

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 782

BY WAYS AND MEANS 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 ATTORNEYS NOMINATED FOR MEMBER-  
5 SHIP, TO PROVIDE FOR A CERTAIN REQUIREMENT OF THE IDAHO STATE BAR, TO  
6 PROVIDE FOR TERMS OF MEMBERS AS OF CERTAIN DATES, AND TO MAKE TECHNICAL  
7 CORRECTIONS; AMENDING SECTION 1-2102, IDAHO CODE, TO REVISE A PROVISION  
8 REGARDING A DUTY OF THE COUNCIL, TO PROVIDE FOR CERTAIN DUTIES OF THE  
9 COUNCIL, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 59-502,  
10 IDAHO CODE, TO REVISE PROVISIONS REGARDING THE SALARIES OF JUDGES;  
11 AMENDING SECTION 67-3502, IDAHO CODE, TO REVISE A PROVISION REGARDING  
12 THE FORMAT AND PREPARATION OF ANNUAL BUDGET REQUESTS; AMENDING SECTION  
13 74-104, IDAHO CODE, TO PROVIDE FOR CERTAIN RECORDS OF THE JUDICIAL COUN-  
14 CIL; AMENDING SECTION 48-1509, IDAHO CODE, TO PROVIDE A CORRECT CODE  
15 REFERENCE; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
16

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

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

20 1-2101. JUDICIAL COUNCIL -- CREATION -- MEMBERSHIP -- APPOINTMENTS --  
21 VACANCIES. (1) There is hereby created a judicial council ~~which that~~ shall  
22 consist of ~~seven eleven (711) permanent members, and one (1) adjunct member.~~  
23 ~~Three (3) permanent~~ There shall be six (6) attorney members, one (1) of whom  
24 shall be a district judge, shall be appointed by the board of commission-  
25 ers of the Idaho state bar one (1) of whom shall be a magistrate judge, and  
26 four (4) of whom shall be members of the Idaho state bar. The district judge  
27 and magistrate judge members shall be nominated by the Idaho supreme court  
28 from the roster of judges currently serving as full-time judges in the state  
29 of Idaho and submitted to the governor for appointment with the consent of  
30 the senate. For the four (4) nonjudicial attorney members, one (1) shall be  
31 an attorney whose practice is predominantly civil defense, one (1) shall be  
32 an attorney whose practice is predominantly representing civil plaintiffs,  
33 one (1) shall be an attorney whose practice is predominantly criminal de-  
34 fense, and one (1) shall be an attorney whose practice is predominantly crim-  
35 inal prosecution. For each of the nonjudicial attorney positions, the Idaho  
36 state bar shall nominate, from its membership, and submit to the governor a  
37 list of three (3) attorneys meeting the criteria for that specific position.  
38 The governor shall select one (1) such attorney from each list for appoint-  
39 ment to the judicial council with the consent of the senate. ~~Three (3) perma-~~  
40 ment There shall be four (4) non-attorney members that shall be appointed by  
41 the governor from the residents of the state of Idaho with the consent of the  
42 senate. If any of the above appointments ~~be~~ are made during a recess of the

1 senate, they shall be subject to consent of the senate at its next session.  
 2 The term of office for a ~~permanent~~ an appointed member of the judicial coun-  
 3 cil shall be ~~six~~ four (64) years. Vacancies shall be filled for the unexpired  
 4 term in like manner. Appointments shall be made with due consideration for  
 5 area representation and not more than three (3) of the ~~permanent~~ appointed  
 6 nonjudicial attorney members and three (3) of the non-attorney members shall  
 7 be from one (1) political party. The chief justice of the ~~Supreme~~ Court  
 8 shall be the ~~seventh~~ eleventh member and chairman of the judicial council.  
 9 No ~~permanent~~ member of the judicial council, except a judge or justice or a  
 10 prosecuting attorney, public defender, or a member of their staff appointed  
 11 to the criminal attorney position, may hold any other office or position of  
 12 profit under the United States or the state of Idaho. The judicial council  
 13 shall act by concurrence of ~~four~~ eight (48) or more members and according to  
 14 rules ~~which~~ that it adopts.

15 (2) ~~In addition to the permanent members of the judicial council, when-~~  
 16 ~~ever there is an issue before the council which involves the removal, disci-~~  
 17 ~~pline or recommendation for retirement of a district court magistrate, the~~  
 18 ~~chief justice shall appoint an adjunct member of the judicial council, who~~  
 19 ~~shall be a district court magistrate. For all purposes for which the adjunct~~  
 20 ~~appointment is made, the adjunct member shall be a full voting member of the~~  
 21 ~~judicial council. The requirements of practicing law for nonjudicial attor-~~  
 22 ~~neys nominated for membership on the judicial council as provided in subsec-~~  
 23 ~~tion (1) of this section shall be determined as of the date of nomination, and~~  
 24 ~~each nominated nonjudicial attorney shall certify in writing that they meet~~  
 25 ~~such requirements for practicing law for the five (5) years immediately pre-~~  
 26 ~~ceding the date of application.~~

27 (3) In selecting nonjudicial attorneys to nominate for membership on  
 28 the judicial council, the Idaho state bar shall make a good faith effort  
 29 to solicit applications from other members of the state bar who meet the  
 30 practice area requirements as provided in subsection (1) of this section  
 31 and shall make a good faith effort to solicit feedback on such attorneys to  
 32 determine each applicant's appropriateness to represent that practice area  
 33 on the council.

