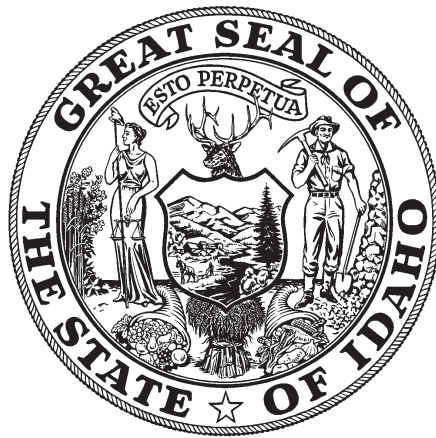


**ELECTION LAWS**  
**of the**  
**STATE of IDAHO**  
**2008**



A compilation of the Primary and General  
Election laws with amendments through  
the 2008 Legislative Session

**Compiled under the authority of**  
**BEN YSURSA**  
**Secretary of State**  
**Boise, Idaho**

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## **2008 IDAHO PRIMARY and GENERAL ELECTION CALENDAR**

January 15	Last day for County Commissioners to establish election precincts. (Sec. 34-301, Idaho Code)
March	County Commissioners to authorize suitable number of ballots. (Sec. 34-902, Idaho Code) (Regular meeting of board)
March 10	First day for filing declarations of candidacy of all candidates, including independents, with Secretary of State or County Clerk. (Sec. 34-704, Idaho Code)
March 21	Last day for filing declarations of candidacy until 5:00 p.m. (Sec. 34-704, Idaho Code)
March 24	Last day for Secretary of State to certify candidates to Legislative District and State Central Committees. (Sec. 34-706, Idaho Code)
March 24	Last day for County Clerk to certify candidates to County Central Committees. (Sec. 34-706, Idaho Code)
March 28	Last day for precinct committeemen to supply list for precinct election personnel. (Sec. 34-303, Idaho Code)
March 28	Last day for Secretary of State to designate candidates for presidential primary. (Sec. 34-732, Idaho Code)
March 31	Last day for Secretary of State to certify candidates to County Clerk. (Sec. 34-705, Idaho Code)
April 1	Last day for County Commissioners to designate mail ballot precincts. (Sec. 34-308, Idaho Code)
April 7	Last day for undesignated presidential candidates to file declaration of candidacy with the Secretary of State. (Sec. 34-732, Idaho Code)
April 7	County Clerk to appoint election personnel. (Sec. 34-303, Idaho Code)
April 14	Last day for political parties to supply the name of its county chairman or alternate to County Clerk in order to have witnesses accompany County Clerk or Deputy Clerk in the delivery of absentee ballots. (Sec. 34-1003, Idaho Code)
April 14	Last day a candidate may withdraw before the Primary. (Sec. 34-717, Idaho Code)
April 17	Last day for Secretary of State to provide form of sample Primary Election ballot. (Sec. 34-712, Idaho Code)

- April 28 Last day for Secretary of State to remove presidential candidates because of death, incapacity or withdrawal. (Sec. 34-733, Idaho Code)
- April 28 Last day for County Commissioners to designate polling places prior to Primary Election. (Sec. 34-302, Idaho Code)
- May 1 Last day to submit initiative petition signatures to County Clerk. This date is dependent upon when 18 month circulation period started. (Sec. 34-1802, Idaho Code)
- May 2 Last day for elector to pre-register for the Primary Election. Election day registration is available. (Sec. 34-408, Idaho Code)
- May 13 Last day declaration of intent to be filed by write-in candidates. (Sec. 34-702A, Idaho Code)
- May 15 First notice of Primary Election to be published. (Sec. 34-602, Idaho Code)
- May 19 Last day for a candidate for President or a designated representative to file with the Secretary of State a list of names and addresses of the persons proposed to be delegates to the national convention of the party of that candidate. (Sec. 34-735, Idaho Code)
- May 21 Last day for application for mail-in absentee ballot to be received by County Clerk not later than 5:00 p.m. (Sec. 34-1002, Idaho Code)
- May 22 Last day for County Clerk to receive written requests for the purpose of authorizing persons to act as watchers and challengers at the polling place. (Sec. 34-304, Idaho Code)
- May 22 Second notice of Primary Election to be published. (Sec. 34-602, Idaho Code) Facsimile sample ballot should be published at this time. (Sec. 34-2425, Idaho Code and Secretary of State Directive)
- May 26 Last day for application for in person absentee voting at the absent elector's polling place until 5:00 p.m. (Sec. 34-1002, Idaho Code)
- May 27 Last day for return of absentee ballots by 8:00 p.m. (Sec. 34-1005, Idaho Code)
- May 27 Primary Election -- 8:00 a.m. to 8:00 p.m. (Sec. 34-102, Idaho Code) (\*) At Clerk's option, polling places may be opened at 7:00 a.m. (Sec. 34-1101, Idaho Code)
- May 27 County Clerk's office to remain open 8:00 a.m. to 8:00 p.m. (Sec. 34-211, Idaho Code)
- May 28 Registration reopens. (Sec. 34-408, Idaho Code)
- June 3 Last day for County Board of Canvassers to meet. (Sec. 34-1205, Idaho Code)

