case of any such  
31 failure or departure, the attorney general shall institute, in the name of  
32 the state, any proceeding necessary to enforce compliance with the terms of  
33 the trust or any departure therefrom.

34           (6) To give an opinion in writing, without fee, to the legislature or  
35 either house thereof, or any senator or representative, and to the gover-  
36 nor, secretary of state, treasurer, state controller, and the superinten-  
37 dent of public instruction, when requested, upon any question of law relat-  
38 ing to their respective offices. The attorney general shall keep a record of  
39 all written opinions rendered by the office and such opinions shall be com-  
40 piled annually and made available for public inspection. All costs incurred  
41 in the preparation of said opinions shall be borne by the office of the attor-  
42 ney general. A copy of the opinions shall be furnished to the supreme court  
43 and to the state librarian.

44           (7) When required by the public service, to repair to any county in the  
45 state and assist the prosecuting attorney thereof in the discharge of du-  
46 ties.

47           (8) To bid upon and purchase, when necessary, in the name of the state,  
48 and under the direction of the state controller, any property offered for  
49 sale under execution issued upon judgments in favor of or for the use of the

1 state, and to enter satisfaction in whole or in part of such judgments as the  
2 consideration for such purchases.

3 (9) Whenever the property of a judgment debtor in any judgment men-  
4 tioned in subsection (8) of this section has been sold under a prior judg-  
5 ment, or is subject to any judgment, lien, or encumbrance, taking precedence  
6 of the judgment in favor of the state, under the direction of the state  
7 controller, to redeem such property from such prior judgment, lien, or en-  
8 cumbrance; and all sums of money necessary for such redemption must, upon the  
9 order of the board of examiners, be paid out of any money appropriated for  
10 such purposes.

11 (10) When necessary for the collection or enforcement of any judgment  
12 hereinbefore mentioned, to institute and prosecute, in behalf of the state,  
13 such suits or other proceedings as may be necessary to set aside and annul all  
14 conveyances fraudulently made by such judgment debtors; the cost necessary  
15 to the prosecution must, when allowed by the board of examiners, be paid out  
16 of any appropriations for the prosecution of delinquents.

17 (11) To exercise all the common law power and authority usually apper-  
18 taining to the office and to discharge the other duties prescribed by law.

19 (12) To report to the governor, at the time required by this section, the  
20 condition of the affairs of the attorney general's office and of the reports  
21 received from prosecuting attorneys.

22 (13) To appoint deputy attorneys general and special deputy attorneys  
23 general and other necessary staff to assist in the performance of the du-  
24 ties of the office. Such deputies and staff shall be nonclassified employees  
25 within the meaning of section 67-5302, Idaho Code.

26 (14) To establish a medicaid fraud control unit pursuant to the provi-  
27 sions of section 56-226, Idaho Code, and to exercise concurrent investiga-  
28 tive and prosecutorial authority and responsibility with county prosecutors  
29 to prosecute persons for the violation of the criminal provisions of chap-  
30 ter 2, title 56, Idaho Code, and for criminal offenses that are not defined  
31 in said chapter 2, title 56, Idaho Code, but that involve or are directly re-  
32 lated to the use of medicaid program funds or services provided through the  
33 medicaid program.

34 (15) To seek injunctive and any other appropriate relief as expedi-  
35 tiously as possible to preserve the rights and property of the residents of  
36 the state of Idaho, and to defend as necessary the state of Idaho, its offi-  
37 cials, employees and agents in the event that any law or regulation violating  
38 the public policy set forth in the Idaho health freedom act, chapter 90,  
39 title 39, Idaho Code, is enacted by any government, subdivision or agency  
40 thereof.

41 (16) To establish an internet crimes against children unit pursuant to  
42 the provisions of section 67-1410, Idaho Code, and to exercise concurrent  
43 investigative and prosecutorial authority and responsibility with county  
44 prosecutors to prosecute persons for the violation of the criminal provi-  
45 sions of sections 18-1507, 18-1509A, 18-1513 and 18-1515, Idaho Code, which  
46 may also encompass criminal offenses that are not defined in said sections  
47 but that involve or are directly related to child pornography and sollicita-  
48 tion of minors for pornography, prostitution or sex-related offenses.

49 (17) To respond to allegations of violation of state law by elected  
50 county officers, to investigate such claims, to issue appropriate findings

1 and to refer such cases for further investigation and prosecution pursuant  
2 to section 31-2002, Idaho Code.

3 (18) To establish a sobriety and drug monitoring program to reduce the  
4 number of people on Idaho's highways who drive under the influence of alco-  
5 hol or drugs, reduce the number of repeat offenders for certain offenses in  
6 which the abuse of alcohol or drugs was a contributing factor, and increase  
7 pretrial and posttrial options for prosecutors and judges in responding to  
8 repeat DUI offenders and offenders for certain crimes in which the abuse of  
9 alcohol or drugs was a contributing factor in the commission of the crime,  
10 and to adopt such rules and establish such fees as are necessary for the oper-  
11 ation of said program, as set forth by law.

12 (19) To hear petitions relating to the open meetings law pursuant to  
13 section 74-208(6), Idaho Code.

