

SENATE FILE NO. SF0076

Attorney general-elected official.

Sponsored by: Senator(s) Bouchard and Moniz and
Representative(s) Biteman and Salazar

A BILL

for

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

13

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

15

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 or election; term; removal;**
6 **qualifications.**

7

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

17

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

1

2 **9-1-602. Vacancy in office.**

3

4 In case of a vacancy in the office of attorney general
5 appointed under W.S. 9-1-601(a), the governor shall appoint
6 a qualified person to fill the vacancy in accordance with
7 the provisions of W.S. 28-12-101(b). A vacancy in the
8 office of an elected attorney general shall be filled as
9 provided by W.S. 22-18-111. An appointment to fill a
10 vacancy shall be subject to senate confirmation. If the
11 senate fails to confirm the person appointed to fill the
12 vacancy of an elected attorney general, the procedure
13 specified in W.S. 22-18-111 shall be repeated and the
14 governor shall appoint another qualified person to fill the
15 vacancy in accordance with the provisions of W.S.
16 28-12-101(b).

17

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

20

21 The attorney general shall keep an office in the state
22 capital, shall not open an office elsewhere and shall not
23 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 an attorney general. The question of retention of
12 a circuit court judge or a magistrate of the circuit court
13 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, 1-35-103(a), 1-35-104,
6 7-22-101(a)(vi), 7-22-102(a), (b), (c)(intro) and (d),
7 7-22-108(a), 8-1-102(a)(xii), 8-2-101(a)(vi), 9-1-101(b),
8 9-1-603(b) and (c), 9-1-605(b) through (d), 9-1-608(a) and
9 (b), 9-1-611(c), 9-1-633(a) and (b)(intro), 9-1-636(b) and
10 (c)(intro), 9-2-1016(h)(i), 9-4-218(a)(iii), 9-5-101(a),
11 9-5-109(m)(iii), 9-13-102(a)(xvi), 9-13-108(a)(intro),
12 9-14-101, 9-14-102(c), 18-3-902(a), 28-1-115(f)(ii),
13 28-12-103, 35-7-1004 and 35-11-1507(a) are amended to read:
14

15 **1-31-103. Commencement of action.**
16

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

1

2 **1-35-103. Violation of state contracts to be reported**
3 **to attorney general; investigation; action to recover**
4 **damages; employment of special assistants.**

5

6 (a) Any officer, board or commission of the state of
7 Wyoming, or their legal counsel, responsible for the
8 enforcement of any contract between the state of Wyoming
9 and any person, having reason to believe that there has
10 been a violation of the terms of the contract to the damage
11 of the state of Wyoming, shall report the matter to the
12 attorney general of the state of Wyoming. The attorney
13 general shall make such investigation of the matter as is
14 necessary. Upon completion of the investigation and finding
15 of probable damages to the state of Wyoming, the attorney
16 general may bring suit in any court of competent
17 jurisdiction to recover all damages that the state of
18 Wyoming may have incurred by reason of the breach of
19 contract, or for any money or other property that may be
20 due on the contract. ~~Subject to the governor's approval he~~
21 The attorney general may employ specially qualified
22 assistants or counsel to aid in any investigation of such
23 action.

1

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

4

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

11

12 **7-22-101. Definitions.**

13

14 (a) As used in this article:

15

16 (vi) "~~Five (5)~~ Sate elected officials" means
17 the governor, secretary of state, state auditor, state
18 treasurer, attorney general and superintendent of public
19 instruction;

20

21 **7-22-102. Authority to contract; general conditions.**

22

1 (a) The state or a local government may contract with
2 private entities for the construction, lease (as lessor or
3 lessee), acquisition, improvement, operation, maintenance,
4 purchase or management of facilities and services as
5 provided in this article, but only after receiving the
6 consent of the ~~five (5)~~ state elected officials as to site,
7 number of beds and classifications of inmates or prisoners
8 to be housed in the facility.