- June 4 County Clerk issues certificates of nomination or election to candidates and certifies to Secretary of State. (Sec. 34-1208, Idaho Code)
- June 6 Last day for county central committee to meet and elect officers. (Sec. 34-502, Idaho Code)
- June 7 Last day for legislative district central committees to meet and elect officers. (Sec. 34-503, Idaho Code)
- June 11 Last day for State Board of Canvassers to meet. (Sec. 34-1211, Idaho Code)
- June 13 Last day for write-in candidates to pay filing fee. This date is dependent upon the day of county canvass--10 days after canvass. (Sec. 34-702, Idaho Code)
- June 13 Secretary of State issues certificates of nomination or election. (Sec. 34-1214, Idaho Code)
- June 30 Last day for County Clerk to verify initiative petition signatures. This is dependent upon the last day to submit initiative petition signatures to the County clerk – 60 calendar days from the submission of signatures. (Sec. 34-1802, Idaho Code)
- July 28 Last day for County Clerk to examine election register and note challenges from Primary Election. (Sec. 34-432, Idaho Code)
- August 6 Last day for Magistrates up for retention to file declarations of candidacy with County Clerk. (Sec. 1-2220, Idaho Code)
- August 24 Last day for independent candidates for President and Vice-President to file nomination petitions. (Sec. 34-708A, Idaho Code)
- August 30 Last day for new political party formation petitions to be filed with the Secretary of State. (Sec. 34-501, Idaho Code)
- September 1 Last day for state party chairmen to certify candidates for President, Vice-President and Presidential Electors. (Five day extension may be granted by Secretary of State.) (Sec. 34-711, Idaho Code)
- September 1 Last day for independent candidates for President to certify Presidential Electors. (Sec. 34-711A, Idaho Code)
- September 7 Last day for Secretary of State to forward General Election sample ballots. (Sec. 34-909, Idaho Code)
- September 7 Last day for Secretary of State to certify to the County Clerk constitutional amendments. (Sec. 34-603, Idaho Code)
- September 7 Last day a candidate may withdraw before the General Election. (Sec. 34-717, Idaho Code)

- September 15 Last day for County Clerk to print absentee ballots. (Secretary of State Directive)
- September 22 Last day for political parties to supply the name of its county chairman or alternate to County Clerk in order to have witnesses accompany County Clerk or Deputy Clerk in the delivery of absentee ballots. (Sec. 34-1003, Idaho Code)
- October 6 Last day for County Commissioners to designate polling places prior to General Election. (Sec. 34-302, Idaho Code)
- October 10 Last day for elector to pre-register for the General Election. Election day registration is available. (Sec. 34-408, Idaho Code)
- October 21 Last day declaration of intent to be filed by write-in candidates. (Sec. 34-702A, Idaho Code)
- October 23 First notice of General Election to be published. (Sec. 34-602, Idaho Code)
- October 27 Last day for Secretary of State to certify vacancy candidates who have been appointed by the central committees. (Sec. 34-909, Idaho Code)
- October 29 Last day for application for mail-in absentee ballot to be received by County Clerk not later than 5:00 p.m. (Sec. 34-1002, Idaho Code)
- October 30 Last day for County Clerk to receive written requests for the purpose of authorizing persons to act as watchers and challengers at the polling place. (Sec. 34-304, Idaho Code)
- October 30 Second notice of General Election to be published. (Sec. 34-602, Idaho Code) Facsimile sample ballot should be published with this notice. (Sec. 34-2425, Idaho Code and Secretary of State Directive)
- November 3 Last day for application of in person absentee ballot applications at the absent elector's polling place until 5:00 p.m. (Sec. 34-1002, Idaho Code)
- November 4 Last day for return of absentee ballots by 8:00 p.m. (Sec. 34-1005, Idaho Code)
- November 4 General Election -- 8:00 a.m. to 8:00 p.m. (Sec. 34-101, Idaho Code) (\*) At Clerk's option, polling places may be opened at 7:00 a.m. (Sec. 34-1101, Idaho Code)
- November 4 County Clerk's office to remain open 8:00 a.m. to 8:00 p.m. (Sec. 34-211, Idaho Code)
- November 5 Registration reopens. (Sec. 34-408, Idaho Code)
- November 14 Last day for County Board of Canvassers to meet. (Sec. 34-1205, Idaho Code)
- November 17 County Clerk issues certificates of election. (Sec. 34-1209, Idaho Code)

