

HOUSE BILL NO. HB0208

Attorney general-elected official.

Sponsored by: Representative(s) Gray, Biteman, Clem, Edwards, Lindholm, Loucks, Salazar and Steinmetz and Senator(s) Meier

A BILL

for

1 AN ACT relating to the attorney general; providing for the
2 election of the attorney general; setting the attorney
3 general's term at four (4) years; providing for filling a
4 vacancy in the position; repealing provision for interim
5 appointment; providing for the application of the Ethics
6 and Disclosure Act to the office of the attorney general;
7 amending certain provisions regarding actions the attorney
8 general takes requiring approval of or pursuant to the
9 direction of the governor; making conforming amendments;
10 and providing for effective dates.

11

12 *Be It Enacted by the Legislature of the State of Wyoming:*

13

1 **Section 1.** W.S. 9-1-601(a) and (c), 9-1-602, 9-1-604,
2 9-13-102(a) (xii) (A), 22-2-105(a) (ii) (intro) and
3 22-6-117(a) (iv) are amended to read:

4
5 **9-1-601. Appointment; term; removal; qualifications.**

6
7 (a) Until the term of office commences for the
8 general election in 2018, the attorney general of the state
9 of Wyoming shall be appointed by the governor with the
10 advice and consent of the senate in accordance with W.S.
11 28-12-101 through 28-12-103 and may be removed by the
12 governor as provided in W.S. 9-1-202. Beginning at the
13 general election in 2018, the attorney general shall be
14 elected in a statewide election for a term of four (4)
15 years.

16
17 (c) ~~Prior to his~~ To be eligible for appointment or
18 election, the attorney general shall have been a practicing
19 attorney for at least four (4) years. ~~At the date of~~
20 ~~appointment, he~~ shall be in good standing in the courts of
21 record of this state and shall be a resident and elector of
22 the state.

23

1 **9-1-602. Vacancy in office.**

2

3 In case of a vacancy in the office of attorney general
4 appointed under W.S. 9-1-601(a), the governor shall appoint
5 a qualified person to fill the vacancy in accordance with
6 the provisions of W.S. 28-12-101(b). A vacancy in the
7 office of an elected attorney general shall be filled as
8 provided by W.S. 22-18-111. An appointment to fill a
9 vacancy shall be subject to senate confirmation. If the
10 senate fails to confirm the person appointed to fill the
11 vacancy of an elected attorney general, the procedure
12 specified in W.S. 22-18-111 shall be repeated and the
13 governor shall appoint another qualified person to fill the
14 vacancy in accordance with the provisions of W.S.
15 28-12-101(b).

16

17 **9-1-604. Office in state capital; private practice**
18 **prohibited; exception.**

19

20 The attorney general shall keep an office in the state
21 capital, shall not open an office elsewhere and shall not
22 engage in any private practice except to consummate

1 business pending at the time of his appointment or election
2 if not in conflict with the duties of his office.

3

4 **9-13-102. Definitions.**

5

6 (a) As used in this article:

7

8 (xii) "Public employee" means any of the
9 following state employees:

10

11 (A) The attorney general until the 2018
12 general election and the director of any department of the
13 executive branch appointed by the governor under W.S.
14 9-2-1706, or the director of any legislative agency;

15

16 **22-2-105. Terms of office and offices voted on at**
17 **general elections.**

18

19 (a) The terms of office and offices voted on at
20 general elections are as follows:

21

22 (ii) Four Year Term. - At the general election
23 in 1974 and in every fourth ~~(4th)~~ year thereafter, there

1 shall be elected the following officers: one (1) governor,
2 one (1) secretary of state, one (1) state treasurer, one
3 (1) state auditor, one (1) superintendent of public
4 instruction, county clerks, county treasurers, county
5 assessors, county coroners, county and prosecuting
6 attorneys, district attorneys, sheriffs, clerks of the
7 district court. At every general election there shall be
8 elected the necessary member or members of the Wyoming
9 senate and county commissioners. At the general election in
10 2018 and every fourth year thereafter, there shall be
11 elected a state attorney general. The question of retention
12 of a circuit court judge or a magistrate of the circuit
13 court shall be submitted:

14

15 **22-6-117. Order of listing offices in partisan**
16 **elections.**

17

18 (a) The major party primary and general partisan
19 election ballots shall contain the offices to be voted on
20 in the following order:

21

1 (iv) Candidates for governor, secretary of
2 state, state auditor, state treasurer, attorney general and
3 superintendent of public instruction;
4

5 **Section 2.** W.S. 1-31-103, 1-35-104, 7-22-102(d),
6 8-2-101(a)(vi), 9-1-603(b) and (c), 9-1-605(b) through (d),
7 9-1-608(a) and (b), 9-1-611(c), 9-1-633(a) and (b)(intro),
8 9-1-636(b) and (c)(intro), 9-4-218(a)(iii), 9-5-101(a),
9 9-5-109(m)(iii), 9-13-102(a)(xvi), 9-13-108(a)(intro),
10 9-14-101, 9-14-102(c), 18-3-902(a), 28-1-115(f)(ii),
11 28-12-103, 35-7-1004 and 35-11-1507(a) are amended to read:
12

13 **1-31-103. Commencement of action.**
14

15 The attorney general or a county attorney ~~shall~~may
16 commence an action ~~when directed by the governor, supreme~~
17 ~~court or legislature, or~~ when upon complaint or otherwise
18 he has good reason to believe that such an action can be
19 established by proof. A county attorney shall, and the
20 attorney general may, commence an action when directed by
21 the governor, supreme court or legislature.
22

1 **1-35-104. Actions under control of attorney general;**
2 **settlement or compromise.**

3

4 The attorney general shall control all investigations and
5 actions instituted and conducted in behalf of the state as
6 provided in W.S. 1-35-103 and has full discretionary powers
7 to prosecute all investigations and litigation and, ~~with~~
8 ~~the approval of the governor,~~ to settle, compromise or
9 dismiss the actions.

10

11 **7-22-102. Authority to contract; general conditions.**

12

13 (d) The state or the local government may reject or
14 return prisoners from outside the state. Prisoners or
15 inmates of out-of-state, nonfederal jurisdictions shall not
16 be incarcerated in any facility operated by a local
17 government entity under this article without the consent of
18 the majority of the ~~five (5)~~ six (6) elected officials of
19 this state. At no time shall the number of prisoners from
20 out-of-state, nonfederal jurisdictions incarcerated in a
21 facility operated by a local government entity under this
22 article exceed thirty percent (30%) of the capacity of that
23 facility. Any out-of-state, nonfederal prisoner shall be

1 returned to the jurisdiction of origin to be released from
2 custody by them, outside the state of Wyoming at the
3 appropriate time.

4

5 **8-2-101. Distribution of statutes, supplements and**
6 **session laws.**

7

8 (a) Statutes, supplements and session laws shall be
9 distributed as provided by contract with the publisher or
10 as directed by the management council, to the following,
11 without charge:

12

13 (vi) One (1) copy to each of the ~~five (5)~~ six
14 (6) elected state officers;

15

16 **9-1-603. Duties generally; retention of qualified**
17 **practicing attorneys; matters in which county or state is**
18 **party or has interest; assistance to county and district**
19 **attorneys in felony trials; coordination of county and**
20 **school safety activities.**

21

22 (b) ~~With the approval of the governor~~ The attorney
23 general may retain qualified practicing attorneys to

1 prosecute fee-generating suits for the state if expertise
2 in a particular field is desirable.