9

10 (b) No contract shall be entered into or renewed
11 unless the contracting governmental entity, with the
12 concurrence of the ~~five (5)~~ state elected officials,
13 determines the contract offers substantial cost savings to
14 the contracting governmental entity and at least the same
15 quality of services provided by the state or by similar
16 local governments.

17

18 (c) After receiving the majority consent of the ~~five~~
19 ~~(5)~~ state elected officials as to the site, number of beds
20 and classifications of inmates or prisoners to be housed in
21 the facility, the state or the local government may
22 contract with private entities for the construction, lease

1 (as lessor or lessee), acquisition, improvement, operation,
2 maintenance, purchase or management of facilities, either:

3
4 (d) The state or the local government may reject or
5 return prisoners from outside the state. Prisoners or
6 inmates of out-of-state, nonfederal jurisdictions shall not
7 be incarcerated in any facility operated by a local
8 government entity under this article without the consent of
9 the majority of the ~~five (5) state~~ elected officials. ~~of~~
10 ~~this state.~~ At no time shall the number of prisoners from
11 out-of-state, nonfederal jurisdictions incarcerated in a
12 facility operated by a local government entity under this
13 article exceed thirty percent (30%) of the capacity of that
14 facility. Any out-of-state, nonfederal prisoner shall be
15 returned to the jurisdiction of origin to be released from
16 custody by them, outside the state of Wyoming at the
17 appropriate time.

18
19 **7-22-108. Monitoring; right of access.**

20
21 (a) The contracting governmental entity at the
22 contractor's expense, shall employ an individual to be
23 responsible for monitoring all aspects of the private

1 contractor's performance under a contract for the operation
2 of a facility pursuant to W.S. 7-22-102. The individual
3 employed as contract monitor shall be qualified to perform
4 this function by reason of education, training and
5 experience as determined by the ~~five~~(5)-state elected
6 officials. At a minimum, the contract monitor shall have
7 completed at least the same training required by this
8 article for detention officers and shall have served a
9 minimum of three (3) years as a detention officer. The
10 monitor, with the approval of the contracting governmental
11 entity, shall appoint staff as necessary to assist in
12 monitoring at the facility, which staff shall be at the
13 contractor's expense and will be solely responsible to the
14 contract monitor. The monitor or his designee shall be
15 provided an on-site work area by the contractor, shall be
16 on-site on a daily basis, and shall have access to all
17 areas of the facility and to inmates and staff at all
18 times. The contractor shall provide any and all data,
19 reports and other materials that the monitor determines are
20 necessary to carry out monitoring responsibilities under
21 this section.

22

23 **8-1-102. Definitions.**

1

2 (a) As used in the statutes unless the legislature
3 clearly specifies a different meaning or interpretation or
4 the context clearly requires a different meaning:

5

6 (xii) "Elected state official" means the
7 governor, secretary of state, state auditor, state
8 treasurer, attorney general and superintendent of public
9 instruction;

10

11 **8-2-101. Distribution of statutes, supplements and**
12 **session laws.**

13

14 (a) Statutes, supplements and session laws shall be
15 distributed as provided by contract with the publisher or
16 as directed by the management council, to the following,
17 without charge:

18

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

21

22 **9-1-101. Location of seat of government; residence of**
23 **state officials; deputies authorized.**

1

2 (b) The governor, secretary of state, state
3 treasurer, state auditor, attorney general and state
4 superintendent of public instruction shall reside and
5 maintain their offices at the seat of government.

6

7 **9-1-603. Duties generally; retention of qualified**
8 **practicing attorneys; matters in which county or state is**
9 **party or has interest; assistance to county and district**
10 **attorneys in felony trials; coordination of county and**
11 **school safety activities.**

12

13 (b) ~~With the approval of the governor~~ The attorney
14 general may retain qualified practicing attorneys to
15 prosecute fee-generating suits for the state if expertise
16 in a particular field is desirable.

