

IN THE SENATE

SENATE BILL NO. 1292

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO THE DEPARTMENT OF LANDS; REPEALING SECTION 58-120, IDAHO CODE, RELATING TO THE ATTORNEY GENERAL TO REPRESENT STATE; AMENDING CHAPTER 1, TITLE 58, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 58-120, IDAHO CODE, TO PROVIDE FOR CERTAIN LEGAL REPRESENTATION; AMENDING SECTION 67-1406, IDAHO CODE, TO PROVIDE AN EXCEPTION TO CERTAIN LEGAL REPRESENTATION AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 58-120, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 1, Title 58, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 58-120, Idaho Code, and to read as follows:

58-120. GENERAL COUNSEL TO REPRESENT THE DEPARTMENT OF LANDS. (1) Counsel to the department of lands shall be provided by an attorney hired by the director of the department of lands subject to approval by the state land board. Such counsel shall be independent of the office of the attorney general but may consult with the office of the attorney general as determined by the counsel. Such counsel shall be designated the general counsel for the department of lands.

(2) General counsel may hire additional attorneys or contract with the office of the attorney general as necessary. Nothing in this section shall preclude the department of lands from hiring counsel separate from the general counsel.

SECTION 3. That Section 67-1406, Idaho Code, be, and the same is hereby amended to read as follows:

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

(1) The legislative and judicial branches of government and the governor may employ attorneys other than those under the supervision of the attorney general, and such attorneys may appear in any court. However, such entities may, upon request, utilize the attorney general's legal services.

(2) Those state entities within the department of self-governing agencies ~~which~~ that are enumerated in section 67-2601(2)(a), (b), (g), (h), and (i), Idaho Code, the department of lands, and colleges and universities may employ private counsel to advise them and represent them before courts of the

1 state of Idaho. Such entities may also obtain legal services from the attorney
2 general on such terms as the parties may agree.

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

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

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

26 SECTION 4. An emergency existing therefor, which emergency is hereby
27 declared to exist, this act shall be in full force and effect on and after
28 July 1, 2024.