3

4 (c) Upon the failure or refusal of any district or
5 county attorney to act in any criminal or civil case or
6 matter in which the county, state or any agency thereof is
7 a party, or has an interest, the attorney general may, at
8 the request of the board of county commissioners of the
9 county involved or of the district judge of the judicial
10 district involved, act on behalf of the county, state or
11 any agency thereof, if after a thorough investigation the
12 action is deemed advisable by the attorney general. The
13 cost of investigation and the cost of any prosecution
14 arising therefrom shall be paid out of the general fund of
15 the county where the investigation and prosecution take
16 place. The attorney general ~~shall~~ may also, ~~upon direction~~
17 ~~of the governor,~~ investigate any matter in any county of
18 the state in which the county, state or any agency thereof
19 may be interested. After investigation, the attorney
20 general shall submit a report of the investigation ~~to the~~
21 ~~governor and~~ to the district or county attorney of each
22 county involved and may take such other action as he deems
23 appropriate.

1

2 **9-1-605. Approval of public securities and official**
3 **bonds; water rights proceedings; investigation of**
4 **misconduct of county official; commencement of action.**

5

6 (b) ~~Under the direction of the governor~~ The attorney
7 general shall institute and pursue proceedings to maintain
8 the state's and its citizens' rights in the waters of
9 interstate streams.

10

11 (c) Upon representation to the ~~governor~~ attorney
12 general of misconduct or malfeasance in office or the
13 commission of a crime by any county officer in the state
14 and if the ~~governor~~ attorney general believes the ends of
15 justice demand or the matter will not be properly
16 investigated and prosecuted by the sheriff and by the
17 district attorney of the county, ~~the governor may direct~~
18 the attorney general ~~to~~ may investigate the case.

19

20 (d) Upon completion of the investigation, the
21 attorney general ~~shall report the results of the~~
22 ~~investigation and his recommendations to the governor. If~~
23 ~~the governor and the attorney general determine that the~~

1 ~~attorney general should~~ may institute a criminal or civil
2 action, ~~the attorney general shall commence the action as~~
3 he deems appropriate. The attorney general shall have the
4 authority and duty vested in district attorneys in this
5 state.

6

7 **9-1-608. Assistant attorneys general.**

8

9 (a) ~~With the approval of the governor,~~ The attorney
10 general may appoint assistant attorneys general necessary
11 for the efficient operation of his office. Each assistant
12 attorney general shall be a member in good standing of the
13 Wyoming bar and shall serve at the pleasure of the attorney
14 general. The assistants shall act under the direction of
15 the attorney general and his deputies. The attorney
16 general, his deputies or his assistants may appear in any
17 courts of the state or the United States and prosecute or
18 defend on behalf of the state. An appearance by the
19 attorney general or his staff does not waive the sovereign
20 immunity of the state.

21

22 (b) ~~With the approval of the governor~~ The attorney
23 general may appoint special assistant attorneys general for

1 any purposes. A person shall not be employed as an attorney
2 or legal counsel by any department, board, agency,
3 commission or institution of the state, or represent the
4 state in that capacity, except by the written appointment
5 of the attorney general. Written appointment of the
6 attorney general shall not be required for the employment
7 of legal counsel by elected state officials.

8

9 **9-1-611. Division of criminal investigation; created;**
10 **definitions; director; appointment; qualifications.**

11

12 (c) ~~With the approval of the governor,~~ The attorney
13 general shall appoint a director who is the chief
14 administrative officer and chief agent of the division.

15

16 **9-1-633. Wyoming law enforcement academy; director;**
17 **appointment; term; qualifications; employees; salaries;**
18 **curriculum and training programs; fees; disposition.**

19

20 (a) A director of the Wyoming law enforcement academy
21 shall be appointed by the attorney general. ~~with the~~
22 ~~consent of the governor.~~ The director shall serve at the
23 pleasure of the attorney general. He shall have

1 administrative and operational experience in criminal
2 justice and such other qualifications as are satisfactory
3 to the attorney general.

4

5 (b) The director may employ assistants, instructors
6 and other personnel as approved by the attorney general.
7 ~~with the consent of the governor.~~ The attorney general may
8 appoint the director as a peace officer, if qualified
9 pursuant to W.S. 9-1-701 through 9-1-707. The director may
10 appoint full-time staff instructors who qualify pursuant to
11 W.S. 9-1-701 through 9-1-707 to perform as peace officers.
12 Persons appointed as peace officers pursuant to this
13 subsection shall be considered peace officers only:

14

15 **9-1-636. Division of victim services; created;**
16 **appointment of director and deputy director; administrative**
17 **and clerical employees; definitions.**

18

19 (b) ~~With the approval of the governor,~~ The attorney
20 general shall appoint a director who is the chief
21 administrative officer of the division. The director is
22 responsible to the attorney general for the operation of

1 the division and shall serve at the pleasure of the
2 attorney general.