- November 19 Last day for State Board of Canvassers to meet. (Sec. 34-1211, Idaho Code)
- November 20 Secretary of State issues certificates of election. (Sec. 34-1215, Idaho Code)
- December 15 Presidential Electors meet and cast votes. (3 United States Code 7)
- Jan. 5, 2009 Last day for County Clerk to examine election register and note challenges from General Election. (Sec. 34-432, Idaho Code)
- Jan. 19, 2009 Last day for County Clerk to submit report to Secretary of State on absentee voters as required by federal law. (Sec. 34-1002, Idaho Code)
- Mar. 4, 2009 Last day for County Clerk to cancel registration of those electors who have not voted in four (4) years. (Sec. 34-435, Idaho Code)



## COUNTIES OF IDAHO

<b>County</b>	<b>County seat</b>	<b>Zip Code</b>	<b>Phone</b>
Ada	Boise	83702-7300	287-6860
Adams	Council	83612-0048	253-4561
Bannock	Pocatello	83205-6094	236-7334
Bear Lake	Paris	83261-0190	945-2212
Benewah	St. Maries	83861-1852	245-3212
Bingham	Blackfoot	83221-1776	785-8040
Blaine	Hailey	83333-8429	788-5505
Boise	Idaho City	83631-1300	392-4431
Bonner	Sandpoint	83864-1305	265-1432
Bonneville	Idaho Falls	83402-3582	529-1350 x 1363
Boundary	Bonnars Ferry	83805-0419	267-2242
Butte	Arco	83213-0737	527-3021
Camas	Fairfield	83327-0430	764-2242
Canyon	Caldwell	83605-3407	454-7562
Caribou	Soda Springs	83276-0775	547-4324
Cassia	Burley	83318-1862	878-5240
Clark	Dubois	83423-0205	374-5304
Clearwater	Orofino	83544-0586	476-5615
Custer	Challis	83226-0385	879-2360
Elmore	Mountain Home	83647-3000	587-2131
Franklin	Preston	83263-1232	852-1090
Fremont	St. Anthony	83445-1409	624-7332
Gem	Emmett	83617-3059	365-4561
Gooding	Gooding	83330-0417	934-4841
Idaho	Grangeville	83530-1948	983-2751
Jefferson	Rigby	83442-0275	745-7756
Jerome	Jerome	83338-2344	324-8811
Kootenai	Coeur d'Alene	83816-9000	446-1030
Latah	Moscow	83843-0568	882-8580
Lemhi	Salmon	83467-3900	756-2815
Lewis	Nezperce	83543-0039	937-2661
Lincoln	Shoshone	83352-1501	886-7641
Madison	Rexburg	83440-0389	356-3662
Minidoka	Rupert	83350-0368	436-9511
Nez Perce	Lewiston	83501-0896	799-3020
Oneida	Malad	83252-1245	766-4116
Owyhee	Murphy	83650-0128	495-2421
Payette	Payette	83661-2400	642-6000
Power	American Falls	83211-1200	226-7611
Shoshone	Wallace	83873-2348	752-1264
Teton	Driggs	83422-5164	354-2905
Twin Falls	Twin Falls	83303-0126	736-4004
Valley	Cascade	83611-1350	382-7100
Washington	Weiser	83672-0670	414-2092

**CONGRESSIONAL DISTRICTS  
AND COUNTIES**

**JUDICIAL DISTRICTS**

**LEGISLATIVE DISTRICTS**

**TITLE 34**  
**ELECTIONS**



**CHAPTER 1  
DEFINITIONS**

**34-101. "General election" defined — Offices to be filled — Constitutional amendments.** "General election" means the national, state and county election held on the first Tuesday succeeding the first Monday of November in each even-numbered year.

