

IN THE SENATE

SENATE BILL NO. 1023

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE OFFICE OF ADMINISTRATIVE HEARINGS; AMENDING SECTION
2 67-1406, IDAHO CODE, TO PROVIDE THAT THE OFFICE OF ADMINISTRATIVE HEAR-
3 INGS MAY EMPLOY PRIVATE COUNSEL; AMENDING SECTION 67-2601, IDAHO CODE,
4 TO PROVIDE THAT THE OFFICE OF ADMINISTRATIVE HEARINGS IS UNDER THE DE-
5 PARTMENT OF SELF-GOVERNING AGENCIES AND TO MAKE TECHNICAL CORRECTIONS;
6 AMENDING SECTION 67-5281, IDAHO CODE, TO PROVIDE THAT THE CHIEF ADMIN-
7 ISTRATIVE HEARING OFFICER SHALL BE COMPENSATED AS DETERMINED BY THE
8 GOVERNOR; AMENDING SECTION 67-5282, IDAHO CODE, TO REVISE PROVISIONS
9 REGARDING THE DUTIES AND PROHIBITED CONDUCT OF THE CHIEF ADMINISTRA-
10 TIVE HEARING OFFICER; AMENDING SECTION 67-5283, IDAHO CODE, TO REVISE
11 PROVISIONS REGARDING QUALIFICATIONS OF THE CHIEF ADMINISTRATIVE HEAR-
12 ING OFFICER; AMENDING SECTION 67-5303, IDAHO CODE, TO PROVIDE THAT ALL
13 HEARING OFFICERS AND ALL OTHER EMPLOYEES OF THE OFFICE OF ADMINISTRA-
14 TIVE HEARINGS SHALL BE NONCLASSIFIED EMPLOYEES AND TO REMOVE SURPLUS
15 VERBIAGE; AMENDING SECTION 74-104, IDAHO CODE, TO PROVIDE THAT CERTAIN
16 WRITINGS ASSOCIATED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL BE
17 EXEMPT FROM DISCLOSURE AND THAT CERTAIN ORDERS ISSUED BY THE OFFICE OF
18 ADMINISTRATIVE HEARINGS ARE NOT EXEMPT FROM DISCLOSURE; AND DECLARING
19 AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
20

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

22 SECTION 1. That Section 67-1406, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 67-1406. EMPLOYMENT OF ATTORNEYS RESTRICTED -- EXEMPTIONS. Notwith-
25 standing any other provision of law to the contrary, no department, agency,
26 office, officers, board, commission, institution or other state entity
27 shall be represented by or obtain its legal advice from an attorney at law
28 other than the attorney general except as follows:

29 (1) The legislative and judicial branches of government and the gover-
30 nor may employ attorneys other than those under the supervision of the attor-
31 ney general, and such attorneys may appear in any court. However, such enti-
32 ties may, upon request, utilize the attorney general's legal services.

33 (2) Those state entities within the department of self-governing agen-
34 cies which are enumerated in section 67-2601(2) (a), (b), ~~and (h)~~, and (i),
35 Idaho Code, and colleges and universities may employ private counsel to ad-
36 vise them and represent them before courts of the state of Idaho. Such enti-
37 ties may also obtain legal services from the attorney general on such terms
38 as the parties may agree.

39 (3) Whenever the attorney general determines that it is necessary or
40 appropriate in the public interest, the attorney general may authorize con-
41 tracts for legal services pursuant to the provisions of section 67-1409,
42 Idaho Code.

1 (4) The provisions of section 67-1401, Idaho Code, shall govern the
2 normal relationship between the attorney general and the state entities in
3 the executive branch of state government. However, if after consultation
4 with the attorney general, the governor determines in his sole judgment,
5 which shall not be subject to judicial review, that counsel assigned to rep-
6 resent or give legal advice to any state entity, other than the lieutenant
7 governor, state controller, state treasurer, secretary of state, attorney
8 general, and the superintendent of public instruction, cannot effectively
9 advocate or pursue the policies of the governor, the governor shall request
10 that other counsel be provided by the attorney general, and the attorney gen-
11 eral shall provide from within the office of the attorney general or obtain
12 from outside the office of the attorney general, depending upon the request
13 of the governor, qualified counsel acceptable to the governor to represent
14 such state entity.

15 (5) Any separate counsel employed pursuant to the foregoing exceptions
16 shall be compensated with funds appropriated to such state entity, unless
17 such separate counsel shall have been employed at the request or convenience
18 of the attorney general or because of a conflict in representation by the at-
19 torney general.