14 SECTION 3. That Section 74-208, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 74-208. VIOLATIONS. (1) If an action, or any deliberation or decision-  
17 making that leads to an action, occurs at any meeting which fails to comply  
18 with the provisions of this chapter, such action shall be null and void.

19 (2) Any member of the governing body governed by the provisions of this  
20 chapter, who conducts or participates in a meeting which violates the provi-  
21 sions of this act shall be subject to a civil penalty not to exceed two hun-  
22 dred fifty dollars (\$250).

23 (3) Any member of a governing body who knowingly violates the provi-  
24 sions of this chapter shall be subject to a civil penalty not to exceed one  
25 thousand five hundred dollars (\$1,500).

26 (4) Any member of a governing body who knowingly violates any provision  
27 of this chapter and who has previously admitted to committing or has been  
28 previously determined to have committed a violation pursuant to subsection  
29 (3) of this section within the twelve (12) months preceding this subsequent  
30 violation shall be subject to a civil penalty not to exceed two thousand five  
31 hundred dollars (\$2,500).

32 (5) The attorney general shall have the duty to enforce this chapter in  
33 relation to public agencies of state government, and the prosecuting attor-  
34 neys of the various counties shall have the duty to enforce this act in rela-  
35 tion to local public agencies within their respective jurisdictions. In the  
36 event that there is reason to believe that a violation of the provisions of  
37 this act has been committed by members of a board of county commissioners or,  
38 for any other reason a county prosecuting attorney is deemed disqualified  
39 from proceeding to enforce this act, the prosecuting attorney or board of  
40 county commissioners shall seek to have a special prosecutor appointed for  
41 that purpose as provided in section 31-2603, Idaho Code. If the prosecuting  
42 attorney takes no action for an alleged violation, he shall provide notice in  
43 writing of his reasons for taking no action.

44 (6) In the event that there is reason to believe that a violation of  
45 the provisions of this act has been committed by a local public agency and  
46 the prosecuting attorney takes no action, a person affected by the violation  
47 may, within ten (10) days of receipt of the written notice provided pursuant  
48 to subsection (5) of this section, file a petition with the office of the  
49 attorney general for review of the prosecuting attorney's inaction. If no

1 written notice from the prosecuting attorney has been provided within four-  
2 teen (14) days from the complaint, a person affected by the violation may  
3 still petition the attorney general as provided in this subsection. Such pe-  
4 tition to the attorney general shall be on a form established by the office  
5 of the attorney general and shall include the reason for the petition, any  
6 supporting information required by the office of the attorney general, and  
7 a filing fee in the amount of fifty dollars (\$50.00). The statute of lim-  
8 itations for enforcement of a violation shall toll while the attorney gen-  
9 eral reviews the petition. If the attorney general determines that probable  
10 cause of a violation of the provisions of this act exists, he shall refer the  
11 violation to the prosecuting attorney. If the prosecuting attorney takes  
12 no enforcement action pursuant to the provisions of this act within four-  
13 teen (14) days after the attorney general has referred the violation back  
14 to the prosecuting attorney, the attorney general may pursue such nonjudi-  
15 cial remedies as he deems appropriate. Nothing in this subsection shall pre-  
16 clude a local public agency from appealing enforcement by the attorney gen-  
17 eral pursuant to this subsection to the district court.

18 (7) Any person affected by a violation of the provisions of this chap-  
19 ter may commence a civil action in the magistrate division of the district  
20 court of the county in which the public agency ordinarily meets, for the pur-  
21 pose of requiring compliance with provisions of this act. No private action  
22 brought pursuant to this subsection shall result in the assessment of a civil  
23 penalty against any member of a public agency and there shall be no private  
24 right of action for damages arising out of any violation of the provisions of  
25 this chapter. Any suit brought for the purpose of having an action declared  
26 or determined to be null and void pursuant to subsection (1) of this section  
27 shall be commenced within thirty (30) days of the time of the decision or ac-  
28 tion that results, in whole or in part, from a meeting that failed to comply  
29 with the provisions of this act. Any other suit brought under the provisions  
30 of this section shall be commenced within one hundred eighty (180) days of  
31 the time of the violation or alleged violation of the provisions of this act.

32 (78) (a) A violation may be cured by a public agency upon:

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

34 (ii) Receipt by the secretary or clerk of the public agency of  
35 written notice of an alleged violation. A complaint filed and  
36 served upon the public agency may be substituted for other forms of  
37 written notice. Upon notice of an alleged open meeting violation,  
38 the governing body shall have fourteen (14) days to respond pub-  
39 licly and either acknowledge the open meeting violation and state  
40 an intent to cure the violation or state that the public agency  
41 has determined that no violation has occurred and that no cure is  
42 necessary. Failure to respond shall be treated as a denial of any  
43 violation for purposes of proceeding with any enforcement action.

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

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

4 (d) A cure as provided in this section shall act as a bar to the impo-  
5 sition of the civil penalty provided in subsection (2) of this section.  
6 A cure of a violation as provided in subsection (78) (a) (i) of this sec-  
7 tion shall act as a bar to the imposition of any civil penalty provided  
8 in subsection (4) of this section.