At these elections there shall be chosen all congressional, state and county officers, including electors of president and vice-president of the United States, as are by law to be elected in such years.

All amendments to the Idaho Constitution shall be submitted to the voters for their approval at these elections. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 194)

**34-102. "Primary election" defined — Purposes.** "Primary election" means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties. Primary elections shall be held on the fourth Tuesday of May in each even-numbered year.

"Presidential primary" or "presidential preference primary" means an election held for the purpose of allowing voters to express their choice for candidates for nominations for president of the United States. Presidential primary elections shall be held in conjunction with the primary election, on the fourth Tuesday of May in each presidential election year. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 194; S.L. 1975, Ch. 174; S.L. 1979, Ch. 309)

**34-103. "Special election" defined.** "Special election" means any election other than a general or primary election held at any time for any purpose provided by law. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 194)

**34-104. "Qualified elector" defined.** "Qualified elector" means any person who is eighteen (18) years of age, is a United States citizen and who has resided in this state and in the county at least thirty (30) days next preceding the election at which he desires to vote, and who is registered as required by law. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 194; S.L. 1972, Ch. 350; S.L. 1973, Ch. 304; S.L. 1982, Ch. 253)

**34-105. "Registered elector" defined.** "Registered elector", for the purpose of this act, means any "qualified elector". (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 194)

**34-106. Limitation upon elections.** On and after January 1, 1994, notwithstanding any other provisions of the law to the contrary, there shall be no more than four (4) elections conducted in any county in any calendar year, except as provided in this section, and except that elections to fill vacancies in the United States house of representatives shall be held as provided in the governor's proclamation.

(1) The dates on which elections may be conducted are:

## ELECTION LAWS OF THE STATE OF IDAHO

- (a) the first Tuesday in February of each year; and
- (b) the fourth Tuesday in May of each year; and
- (c) the first Tuesday in August of each year; and
- (d) the Tuesday following the first Monday in November of each year.

(e) In addition to the elections specified in paragraphs (a) through (d) of this subsection, an emergency election may be called upon motion of the governing board of a political subdivision. An emergency exists when there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for a national or local defense, or it is necessary to do emergency work to safeguard life, health or property. Such a special election, if conducted by the county clerk, shall be conducted at the expense of the political subdivision submitting the question.

(2) Candidates for office elected in February, May or August shall take office on the date specified in the certificate of election but not more than sixty (60) days following the election.

(3) Candidates for office elected in November shall take office as provided in the constitution, or on January 1, next succeeding the November election.

(4) The governing board of each political subdivision subject to the provisions of this section, which, prior to January 1, 1994, conducted an election for members of that governing board on a date other than a date permitted in subsection (1) of this section, shall establish as the election date for that political subdivision the date authorized in subsection (1) of this section which falls nearest the date on which elections were previously conducted, unless another date is established by law.

(5) The secretary of state is authorized to provide such assistance as necessary, and to prescribe any needed rules, regulations or interpretations for the conduct of election authorized under the provisions of this section.

(6) School districts governed by title 33, Idaho Code, but not including community colleges governed by chapter 21, title 33, Idaho Code, and water districts governed by chapter 6, title 42, Idaho Code, are exempt from the provisions of this section.

(7) Initiative, referendum, and recall elections conducted by any political subdivision shall be held on the nearest date authorized in subsection (1) of this section which falls more than forty-five (45) days after the clerk of the political subdivision orders that such initiative, referendum or recall election shall be held. (History: S.L. 1992, Ch. 176; S.L. 1993, Ch. 313; S.L. 2007, Ch. 92)

34-106A. [Repealed - S.L. 1972, Ch. 350]

**34-107. "Residence" defined.** (1) "Residence," for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.

(2) In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits,

## ELECTION LAWS OF THE STATE OF IDAHO

residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, situs of residence for which the exemption in section 63-602G, Idaho Code, is filed, and motor vehicle registration.