20 SECTION 2. That Section 67-2601, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 67-2601. DEPARTMENT CREATED -- ORGANIZATION. (1) There is hereby cre-
23 ated the department of self-governing agencies. The department shall, for
24 the purposes of section 20, article IV, of the constitution of the state of
25 Idaho, be an executive department of the state government.

26 (2) The department shall consist of the following:

27 (a) Agricultural commodity commissions: Idaho apple commission, as
28 provided by chapter 36, title 22, Idaho Code; Idaho bean commission,
29 as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as
30 provided by chapter 29, title 25, Idaho Code; Idaho cherry commission,
31 as provided by chapter 37, title 22, Idaho Code; Idaho dairy products
32 commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea
33 and lentil commission, as provided by chapter 35, title 22, Idaho Code;
34 Idaho potato commission, as provided by chapter 12, title 22, Idaho
35 Code; ~~the~~ Idaho wheat commission, as provided by chapter 33, title 22,
36 Idaho Code; and ~~the~~ Idaho alfalfa and clover seed commission, as pro-
37 vided in chapter 42, title 22, Idaho Code.

38 (b) The board of commissioners of the Idaho state bar, as provided by
39 chapter 4, title 3, Idaho Code.

40 (c) The board of examiners, pursuant to section 67-2001, Idaho Code.

41 (d) The division of veterans services, to be headed by a division ad-
42 ministrator who shall be a nonclassified employee exempt from the pro-
43 visions of chapter 53, title 67, Idaho Code. The administrator of the
44 division shall administer the provisions of chapter 2, title 65, Idaho
45 Code, and chapter 9, title 66, Idaho Code, with the advice of the vet-
46 erans affairs commission established under chapter 2, title 65, Idaho
47 Code, and shall perform such additional duties as are imposed upon him
48 by law.

1 (e) The board of library commissioners, pursuant to section 33-2502,
2 Idaho Code.

3 (f) The Idaho state historical society, pursuant to section 67-4123,
4 Idaho Code.

5 (g) The state public defense commission, pursuant to section 19-849,
6 Idaho Code.

7 (h) The division of occupational and professional licenses, which is
8 hereby created.

9 (i) The office of administrative hearings, pursuant to section
10 67-5280, Idaho Code.

11 (3) Notwithstanding any other provision of law to the contrary, the
12 governor shall have the authority to assign entities listed in subsection
13 (2) of this section to divisions, sections, or units in such a manner as will
14 tend to provide an orderly arrangement in the administrative organization of
15 state government.

16 SECTION 3. That Section 67-5281, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 67-5281. CHIEF ADMINISTRATIVE HEARING OFFICER -- APPOINTMENT -- QUAL-
19 IFICATIONS -- REMOVAL -- SALARY. (1) A chief administrative hearing officer
20 shall be appointed by the governor and confirmed by the senate to serve a four
21 (4) year term. A person may be reappointed to serve additional terms. Pro-
22 vided, however, there is no right to reappointment.

23 (2) The chief administrative hearing officer must meet the following
24 qualifications on the effective date of his appointment:

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

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

27 (c) Have held a license to practice law or held a judicial office in one
28 (1) or more jurisdictions of the United States for at least five (5) con-
29 tinuous years immediately preceding such appointment; and

30 (d) Be or become an active member of the Idaho state bar within one (1)
31 year of appointment and remain an active member in good standing there-
32 after.

33 (3) If the chief administrative hearing officer resigns, dies, or is
34 removed from office as provided in this section, the governor shall appoint a
35 person who meets the qualifications established in this section, subject to
36 confirmation by the senate, to fill the unexpired term.

37 (4) The chief administrative hearing officer may be removed from office
38 by the governor for failing to retain those qualifications of his office es-
39 tablished in subsection (2) of this section, for engaging in prohibited con-
40 duct established in section 67-5282 (2), Idaho Code, or for good cause shown.
41 Before such removal, the governor shall give the chief administrative hear-
42 ing officer a written copy of the charges against him, provide him an oppor-
43 tunity to submit a response no fewer than fourteen (14) calendars days there-
44 after, and may provide him such other process as the governor deems appropri-
45 ate. If the chief administrative hearing officer is removed, the governor
46 shall provide the house of representatives and the senate written notice of
47 the removal, the effective date of removal, and the reason or reasons there-
48 for.

