

IN THE SENATE

SENATE BILL NO. 1148

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE STATE JUDICIARY; AMENDING SECTION 1-2101, IDAHO CODE, TO
2 REVISE PROVISIONS REGARDING MEMBERSHIP OF AND APPOINTMENTS TO THE JU-
3 DICIAL COUNCIL, TO REMOVE A PROVISION REGARDING AN ADJUNCT MEMBER, TO
4 PROVIDE FOR A CERTAIN REQUIREMENT OF THE IDAHO STATE BAR, TO PROVIDE FOR
5 TERMS OF MEMBERS AS OF CERTAIN DATES, AND TO MAKE TECHNICAL CORRECTIONS;
6 AMENDING SECTION 1-2102, IDAHO CODE, TO REVISE A PROVISION REGARDING A
7 DUTY OF THE COUNCIL, TO PROVIDE FOR CERTAIN DUTIES OF THE COUNCIL, AND
8 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-905, IDAHO CODE, TO
9 PROVIDE FOR NONPARTISAN BALLOTS FOR THE ELECTION OF JUDGES OF THE COURT
10 OF APPEALS AND TO REMOVE A PROVISION REGARDING BALLOTS; AMENDING SEC-
11 TION 74-104, IDAHO CODE, TO PROVIDE FOR CERTAIN RECORDS OF THE JUDICIAL
12 COUNCIL; AMENDING SECTION 48-1509, IDAHO CODE, TO PROVIDE A CORRECT
13 CODE REFERENCE; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE
14 DATE.
15

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

17 SECTION 1. That Section 1-2101, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 1-2101. JUDICIAL COUNCIL -- CREATION -- MEMBERSHIP -- APPOINTMENTS --
20 VACANCIES. (1) There is hereby created a judicial council ~~which shall con-~~
21 ~~sist of seven (7) permanent members, and one (1) adjunct member. Three (3)~~
22 ~~permanent~~ that shall consist of nine (9) members. There shall be four (4) at-
23 torney members, one (1) of whom shall be a district judge, ~~shall be appointed~~
24 ~~by the board of commissioners of the Idaho state bar~~ one (1) of whom shall be a
25 magistrate judge, and two (2) of whom shall be members of the Idaho state bar.
26 The district judge and magistrate judge members shall be appointed by the
27 governor from a list of three (3) judges for each position submitted to the
28 governor by the Idaho supreme court from the roster of judges currently serv-
29 ing as full-time judges in the state of Idaho with the consent of the senate.
30 The two (2) nonjudicial attorney positions may be held by attorneys with any
31 type of practice, provided they shall not both be attorneys whose practice as
32 certified by them at the time of their appointment is predominantly civil de-
33 fense, predominantly representing civil plaintiffs, predominantly criminal
34 defense, or predominantly criminal prosecution. For each of the nonjudicial
35 attorney positions, the Idaho state bar shall nominate from its membership
36 and submit to the governor a list of three (3) attorneys who meet the criteria
37 of this section. The governor shall select one (1) such attorney for each va-
38 cancy for appointment to the judicial council with the consent of the senate.
39 ~~Three (3) permanent~~ There shall be four (4) non-attorney members that shall
40 be appointed by the governor from the residents of the state of Idaho with the
41 consent of the senate. If any of the above appointments ~~be~~ are made during a
42 recess of the senate, they shall be subject to consent of the senate at its

1 next session. The term of office for a ~~permanent~~ an appointed member of the
 2 judicial council shall be ~~six (6)~~ four (4) years. Vacancies shall be filled
 3 for the unexpired term in like manner. Appointments shall be made with due
 4 consideration for area representation and not more than ~~three (3)~~ five (5) of
 5 the ~~permanent~~ appointed members shall be from one (1) political party. The
 6 chief justice of the ~~Supreme Court~~ shall be the ~~seventh~~ ninth member and
 7 chairman of the judicial council. No ~~permanent~~ more than two (2) of the non-
 8 judicial members of the judicial council, ~~except a judge or justice,~~ may hold
 9 any other office or position of profit under the United States or the state of
 10 Idaho. The judicial council shall act by concurrence of ~~four (4)~~ five (5) or
 11 more members and according to rules ~~which that~~ it adopts.