(3) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

(4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(5) If a qualified elector moves to another state, or to any of the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 194; S.L. 1982, Ch. 215; S.L. 1989, Ch. 147; S.L. 1996, Ch. 322)

**34-108. "Election official" defined.** "Election official" means the secretary of state, any county clerk, registrar, judge of election, clerk of election, canvassing board or board of county commissioners engaged in the performance of election duties as required by law. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 194)

**34-109. "Political party" defined.** "Political party" means an affiliation of electors representing a political group under a given name as authorized by law. (History: S.L. 1970, Ch. 140)

**34-110. "Election register" defined.** "Election register" means the voter registration cards of all electors who are qualified to appear and vote at the designated polling places. (History: S.L. 1970, Ch. 140)

**34-111. "Combination election record and poll book" defined — Operation.**

(1) "Combination election record and poll book" means the book containing a listing of registered electors who are qualified to appear and vote at the designated polling places. An additional copy of the combination election record and poll book may be maintained to record that the elector has voted.

(2) The county clerk shall deliver to the chief election judge in each precinct, as other election supplies and materials are delivered, a list in alphabetical order of all registered electors referred to in section 34-110, Idaho Code. This list shall constitute the combination election record and poll book of each precinct. This list shall include the residence address of each elector. For any given precinct, the list may be divided into two (2) or more separate parts and shall be alphabetical according to the name of the registered elector.

(3) The county clerk shall administer an oath of office to the chief judge of each precinct, before or upon delivering supplies. The county clerk may delegate his authority to administer oath of the chief judge to any officer authorized to administer oaths, including notaries public.

## ELECTION LAWS OF THE STATE OF IDAHO

(4) Before entering upon the discharge of their duties, the election judges shall take and subscribe an oath in the combination election record and poll book. Such oaths shall be administered by the chief judge of the precinct. Should the chief judge fail to be present any officer authorized to administer oaths including notaries public may administer oaths to the election judges. Blank oaths of office shall be attached to the combination election record and poll book.

(5) The combination election record and poll book shall be in the manner and form prescribed by the secretary of state.

(6) Immediately after the close of the polls, the names of the electors who voted shall be counted and the number written and certified in the combination election record and poll book. The combination election record and poll book shall be immediately signed by each of the election board judges. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 350; S.L. 1982, Ch. 137)

**34-112. "County clerk" defined.** "County clerk" means the clerk of the district court. (History: S.L. 1970, Ch. 140)

**34-113. "Candidate" defined.** "Candidate" means and includes every person for whom it is contemplated or desired that votes be cast at any political convention, primary, general or special election, and who either tacitly or expressly consents to be so considered, except candidates for president and vice-president of the United States. (History: S.L. 1970, Ch. 140)

**34-114. "Tally book" or "tally list" defined.** "Tally book" or "tally list" means the forms in which the votes cast for any candidate or special question are counted and totaled at the polling precinct. (History: S.L. 1970, Ch. 140)

**34-115. References to male include female and masculine includes feminine.** All references to the male elector includes [include] the female elector and the masculine pronoun includes the feminine. (History: S.L. 1970, Ch. 140)

**34-116. Calendar days used in computation of time.** Calendar days shall be used in all computations of time made under the provisions of this act. In computing time for any act to be done before any election, the first day shall be included and the last, or election day, shall be excluded. Sundays, Saturdays and legal holidays shall be included, but if the time for any act to be done shall fall on Sunday, Saturday or a legal holiday, such act shall be done upon the day following such Sunday, Saturday or legal holiday. (History: S.L. 1970, Ch. 140; S.L. 1995, Ch. 215)

**34-117. "Judicial nominating election" defined.** "Judicial nominating election" means an election held for the purpose of selecting justices of the supreme court and judges of the district court as are by law to be selected at such election. This election shall be held on the date of the statewide primary election. (History: S.L. 1971, Ch. 194)

## ELECTION LAWS OF THE STATE OF IDAHO

(4) Before entering upon the discharge of their duties, the election judges shall take and subscribe an oath in the combination election record and poll book. Such oaths shall be administered by the chief judge of the precinct. Should the chief judge fail to be present any officer authorized to administer oaths including notaries public may administer oaths to the election judges. Blank oaths of office shall be attached to the combination election record and poll book.