17

18 (c) Upon the failure or refusal of any district or
19 county attorney to act in any criminal or civil case or
20 matter in which the county, state or any agency thereof is
21 a party, or has an interest, the attorney general may, at
22 the request of the board of county commissioners of the
23 county involved or of the district judge of the judicial

1 district involved, act on behalf of the county, state or
2 any agency thereof, if after a thorough investigation the
3 action is deemed advisable by the attorney general. The
4 cost of investigation and the cost of any prosecution
5 arising therefrom shall be paid out of the general fund of
6 the county where the investigation and prosecution take
7 place. The attorney general ~~shall~~ may also, ~~upon direction~~
8 ~~of the governor,~~ investigate any matter in any county of
9 the state in which the county, state or any agency thereof
10 may be interested. After investigation, the attorney
11 general shall submit a report of the investigation ~~to the~~
12 ~~governor and~~ to the district or county attorney of each
13 county involved and may take such other action as he deems
14 appropriate.

15

16 **9-1-605. Approval of public securities and official**
17 **bonds; water rights proceedings; investigation of**
18 **misconduct of county official; commencement of action.**

19

20 (b) ~~Under the direction of the governor~~ The attorney
21 general shall institute and pursue proceedings to maintain
22 the state's and its citizens' rights in the waters of
23 interstate streams.

1

2 (c) Upon representation to the ~~governor~~attorney
3 general of misconduct or malfeasance in office or the
4 commission of a crime by any county officer in the state
5 and if the ~~governor~~attorney general believes the ends of
6 justice demand or the matter will not be properly
7 investigated and prosecuted by the sheriff and by the
8 district attorney of the county, ~~the governor may direct~~
9 the attorney general ~~to~~may investigate the case.

10

11 (d) Upon completion of the investigation, the
12 attorney general ~~shall report the results of the~~
13 ~~investigation and his recommendations to the governor. If~~
14 ~~the governor and the attorney general determine that the~~
15 ~~attorney general should~~may institute a criminal or civil
16 action, ~~the attorney general shall commence the action~~ as
17 he deems appropriate. The attorney general shall have the
18 authority and duty vested in district attorneys in this
19 state.

20

21 **9-1-608. Assistant attorneys general.**

22

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

13

14 (b) ~~With the approval of the governor,~~ The attorney
15 general may appoint special assistant attorneys general for
16 any purposes. A person shall not be employed as an attorney
17 or legal counsel by any department, board, agency,
18 commission or institution of the state, or represent the
19 state in that capacity, except by the written appointment
20 of the attorney general. Written appointment of the
21 attorney general shall not be required for the employment
22 of legal counsel by elected state officials.

23

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

3
4 (c) ~~With the approval of the governor,~~ The attorney
5 general shall appoint a director who is the chief
6 administrative officer and chief agent of the division.

7
8 **9-1-633. Wyoming law enforcement academy; director;**
9 **appointment; term; qualifications; employees; salaries;**
10 **curriculum and training programs; fees; disposition.**

11
12 (a) A director of the Wyoming law enforcement academy
13 shall be appointed by the attorney general. ~~with the~~
14 ~~consent of the governor.~~ The director shall serve at the
15 pleasure of the attorney general. He shall have
16 administrative and operational experience in criminal
17 justice and such other qualifications as are satisfactory
18 to the attorney general.

19
20 (b) The director may employ assistants, instructors
21 and other personnel as approved by the attorney general.
22 ~~with the consent of the governor.~~ The attorney general may
23 appoint the director as a peace officer, if qualified

1 pursuant to W.S. 9-1-701 through 9-1-707. The director may
2 appoint full-time staff instructors who qualify pursuant to
3 W.S. 9-1-701 through 9-1-707 to perform as peace officers.
4 Persons appointed as peace officers pursuant to this
5 subsection shall be considered peace officers only:

6

7 **9-1-636. Division of victim services; created;**
8 **appointment of director and deputy director; administrative**
9 **and clerical employees; definitions.**

10

11 (b) ~~With the approval of the governor,~~ The attorney
12 general shall appoint a director who is the chief
13 administrative officer of the division. The director is
14 responsible to the attorney general for the operation of
15 the division and shall serve at the pleasure of the
16 attorney general.