12 (2) ~~In addition to the permanent members of the judicial council, when-~~
 13 ~~ever there is an issue before the council which involves the removal, disci-~~
 14 ~~pline or recommendation for retirement of a district court magistrate, the~~
 15 ~~chief justice shall appoint an adjunct member of the judicial council, who~~
 16 ~~shall be a district court magistrate. For all purposes for which the adjunct~~
 17 ~~appointment is made, the adjunct member shall be a full voting member of the~~
 18 ~~judicial council. In selecting nonjudicial attorneys to nominate for mem-~~
 19 ~~bership on the judicial council, the Idaho state bar commission shall so-~~
 20 ~~licit applications from members of the state bar who are eligible for nomina-~~
 21 ~~tion as provided in subsection (1) of this section and shall make a good faith~~
 22 ~~effort to solicit feedback on such attorneys to determine each applicant's~~
 23 ~~appropriateness to serve on the council.~~

24 (3) Members serving on the judicial council and confirmed by the sen-
 25 ate as of July 1, 2023, shall continue to serve until the expiration of their
 26 terms. All subsequent appointments shall be made subject to the require-
 27 ments of this section, provided that the length of the initial terms of the
 28 additional members added to the council by this act may be less than four
 29 (4) years as designated by the governor in his appointment in order to as
 30 nearly as practicable stagger the terms of newly appointed members and those
 31 currently serving in order to promote continuity and avoid disproportionate
 32 council turnover in any given year. Subsequent terms thereafter shall be for
 33 four (4) years as required in this section.

34 SECTION 2. That Section 1-2102, Idaho Code, be, and the same is hereby
 35 amended to read as follows:

36 1-2102. DUTIES OF COUNCIL. The judicial council shall:

37 (1) Conduct studies for the improvement of the administration of jus-
 38 tice;

39 (2) Make reports to the supreme court and legislature at intervals of
 40 not more than two (2) years;

41 (3) Submit to the governor the names of not less than ~~two (2)~~ three (3)
 42 ~~nor~~ and not more than four (4) qualified persons for each vacancy in the of-
 43 fice of justice of the supreme court, judge of the court of appeals, or dis-
 44 trict judge, one (1) of whom shall be appointed by the governor; provided,
 45 that the council shall submit only the names of those qualified persons who
 46 are eligible to stand for election pursuant to section 1-2404, 34-615, or
 47 34-616, Idaho Code; and provided further, that for each vacancy the governor
 48 may request one (1) time that up to three (3) additional names be submitted
 49 for the vacancy, in which case the council shall solicit interest in the va-

1 cancy a second time and submit the number of additional qualified applicants
 2 as the governor requested for the vacant position to be considered with the
 3 original list;

4 (4) For each list of names submitted to the governor under subsection
 5 (3) of this section, provide to the governor a report summarizing the factors
 6 considered in including each person on the list. Such factors may include
 7 references to comments and ratings received by the council regarding each
 8 nominee as well as other qualifications and considerations that the council
 9 considered in making its recommendations; provided however, that a comment
 10 that is not a public record or subject to disclosure pursuant to court rule
 11 shall not be disclosed in this report;

12 ~~(4)~~ (5) Recommend the removal, discipline, and retirement of judicial
 13 officers, including magistrates;

14 ~~(5)~~ (6) Prepare an annual budget request in the form prescribed in sec-
 15 tion 67-3502, Idaho Code, and submit such request to the supreme court, which
 16 shall include such request as submitted by the judicial council in the annual
 17 budget request of the judicial department; and