(5) The combination election record and poll book shall be in the manner and form prescribed by the secretary of state.

(6) Immediately after the close of the polls, the names of the electors who voted shall be counted and the number written and certified in the combination election record and poll book. The combination election record and poll book shall be immediately signed by each of the election board judges. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 350; S.L. 1982, Ch. 137)

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## ELECTION LAWS OF THE STATE OF IDAHO

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(5) The combination election record and poll book shall be in the manner and form prescribed by the secretary of state.

(6) Immediately after the close of the polls, the names of the electors who voted shall be counted and the number written and certified in the combination election record and poll book. The combination election record and poll book shall be immediately signed by each of the election board judges. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 350; S.L. 1982, Ch. 137)

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**34-115. References to male include female and masculine includes feminine.** All references to the male elector includes [include] the female elector and the masculine pronoun includes the feminine. (History: S.L. 1970, Ch. 140)

**34-116. Calendar days used in computation of time.** Calendar days shall be used in all computations of time made under the provisions of this act. In computing time for any act to be done before any election, the first day shall be included and the last, or election day, shall be excluded. Sundays, Saturdays and legal holidays shall be included, but if the time for any act to be done shall fall on Sunday, Saturday or a legal holiday, such act shall be done upon the day following such Sunday, Saturday or legal holiday. (History: S.L. 1970, Ch. 140; S.L. 1995, Ch. 215)

**34-117. "Judicial nominating election" defined.** "Judicial nominating election" means an election held for the purpose of selecting justices of the supreme court and judges of the district court as are by law to be selected at such election. This election shall be held on the date of the statewide primary election. (History: S.L. 1971, Ch. 194)

**CHAPTER 2  
DUTIES OF OFFICERS**

**34-201. Secretary of state chief election officer.** The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws.

The secretary of state is responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed service voters and overseas voters with respect to elections for federal office as required by section 102 of the uniformed and overseas citizens absentee voting act (42 U.S.C. section 1973 et. seq.).

If a national or local emergency or other situation arises which make substantial compliance with the provisions of the uniformed and overseas citizens absentee voting act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States armed forces, mobilization of those forces, including state national guard and reserve components of this state, the secretary of state may prescribe, by directive, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in this state. (History: S.L. 1970, Ch. 140; S.L. 2003, Ch. 48)

**34-202. Secretary of state to distribute comprehensive directives and instructions relating to election laws to all county clerks.** In carrying out his responsibility under section 17 [34-201], [Idaho Code,] the secretary of state shall cause to be prepared and distributed to each county clerk detailed and comprehensive written directives and instructions relating to and based upon the election laws as they apply to elections, registration of electors and voting procedures which by law are under the direction and control of the county clerk. Such directives and instructions shall include sample forms of ballots, papers, documents, records and other materials and supplies required by such election laws. The secretary of state shall prescribe a form for voter registration cards based on the voter registration laws and, from time to time, shall cause to be prepared and distributed to each county clerk such written corrections of such directives and instructions and of the form for registration cards as are necessary to maintain uniformity in the application, operation and interpretation of and to reflect changes in the election laws. Each county clerk affected thereby shall comply with such directives and instruction, and corrections thereof, and shall provide voter registration cards prepared in accordance with the prescribed form. (History: S.L. 1970, Ch. 140)

**34-203. Assistance and advice to county clerks.** In carrying out his responsibility under section 17 [34-201], [Idaho Code,] the secretary of state shall assist and advise each county clerk with regard to the application, operation and interpretation of the election laws as they apply to elections, registration of electors and voting procedures which by laws are under the direction and control of the county clerk. (History: S.L. 1970, Ch. 140)

**34-204. Conferences with county clerks on administration of election laws.** In carrying out his responsibility under section 17 [34-201], [Idaho Code,] the secretary of state shall cause to be organized and conducted at convenient places and times in this state at least three (3) conferences on the administration of the election laws. The secretary of state shall cause written notice of the place and time of each conference to be given to each county clerk. Each county clerk or his designated deputy shall attend at least one (1) of the conferences and shall comply with the instructions given under the authority of the secretary of state at each conference such county clerk attends. (History: S.L. 1970, Ch. 140)

**34-205. Duties of secretary of state relating to election laws.** The secretary of state shall:

(1) Prepare and cause to be printed, in appropriate and convenient form, periodic compilations and digests of the election laws.