1 (5) The chief administrative hearing officer shall be compensated as
2 determined by the governor.

3 SECTION 4. That Section 67-5282, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 67-5282. DUTIES AND PROHIBITED CONDUCT OF THE CHIEF ADMINISTRATIVE
6 HEARING OFFICER. (1) The chief administrative hearing officer shall:

7 (a) Serve as the administrator of the office of administrative hear-
8 ings;

9 (b) Conduct such contested case proceedings and such other proceedings
10 as are conducted by the office of administrative hearings in accordance
11 with section 67-5280(2) (a) and (b), Idaho Code;

12 (c) Devote full-time to the office of administrative hearings and his
13 obligations as chief administrative hearing officer;

14 (d) Subject to applicable law and regulation, appoint, supervise, and
15 remove hearing officers and staff as he deems appropriate to the proper
16 functioning of the office of administrative hearings, determine the
17 duties of such appointees as he deems appropriate, and, from among the
18 hearing officers employed by the office of administrative hearings,
19 designate a deputy chief administrative hearing officer to act in place
20 of the chief administrative hearing officer when the chief administra-
21 tive hearing officer is unable to perform his duties;

22 ~~(e) Promulgate rules~~ Have the authority to promulgate rules, pursuant
23 to the provisions of this chapter, to implement the provisions of sec-
24 tions 67-5280 through 67-5286, Idaho Code;

25 (f) Establish a hearing officer code of conduct that shall, among other
26 things, provide for independent and unbiased decision-making by hear-
27 ing officers both as perceived and in fact and provide for a system to
28 monitor compliance with, and sanction violations of, the hearing offi-
29 cer code of conduct;

30 (g) Protect and ensure the decisional independence of hearing offi-
31 cers;

32 (h) Implement a system for monitoring the quality of contested case
33 proceedings and such other proceedings as are conducted by the office of
34 administrative hearings in accordance with section 67-5280(2) (a) and
35 (b), Idaho Code;

36 (i) At his discretion, unless otherwise prohibited by state or federal
37 law, retain independent contractor hearing officers at reasonable and
38 consistent rates of compensation; provided that an independent con-
39 tractor hearing officer with specialized expertise may be compensated
40 at a higher rate if such expertise is necessary to the proper adjudica-
41 tion of the case and such higher rate of compensation is necessary in
42 order to obtain such expertise; and

43 (j) Contract with agencies to conduct such adjudicatory hearings, me-
44 diations, and arbitrations authorized by section 67-5280(2) (b), Idaho
45 Code.

46 (2) The chief administrative hearing officer shall not:

47 (a) Engage in the practice of law outside of his role in the office of
48 administrative hearings, except for the practice of law that is permit-
49 ted for a judge by the Idaho code of judicial conduct and is not incon-

1 sistent with the code of conduct or his duties as chief administrative
 2 hearing officer;

3 (b) Hold, or be a candidate for, any federal, state, county, municipal,
 4 district, or other elective office;

5 (c) Serve as the agent, representative, officer, political treasurer,
 6 or employee, whether for profit or otherwise, of any political party,
 7 political committee, or candidate, ~~whether~~ as defined in either chapter
 8 1, title 34, or chapter 66, title 67, Idaho Code, or otherwise; and

9 (d) Hold any other public or private-sector position, whether for
 10 profit or otherwise, except for volunteer positions that are not incon-
 11 sistent with his duties as chief administrative hearing officer.

12 SECTION 5. That Section 67-5283, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 67-5283. HEARING OFFICER QUALIFICATIONS -- POWERS -- DUTIES. (1) The
 15 chief administrative hearing officer and hearing officers appointed by the
 16 chief administrative hearing officer shall:

17 (a) On the effective date of their appointments and throughout their
 18 tenure, meet and retain all of the qualifications specified for the
 19 chief administrative hearing officer in section 67-5281(2), Idaho
 20 Code;

21 (b) Take the oath of office as prescribed in chapter 4, title 59, Idaho
 22 Code;

23 (c) Comply with the hearing officer code of conduct;

24 (d) Not engage in the conduct prohibited of the chief administrative
 25 hearing officer in section 67-5282(2), Idaho Code. Provided, however,
 26 to the extent that it does not create a conflict of interest, the code of
 27 conduct may be waived for some or all of these prohibitions for contrac-
 28 tor hearing officers; and

29 (e) Be deemed the presiding officers of contested case proceedings and
 30 other proceedings conducted by the office of administrative hearings
 31 and assigned to them and have the power to issue subpoenas, administer
 32 oaths, control the course of the proceedings, order the use of alter-
 33 native dispute resolution with the parties' consent, enter such awards
 34 for costs and attorney's fees as authorized by law, and perform other
 35 necessary and appropriate acts in the performance of their duties with
 36 respect to such cases.