18 (7) Not less than forty-eight (48) hours prior to an interview of an ap-
 19 plicant by the judicial council, if requested by an applicant, disclose to
 20 the applicant any written information or comments provided to the judicial
 21 council about the applicant, removing information that would identify the
 22 commenter, as part of or to be considered in the application and interview
 23 process. No written information submitted to the council shall be submit-
 24 ted to council members nor considered by them if it has been requested by, but
 25 not disclosed to, the applicant to whom the information relates. If such in-
 26 formation is not a public record or is not subject to disclosure pursuant to
 27 court rule, it shall not be publicly disclosed in any manner by any person ex-
 28 cept as permitted by this section; and

29 ~~(6)~~ (8) Such other duties as may be assigned by law.

30 SECTION 3. That Section 34-905, Idaho Code, be, and the same is hereby
 31 amended to read as follows:

32 34-905. NONPARTISAN BALLOTS FOR ELECTION OF JUSTICES OF SUPREME
 33 COURT, JUDGES OF THE COURT OF APPEALS, AND DISTRICT JUDGES. There shall
 34 be a single nonpartisan ballot for the election of justices of the supreme
 35 court, judges of the court of appeals, and district judges. The names of all
 36 candidates for each office shall be listed under the proper office title by
 37 the secretary of state. A similar ballot shall be prepared for any general
 38 election, whenever it shall be necessary to conduct an election for judicial
 39 office.

40 ~~The ballot for each judicial office shall contain the words: "To suc-~~
 41 ~~ceed (Judge, Justice)," inserting the name of the or of each incumbent~~
 42 ~~candidate for re-election, or retiring judge or justice as the case may be,~~
 43 ~~whose successor is to be elected in that year followed by the words: "Vote~~
 44 ~~for One," followed by the names of the candidates for that particular office.~~

45 SECTION 4. That Section 74-104, Idaho Code, be, and the same is hereby
 46 amended to read as follows:

1 74-104. RECORDS EXEMPT FROM DISCLOSURE -- EXEMPTIONS IN FEDERAL OR
2 STATE LAW -- COURT FILES OF JUDICIAL PROCEEDINGS -- JUDICIAL COUNCIL. (1) The
3 following records are exempt from disclosure:

4 ~~(1)~~ (a) Any public record exempt from disclosure by federal or state law
5 or federal regulations to the extent specifically provided for by such
6 law or regulation.

7 ~~(2)~~ (b) Records contained in court files of judicial proceedings, the
8 disclosure of which is prohibited by or under rules adopted by the Idaho
9 supreme court, but only to the extent that confidentiality is provided
10 under such rules, and any drafts or other working memoranda related to
11 judicial decision-making, provided the provisions of this subsection
12 making records exempt from disclosure shall not apply to the extent that
13 such records or information contained in those records are necessary
14 for a background check on an individual that is required by federal law
15 regulating the sale of firearms, guns or ammunition.

16 (2) The judicial council ratings and tabulated scores from attorney
17 questionnaires of candidates for a judicial vacancy whose names are submit-
18 ted to the governor and the summary prepared pursuant to section 1-2102(4),
19 Idaho Code, shall be public.

20 SECTION 5. That Section 48-1509, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 48-1509. PUBLIC RECORDS. All documents submitted to the attorney gen-
23 eral by any person, including nonprofit hospital entities giving notice un-
24 der section 48-1503, Idaho Code, in connection with the attorney general's
25 review of the proposed nonprofit hospital conversion transaction pursuant
26 to this chapter shall be deemed records contained in court files of judi-
27 cial proceedings, as provided for in section 74-104-~~(2)~~-(1) (b), Idaho Code,
28 and shall only be subject to public disclosure, pursuant to a public document
29 request, in the same manner as set forth in that section.

30 SECTION 6. An emergency existing therefor, which emergency is hereby
31 declared to exist, this act shall be in full force and effect on and after
32 July 1, 2023.