(2) Distribute in appropriate quantities to the county clerks for use by such county clerks and by election boards, copies of such compilations and digests and the sample form of such supplies and materials necessary to conduct elections as the secretary of state considers appropriate, including poll books, tally sheets, return sheets and abstract of vote sheets.

(3) Make such compilations and digests available for distribution, free or at cost, to interested persons. (History: S.L. 1970, Ch. 140)

**34-206. General supervision of administration of election laws by county clerks.** Subject to and in accordance with the directives and instructions prepared and distributed or given under the authority of the secretary of state, each county clerk shall exercise general supervision of the administration of the election laws by each local election official in his county for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity in such administration by local election officials. Such directives and instructions shall be directed to and shall be complied with by each local election official affected thereby. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 69)

**34-207. [Repealed - S.L. 1971, Ch. 69]**

**34-208. Duties of county clerks relating to supervision of election laws.** In carrying out his exercise of general supervision under section 34-206, each county clerk shall:

(1) Require that each local election official shall use such ballots, papers, documents, records and other materials and supplies as directed by the secretary of state.

(2) Require each local election official in his county to submit reports pertaining to the administration of the election laws by such local election official. Each local election official shall comply with any such requirement.

(3) Inspect and observe the administration of the election laws by any local

**34-204. Conferences with county clerks on administration of election laws.** In carrying out his responsibility under section 17 [34-201], [Idaho Code,] the secretary of state shall cause to be organized and conducted at convenient places and times in this state at least three (3) conferences on the administration of the election laws. The secretary of state shall cause written notice of the place and time of each conference to be given to each county clerk. Each county clerk or his designated deputy shall attend at least one (1) of the conferences and shall comply with the instructions given under the authority of the secretary of state at each conference such county clerk attends. (History: S.L. 1970, Ch. 140)

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(1) Prepare and cause to be printed, in appropriate and convenient form, periodic compilations and digests of the election laws.

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(3) Make such compilations and digests available for distribution, free or at cost, to interested persons. (History: S.L. 1970, Ch. 140)

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**34-207. [Repealed - S.L. 1971, Ch. 69]**

**34-208. Duties of county clerks relating to supervision of election laws.** In carrying out his exercise of general supervision under section 34-206, each county clerk shall:

(1) Require that each local election official shall use such ballots, papers, documents, records and other materials and supplies as directed by the secretary of state.

(2) Require each local election official in his county to submit reports pertaining to the administration of the election laws by such local election official. Each local election official shall comply with any such requirement.

(3) Inspect and observe the administration of the election laws by any local election official in his county at any time he deems necessary.

**34-204. Conferences with county clerks on administration of election laws.** In carrying out his responsibility under section 17 [34-201], [Idaho Code,] the secretary of state shall cause to be organized and conducted at convenient places and times in this state at least three (3) conferences on the administration of the election laws. The secretary of state shall cause written notice of the place and time of each conference to be given to each county clerk. Each county clerk or his designated deputy shall attend at least one (1) of the conferences and shall comply with the instructions given under the authority of the secretary of state at each conference such county clerk attends. (History: S.L. 1970, Ch. 140)

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**34-206. General supervision of administration of election laws by county clerks.** Subject to and in accordance with the directives and instructions prepared and distributed or given under the authority of the secretary of state, each county clerk shall exercise general supervision of the administration of the election laws by each local election official in his county for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity in such administration by local election officials. Such directives and instructions shall be directed to and shall be complied with by each local election official affected thereby. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 69)

**34-207. [Repealed - S.L. 1971, Ch. 69]**

**34-208. Duties of county clerks relating to supervision of election laws.** In carrying out his exercise of general supervision under section 34-206, each county clerk shall:

(1) Require that each local election official shall use such ballots, papers, documents, records and other materials and supplies as directed by the secretary of state.