37 (2) (a) Independent contractors may be hired as hearing officers with-
 38 out the limitation on outside work or outside practice of law, provided
 39 that:

40 (i) A disclosure is filed with the chief administrative hear-
 41 ing officer that states in what other outside work the independent
 42 contractor is engaged;

43 (ii) The independent contractor does not engage in outside work
 44 presenting a conflict of interest; and

45 (iii) The independent contractor discloses such other information
 46 as required by the code of conduct.

47 (b) If a failure to comply with the requirements of this subsection by
 48 an independent contractor is brought to the attention of the chief ad-
 49 ministrative hearing officer within thirty (30) days of the issuance of

1 the independent contractor hearing officer's order, the chief admin-
2 istrative hearing officer shall declare such order void and of no ef-
3 fect within fourteen (14) days. The chief administrative hearing offi-
4 cer shall be permitted to issue a stay while he investigates the issue of
5 failure to comply if the order involves a financial transaction.

6 (3) Those individuals serving as hearing officers in the office of
7 the attorney general for department of health and welfare contested case
8 hearings on December 31, 2023, shall have the option to be appointed hearing
9 officers when the office of administrative hearings begins conducting such
10 hearings on or after January 1, 2024, as provided by section 67-5286, Idaho
11 Code, if they meet the hearing officer qualifications requirements set forth
12 in this section and if such hearing officer positions are available in the
13 office of administrative hearings on an employment or independent contrac-
14 tor basis.

15 SECTION 6. That Section 67-5303, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state
18 of Idaho and all employees in such departments, except those employees
19 specifically defined as nonclassified, shall be classified employees who
20 are subject to this chapter and to the system of personnel administration
21 it prescribes. All nonclassified employees are subject to conformity with
22 classified positions as set forth in section 59-1603, Idaho Code. Nonclas-
23 sified employees shall be:

24 (a) Members of the state legislature and all other officers of the state
25 of Idaho elected by popular vote and persons appointed to fill vacancies in
26 elective offices and employees of the state legislature.

27 (b) Members of statutory boards and commissions and heads of depart-
28 ments appointed by and serving at the pleasure of the governor, deputy direc-
29 tors appointed by the director and members of advisory boards and councils
30 appointed by the departments.

31 (c) All employees and officers in the office, and at the residence, of
32 the governor; and all employees and officers in the offices of the lieutenant
33 governor, secretary of state, attorney general, state treasurer, state con-
34 troller, and state superintendent of public instruction who are appointed on
35 and after the effective date of this chapter.

36 (d) Except as otherwise provided by law, not more than one (1) declared
37 position for each board or commission and/or head of a participating depart-
38 ment, in addition to those declared to be nonclassified by other provisions
39 of law.

40 (e) Part-time professional consultants who are paid on a fee basis for
41 any form of legal, medical or other professional service and who are not en-
42 gaged in the performance of administrative duties for the state.

43 (f) Judges, temporary referees, receivers and jurors.

44 (g) All employees of the Idaho supreme court, Idaho court of appeals and
45 district courts.

46 (h) All employees of the Idaho state bar.

47 (i) Assistant attorneys general attached to the office of the attorney
48 general.

1 (j) Officers, members of the teaching staffs of state higher educa-
2 tional institutions, the professional staffs of the office of the state
3 board of education and the Idaho department of education administered by
4 the board of regents and the board of education, all professional staff of
5 the public charter school commission, and the professional staffs of the
6 Idaho division of career technical education and vocational rehabilitation
7 administered by the state board for career technical education. "Teach-
8 ing staff" includes teachers, coaches, resident directors, librarians and
9 those principally engaged in academic research. The word "officer" means
10 presidents, vice presidents, deans, directors, or employees in positions
11 designated by the state board who receive an annual salary of not less than
12 step "A" of the pay grade equivalent to three hundred fifty-five (355) Hay
13 points in the state compensation schedule. In consultation with the Idaho
14 division of human resources, the state board of education shall implement
15 policies and procedures for nonclassified employees to conform with section
16 59-1603, Idaho Code. ~~onetime~~

17 (k) Employees of the military division.