3

4 (c) With the consent of the attorney general ~~and the~~
5 ~~governor,~~ and subject to legislative appropriation, the
6 director may:

7

8 **9-4-218. Federal natural resource policy account**
9 **created; purposes.**

10

11 (a) There is created an account known as the "federal
12 natural resource policy account." Funds within the account
13 may be expended by the governor on behalf of the state of
14 Wyoming and its local governments, to take any of the
15 actions specified in this subsection in response to federal
16 land, water, air, mineral and other natural resource
17 policies which may affect the tax base of the state,
18 wildlife management, state species, recreation, private
19 property rights, water rights or leasehold rights. Funds
20 also may be expended for preparing and participating in
21 environmental impact statements and environmental
22 assessments, including analysis of economic or social and
23 natural or physical environmental effects on the human

1 environment. Funds also may be expended for coordinating
2 and participating in rangeland health assessments pursuant
3 to W.S. 11-2-207. The governor may expend funds from the
4 federal natural resource policy account for:

5
6 (iii) Investigating, initiating, intervening or
7 otherwise participating in litigation, or taking any other
8 legal action by the state, a state agency or the counties
9 of the state individually or jointly, that furthers the
10 purposes of this subsection. In carrying out this
11 subsection, the attorney general, or the counties, with
12 approval of the governor, may retain qualified practicing
13 attorneys to act for the state or the counties, including
14 providing representation in other forums with the federal
15 government or other state or county governments that may
16 preclude or resolve any outstanding issues or attempting to
17 influence pertinent federal legislation;

18
19 **9-5-101. State building commission; composition;**
20 **general powers and duties; conflicts of interest.**

21
22 (a) The ~~five (5) elected state officers~~ governor,
23 secretary of state, state auditor, state treasurer and

1 state superintendent of public instruction constitute the
2 state building commission. The governor shall be chairman
3 of the commission, but in his absence from any meeting, one
4 (1) of the members may act as chairman, and shall preside
5 at the meeting. All votes taken to decide the commission's
6 final action on any matter shall be recorded.

7

8 **9-5-109. Advisory task force on capitol building**
9 **rehabilitation and restoration; composition; duties;**
10 **account created.**

11

12 (m) The advisory task force shall be comprised of:

13

14 (iii) Five (5) members, one (1) each appointed
15 by ~~each of the five (5) statewide elected officials~~ the
16 governor, secretary of state, state auditor, state
17 treasurer and state superintendent of public instruction;

18

19 **9-13-102. Definitions.**

20

21 (a) As used in this article:

22

1 (xvi) "State office" means the state offices of
2 governor, treasurer, superintendent of public instruction,
3 auditor, secretary of state, attorney general and member of
4 the state legislature;

5
6 **9-13-108. Disclosure required.**

7
8 (a) Not later than January 31 annually, each of the
9 state's five (5) elected officials, ~~and~~ each member of the
10 Wyoming legislature and the attorney general shall file a
11 financial disclosure form with the secretary of state. The
12 form shall be signed by the elected official or legislator
13 filing it and under a certification that it is accurate.
14 The financial disclosure form shall contain the following
15 information current as of January 15 of that year:

16
17 **9-14-101. Second amendment defense.**

18
19 The attorney general may seek to intervene or file an
20 amicus curiae brief in any lawsuit filed in any state or
21 federal court in Wyoming, or filed against any Wyoming
22 citizen or firm in any other jurisdiction for damages for
23 injuries as a result of the use of fire arms that are not