34 (4) Members serving on the judicial council and confirmed by the sen-  
 35 ate as of July 1, 2022, shall continue to serve until the expiration of their  
 36 terms. All subsequent appointments shall be made subject to the require-  
 37 ments of this section, provided that the length of the initial terms of the  
 38 additional members added to the council by this act may be less than four  
 39 (4) years as designated by the governor in his appointment in order to as  
 40 nearly as practicable stagger the terms of newly appointed members and those  
 41 currently serving in order to promote continuity and avoid disproportionate  
 42 council turnover in any given year. Subsequent terms thereafter shall be for  
 43 four (4) years as required in this section. In making initial nonjudicial  
 44 attorney appointments following July 1, 2022, the governor shall assign one  
 45 (1) area of practice to each existing attorney member and inform the bar of  
 46 such designations.

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

49 1-2102. DUTIES OF COUNCIL. The judicial council shall:

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

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

5 (3) Submit to the governor the names of not less than ~~two~~ three (23) ~~not~~  
6 and not more than four (4) qualified persons for each vacancy in the office  
7 of justice of the supreme court, judge of the court of appeals, or district  
8 judge, one (1) of whom shall be appointed by the governor; provided, that the  
9 council shall submit only the names of those qualified persons who are eli-  
10 gible to stand for election pursuant to section 1-2404, 34-615, or 34-616,  
11 Idaho Code; and provided further that the governor may reject one (1) list of  
12 names submitted for any vacancy, in which case the council shall solicit in-  
13 terest in the vacancy a second time and submit a second list of not less than  
14 three (3) and not more than four (4) qualified applicants for the vacant po-  
15 sition. No person whose name was submitted initially shall be submitted a  
16 second time for the same vacancy;

17 (4) For each person whose name is submitted to the governor under sub-  
18 section (3) of this section, the council shall provide to the governor a  
19 report summarizing the factors considered in including each person on the  
20 list. Such factors may include comments and ratings received by the council  
21 regarding each nominee as well as other qualifications and considerations  
22 that the council considered in making its recommendations. These reports  
23 shall be public records;

24 (5) Recommend the removal, discipline, and retirement of judicial of-  
25 ficers, including magistrates;

26 (56) Prepare an annual budget request in the form prescribed in sec-  
27 tion 67-3502, Idaho Code, and submit such request to the supreme court, which  
28 shall include such request as submitted by the judicial council in the annual  
29 budget request of the judicial department; and

30 (7) If requested by an applicant, not less than forty-eight (48) hours  
31 prior to an interview of an applicant by the judicial council, disclose to  
32 the applicant any written information or comments provided to the judicial  
33 council as part of or to be considered in the application and interview  
34 process, including the source of any such information. If such information  
35 is not a public record or is not subject to disclosure pursuant to court rule,  
36 it shall not be publicly disclosed in any manner by any person except as per-  
37 mitted by this section; and

38 (68) Such other duties as may be assigned by law.

39 SECTION 3. That Section 59-502, Idaho Code, be, and the same is hereby  
40 amended to read as follows:

41 59-502. SALARIES OF JUDGES. (1) ~~Commencing on July 1, 2021, t~~The  
42 salary of the justices of the supreme court shall be one hundred sixty-three  
43 thousand ~~four~~ six hundred ~~fifty-five~~ hundred dollars (~~\$160,400~~163,655) per annum.

44 (2) ~~Commencing on July 1, 2018, j~~Judges of the court of appeals shall  
45 receive an annual salary in an amount of ~~ten thousand dollars (\$10,000)~~ less  
46 ~~than~~ equal to ninety-five percent (95%) of the annual salary of a supreme  
47 court justice.

48 (3) ~~Commencing on July 1, 2017, d~~District judges shall receive an an-  
49 nual salary in an amount of ~~six thousand dollars (\$6,000)~~ less than equal to

1 ninety percent (90%) of the annual salary of a judge of the court of appeals  
 2 supreme court justice.

3 (4) ~~Commencing on July 1, 2017, m~~Magistrate judges shall receive an an-  
 4 nual salary in an amount of ~~twelve thousand dollars (\$12,000) less than equal~~  
 5 to eighty-five percent (85%) of the annual salary of a district judge supreme  
 6 court justice.