18 (l) Patients, inmates or students employed in a state institution.

19 (m) Temporary employees.

20 (n) All employees and officers of the following named commodity commis-
21 sions, and all employees and officers of any commodity commission created
22 hereafter: the Idaho potato commission, as provided in chapter 12, title 22,
23 Idaho Code; the Idaho honey commission, as provided in chapter 28, title 22,
24 Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22,
25 Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, ti-
26 tle 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33,
27 title 22, Idaho Code; the Idaho pea and lentil commission, as provided in
28 chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in
29 chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in
30 chapter 37, title 22, Idaho Code; the Idaho mint commission, as provided in
31 chapter 38, title 22, Idaho Code; the Idaho sheep and goat health board, as
32 provided in chapter 1, title 25, Idaho Code; the state brand inspector, and
33 all district supervisors, as provided in chapter 11, title 25, Idaho Code;
34 the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and
35 the Idaho dairy products commission, as provided in chapter 31, title 25,
36 Idaho Code.

37 (o) All inspectors of the fresh fruit and vegetable inspection service
38 of the Idaho department of agriculture, except those positions involved in
39 the management of the program.

40 (p) All employees of correctional industries within the department of
41 correction.

42 (q) All deputy administrators and wardens employed by the department of
43 correction. Deputy administrators are defined as only the deputy adminis-
44 trators working directly for the nonclassified division administrators un-
45 der the director of the department of correction.

46 (r) All public information positions, with the exception of secretar-
47 ial positions, in any department.

48 (s) Any division administrator.

49 (t) Any regional administrator or division administrator in the de-
50 partment of environmental quality.

1 (u) All employees of the division of financial management, all employ-
 2 ees of the STEM action center, all employees of the office of species conser-
 3 vation, all employees of the office of drug policy, and all employees of the
 4 office of energy and mineral resources.

5 (v) All employees of the Idaho food quality assurance institute.

6 (w) The state appellate public defender, deputy state appellate public
 7 defenders and all other employees of the office of the state appellate public
 8 defender.

9 (x) All quality assurance specialists or medical investigators of the
 10 Idaho board of medicine.

11 (y) All pest survey and detection employees and their supervisors hired
 12 specifically to carry out activities under the Idaho plant pest act, chapter
 13 20, title 22, Idaho Code, including but not limited to pest survey, detec-
 14 tion, and eradication, except those positions involved in the management of
 15 the program.

16 (z) All medical directors employed by the department of health and
 17 welfare who are engaged in the practice of medicine, as defined by section
 18 54-1803, Idaho Code, at a state hospital or other treatment facility managed
 19 and operated by the department of health and welfare.

20 (aa) All hearing officers and all other employees of the office of ad-
 21 ministrative hearings, as provided for in chapter 52, title 67, Idaho Code.

22 SECTION 7. That Section 74-104, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 74-104. RECORDS EXEMPT FROM DISCLOSURE -- EXEMPTIONS IN FEDERAL OR
 25 STATE LAW -- COURT FILES OF JUDICIAL PROCEEDINGS -- OFFICE OF ADMINISTRATIVE
 26 HEARINGS. The following records are exempt from disclosure:

27 (1) Any public record exempt from disclosure by federal or state law or
 28 federal regulations to the extent specifically provided for by such law or
 29 regulation.

30 (2) Records contained in court files of judicial proceedings, the dis-
 31 closure of which is prohibited by or under rules adopted by the Idaho supreme
 32 court, but only to the extent that confidentiality is provided under such
 33 rules, and any drafts or other working memoranda related to judicial de-
 34 cision-making, provided the provisions of this subsection making records
 35 exempt from disclosure shall not apply to the extent that such records or
 36 information contained in those records are necessary for a background check
 37 on an individual that is required by federal law regulating the sale of
 38 firearms, guns or ammunition.

39 (3) Any writings, drafts, notes, or working memoranda related to de-
 40 cision-making in any proceeding before the office of administrative hear-
 41 ings pursuant to sections 67-5280 through 67-5286, Idaho Code, as well as any
 42 records that are otherwise exempt from disclosure under this chapter that
 43 are filed or submitted to the office of administrative hearings in the course
 44 of any proceedings before it. Orders issued by the office of administrative
 45 hearings are not exempt from disclosure under this section, unless otherwise
 46 exempt from disclosure under this chapter.

1 SECTION 8. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2023.