17

18 (c) With the consent of the attorney general ~~and the~~
19 ~~governor,~~ and subject to legislative appropriation, the
20 director may:

21

22 **9-2-1016. General services division.**

23

1 (h) The general services division shall:

2

3 (i) Manage and control all state motor vehicles
4 and equipment including their identification, purchase,
5 lease, replacement, repair and permanent assignment, except
6 for state owned or leased vehicles personally used by or
7 assigned to the governor, secretary of state, state
8 auditor, state treasurer, attorney general or
9 superintendent of public instruction;

10

11 **9-4-218. Federal natural resource policy account**
12 **created; purposes.**

13

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

1 environmental impact statements and environmental
2 assessments, including analysis of economic or social and
3 natural or physical environmental effects on the human
4 environment. Funds also may be expended for coordinating
5 and participating in rangeland health assessments pursuant
6 to W.S. 11-2-207. The governor may expend funds from the
7 federal natural resource policy account for:

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

21

22 **9-5-101. State building commission; composition;**
23 **general powers and duties; conflicts of interest.**

1

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

11

12 **9-5-109. Advisory task force on capitol building**
13 **rehabilitation and restoration; composition; duties;**
14 **account created.**

15

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

17

18 (iii) Five (5) members, one (1) each appointed
19 by ~~each of the five (5) statewide elected officials~~ the
20 governor, secretary of state, state auditor, state
21 treasurer and state superintendent of public instruction;

22

23 **9-13-102. Definitions.**

1

2 (a) As used in this article:

3

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

8

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

10

11 (a) Not later than January 31 annually, each of the
12 state's ~~five (5)~~ six (6) elected officials and each member
13 of the Wyoming legislature shall file a financial
14 disclosure form with the secretary of state. The form
15 shall be signed by the elected official or legislator
16 filing it and under a certification that it is accurate.
17 The financial disclosure form shall contain the following
18 information current as of January 15 of that year:

19

20 **9-14-101. Second amendment defense.**

21

22 The attorney general may seek to intervene or file an
23 amicus curiae brief in any lawsuit filed in any state or

1 federal court in Wyoming, or filed against any Wyoming
2 citizen or firm in any other jurisdiction for damages for
3 injuries as a result of the use of fire arms that are not
4 defective, if in his judgment, the action endangers the
5 constitutional right of citizens of Wyoming to keep and
6 bear arms. The attorney general is directed to advance
7 arguments that protect the constitutional right to bear
8 arms. ~~Before intervening in any lawsuit pursuant to this~~
9 ~~section, the attorney general shall obtain the approval of~~
10 ~~the governor.~~

11

12 **9-14-102. Unauthorized federal agency actions.**

13

14 (c) The attorney general may seek to take action
15 before the federal environmental protection agency, the
16 federal occupational safety and health administration or in
17 any state or federal court to stop the enforcement,
18 administration or implementation of rulemaking or other
19 actions taken by those agencies if, in his judgment, the
20 rulemaking or other action exceeds the authority granted by
21 the United States congress or otherwise rests on
22 questionable authority. ~~Before intervening in or initiating~~

1 ~~any lawsuit pursuant to this section, the attorney general~~
2 ~~shall obtain the approval of the governor.~~

3
4 **18-3-902. Action to remove county officer for**
5 **misconduct or malfeasance; petition served with summons;**
6 **pleading; trial; judgment; change of judge.**

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

19
20 **28-1-115. Submission of state agency plans to**
21 **legislature; contents; purposes.**

22

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

3
4 (ii) Offices of the ~~five (5)~~ six (6) elected
5 state officials; ~~and the attorney general; and~~

6

7 **28-12-103. Expiration date of appointees' terms.**

8

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

22

23 **35-7-1004. Personnel to administer provisions.**

1

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

11

12 **35-11-1507. Injunction proceedings; penalties.**

13

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

23

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

2

3 **Section 4.**

4

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

9

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

12

13

(END)