7 (5) Salaries shall be paid on regular pay periods not less frequently  
 8 than monthly as determined by order of the supreme court as due out of the  
 9 state treasury, but no justice of the supreme court or judge of the district  
 10 court or magistrate shall be paid his salary, or any part thereof, unless he  
 11 shall first take and subscribe an oath that there is not in his hands any mat-  
 12 ter in controversy not decided by him, which has been finally submitted for  
 13 his consideration and determination thirty (30) days prior to his taking and  
 14 subscribing said oath.

15 SECTION 4. That Section 67-3502, Idaho Code, be, and the same is hereby  
 16 amended to read as follows:

17 67-3502. FORMAT AND PREPARATION OF ANNUAL BUDGET REQUESTS. (1) In the  
 18 preparation of a state budget, the administrator of the division of finan-  
 19 cial management shall, not later than the fifteenth day of July, have avail-  
 20 able for all departments, offices and institutions of the state government  
 21 forms necessary to prepare budget requests. Such forms, whether in elec-  
 22 tronic or written format, shall be developed by the administrator of the di-  
 23 vision and the legislative services office to provide the following informa-  
 24 tion:

25 (a) For the preceding fiscal year, each of the entities listed in this  
 26 section shall report all moneys available to them regardless of source,  
 27 including legislative appropriations, and their expenditures by fund  
 28 and account category of all sums received from all sources, segregated  
 29 as provided for on the forms.

30 (b) For the current fiscal year, each of the entities listed in this  
 31 section shall report their estimates of all moneys available to them  
 32 regardless of source, including legislative appropriations, and their  
 33 estimated expenditures by fund and account category of all sums re-  
 34 ceived from all sources, segregated as provided for on the forms,  
 35 including a statement of the purposes for which anticipated moneys are  
 36 expected to be expended.

37 (c) An estimate of appropriations needed for the succeeding fiscal  
 38 year, showing each primary program or major objective as a separate item  
 39 of the request and itemized by account category.

40 (d) A report concerning the condition and management of programs,  
 41 program performance, and progress toward accomplishing program objec-  
 42 tives.

43 (e) A report that discloses any known future reductions or eliminations  
 44 of federal moneys reported to the division of financial management un-  
 45 der section 67-1910, Idaho Code, and the agency's plan for operating if  
 46 there is a reduction of ten percent (10%) or more in the federal moneys  
 47 that the state agency receives.

48 (2) The completed forms shall, not later than the first day of Septem-  
 49 ber, except with special permission and agreement of the administrator of

1 the division of financial management and the director of the legislative  
2 services office, be filed in the office of the administrator of the di-  
3 vision of financial management and the legislative services office. The  
4 legislative ~~and judicial~~ departments and the department of administration's  
5 division of public works shall, as early as practicable and in any event no  
6 later than the fifteenth day of November, prepare and file in the office of  
7 the governor and the legislative services office upon the forms described  
8 in this section a report of all of the information required in this section.  
9 The judicial department shall include in its filing the budget request of the  
10 judicial council as submitted by the judicial council.

11 SECTION 5. That Section 74-104, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 74-104. RECORDS EXEMPT FROM DISCLOSURE -- EXEMPTIONS IN FEDERAL OR  
14 STATE LAW -- COURT FILES OF JUDICIAL PROCEEDINGS -- JUDICIAL COUNCIL. (1) The  
15 following records are exempt from disclosure:

16 (1a) Any public record exempt from disclosure by federal or state law or  
17 federal regulations to the extent specifically provided for by such law  
18 or regulation.

19 (2b) Records contained in court files of judicial proceedings, the  
20 disclosure of which is prohibited by or under rules adopted by the Idaho  
21 supreme court, but only to the extent that confidentiality is provided  
22 under such rules, and any drafts or other working memoranda related to  
23 judicial decision-making, provided the provisions of this subsection  
24 making records exempt from disclosure shall not apply to the extent that  
25 such records or information contained in those records are necessary  
26 for a background check on an individual that is required by federal law  
27 regulating the sale of firearms, guns or ammunition.

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

32 SECTION 6. That Section 48-1509, Idaho Code, be, and the same is hereby  
33 amended to read as follows:

34 48-1509. PUBLIC RECORDS. All documents submitted to the attorney gen-  
35 eral by any person, including nonprofit hospital entities giving notice un-  
36 der section 48-1503, Idaho Code, in connection with the attorney general's  
37 review of the proposed nonprofit hospital conversion transaction pursuant  
38 to this chapter shall be deemed records contained in court files of judicial  
39 proceedings, as provided for in section 74-104 (21) (b), Idaho Code, and shall  
40 only be subject to public disclosure, pursuant to a public document request,  
41 in the same manner as set forth in that section.

42 SECTION 7. An emergency existing therefor, which emergency is hereby  
43 declared to exist, this act shall be in full force and effect on and after  
44 July 1, 2022.