1 defective, if in his judgment, the action endangers the
2 constitutional right of citizens of Wyoming to keep and
3 bear arms. The attorney general is directed to advance
4 arguments that protect the constitutional right to bear
5 arms. ~~Before intervening in any lawsuit pursuant to this~~
6 ~~section, the attorney general shall obtain the approval of~~
7 ~~the governor.~~

8
9 **9-14-102. Unauthorized federal agency actions.**

10
11 (c) The attorney general may seek to take action
12 before the federal environmental protection agency or in
13 any state or federal court to stop the enforcement,
14 administration or implementation of rulemaking or other
15 actions taken by that agency if, in his judgment, the
16 rulemaking or other action exceeds the authority granted by
17 the United States congress or otherwise rests on
18 questionable authority. ~~Before intervening in or initiating~~
19 ~~any lawsuit pursuant to this section, the attorney general~~
20 ~~shall obtain the approval of the governor.~~

21

1 **18-3-902. Action to remove county officer for**
2 **misconduct or malfeasance; petition served with summons;**
3 **pleading; trial; judgment; change of judge.**

4
5 (a) Whenever it appears to the ~~governor~~attorney
6 general on the verified complaint of qualified electors or
7 the board of county commissioners of the county that any
8 county officer is guilty of misconduct or malfeasance in
9 office ~~he may direct~~ the attorney general ~~to~~may commence
10 and prosecute an action in the district court of the county
11 in which the officer is an official asking for the removal
12 of the officer. The action shall be commenced by the filing
13 of a verified petition in the name of the state of Wyoming
14 signed by the attorney general setting forth the facts
15 constituting the misconduct or malfeasance in office.

16
17 **28-1-115. Submission of state agency plans to**
18 **legislature; contents; purposes.**

19
20 (f) For purposes of this section and W.S. 28-1-116,
21 "state agency" means:

22

1 (ii) Offices of the ~~five (5)~~ six (6) elected
2 state officials; ~~and the attorney general; and~~

3
4 **28-12-103. Expiration date of appointees' terms.**

5
6 Notwithstanding any other provision of law, effective July
7 1, 1979, after the expiration of the current term of office
8 of each person appointed by the governor and required to be
9 confirmed by the senate, the next term of that office
10 expires on March 1 during the year of regular expiration.
11 Thereafter, each term, as specified in this section, and
12 each term of office on any board, commission or committee
13 created by the laws of this state after July 1, 1979, and
14 for which senate confirmation is required, expires on March
15 1 during the year of regular expiration. ~~Notwithstanding~~
16 ~~the provisions of this section, the term of an attorney~~
17 ~~general serving pursuant to W.S. 9-1-601(b) shall terminate~~
18 ~~as provided by that subsection.~~

19
20 **35-7-1004. Personnel to administer provisions.**

21
22 The attorney general ~~by and with the consent of the~~
23 ~~governor~~ may employ such personnel as necessary to

1 administer this act. Such personnel shall serve at the
2 pleasure of the attorney general at such compensation as
3 may be approved by the Wyoming personnel division. Said
4 personnel shall be assigned such duties as may be necessary
5 to assist the commissioner in the performance of his
6 responsibilities under this act for the efficient operation
7 of the work of the office.

8

9 **35-11-1507. Injunction proceedings; penalties.**

10

11 (a) When, in the opinion of the governor, a person is
12 violating or is about to violate any provision of this
13 article, the governor shall ~~direct~~ inform the attorney
14 general and request the attorney general to apply to the
15 appropriate court for an order enjoining the person from
16 engaging or continuing to engage in the activity. Upon a
17 showing that the person has engaged, or is about to engage
18 in the activity, the court may grant a permanent or
19 temporary injunction, restraining order or other order.

20

21 **Section 3.** W.S. 9-1-601(b) is repealed.

22

23 **Section 4.**

1

2 (a) Section 1 of this act is effective immediately
3 upon completion of all acts necessary for a bill to become
4 law as provided by Article 4, Section 8 of the Wyoming
5 Constitution.

6

7 (b) Except as provided in subsection (a) of this
8 section, this act is effective January 7, 2019.

9

10

(END)