(2) Require each local election official in his county to submit reports pertaining to the administration of the election laws by such local election official. Each local election official shall comply with any such requirement.

(3) Inspect and observe the administration of the election laws by any local election official in his county at any time he deems necessary.

(4) Carry on a program of in-service training for local election officials in his county

by periodically distributing to them such bulletins, manuals and other informational instructional materials and by establishing and conducting such classes of instruction pertaining to the administration of the election laws by local election officials as the county clerk considers desirable. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 69)

**34-209. Powers of county clerks.** (1) The county clerk may employ such personnel and procure such equipment, supplies, materials, books, papers, records and facilities of every kind as he considers necessary to facilitate and assist in carrying out his functions in connection with administering the election laws; except that procurement of voting machines or vote tally systems shall be conducted in accordance with the provisions of section 34-2405, Idaho Code.

(2) The necessary expenses incurred by the county clerk in administering the election laws, including reasonable rental for polling places, shall be allowed by the board of commissioners and paid out of the county treasury.

(3) The county clerk and his deputies may administer oaths and affirmations in connection with the performance of their functions in administering the election laws. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 131)

**34-210. Preparation of ballots, papers, documents, records, and other materials and supplies required.** Subject to any applicable election law, the county clerk may devise, prepare and use in his administration of the election laws the ballots, papers, documents, records and other materials and supplies required or permitted by the election laws or otherwise necessary in such administration by such county clerk. (History: S.L. 1970, Ch. 140)

**34-211. Office of county clerk open as long as polls are open.** On the day of any general, special or primary election held throughout the county, the county clerk shall keep his office open for the transaction of business pertaining to the election from the time the polls are opened in the morning continuously until the polls are closed. (History: S.L. 1970, Ch. 140)

**34-212. Reports to prosecuting attorney of noncompliance with election laws by county clerk.** (1) Any person having knowledge of any failure of a county clerk to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state may notify the prosecuting attorney of the county. Upon receipt of such notification the prosecuting attorney shall proceed immediately to investigate the alleged failure of the county clerk to comply. Upon the conclusion of the investigation the prosecuting attorney shall advise and direct the county clerk with regard to how he must proceed in connection with the matter. The county clerk shall proceed immediately to comply with the directive of the prosecuting attorney.

(2) If the prosecuting attorney, upon the conclusion of an investigation under subsection (1) of this section, determines that the county clerk has failed to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, and that such failure to comply involves a violation by the county clerk of any statute, the violation of which is punishable by a criminal penalty

or forfeiture of office, the prosecuting attorney shall promptly proceed to prosecute such violation by the county clerk.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against a county clerk who fails to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, or who violates any statute. (History: S.L. 1970, Ch. 140)

**34-213. Mandamus to enforce compliance by county clerk.** (1) Whenever it appears to the secretary of state that a county clerk has failed to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, the secretary of state may apply to the appropriate district court or a judge thereof for a writ of mandamus to compel the county clerk to comply with such directive or instruction. In any such mandamus proceeding it is a defense that the directive or instruction in question is unlawful.

(2) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against a county clerk who fails to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state. (History: S.L. 1970, Ch. 140)

**34-214. Noncompliance by local county election officials — Enforcement by county clerk.** (1) Whenever it appears to a county clerk that any local election official in his county has failed to comply with any election law or any directive or instruction prepared and issued by the county clerk, the county clerk may issue an order to such local election official. The order shall specify in what manner the local election official has failed to comply, indicate the proper manner of compliance and direct the local election official to so comply with such law or directive or instruction within a designated reasonable time.

(2) If the local election official fails to comply as directed by the order of the county clerk, the county clerk may apply to a judge of the district court for the county in which the county clerk holds office for an order, returnable within five (5) days from the date thereof, to compel the local election official to comply with the order of the county clerk or to show cause why he should not be so compelled. Upon receipt of the application of the county clerk the judge shall issue the appropriate order, which shall be final. The judge shall dispose of the matter as soon as possible and not more than ten (10) days after his order is returned by the local election official.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against the noncomplying local election official. (History: S.L. 1970, Ch. 140)

**34-215. Appeals by aggrieved persons.** (1) Any person adversely affected by any act or failure to act by the secretary of state or a county clerk under any election law, or by any order, rule, regulation, directive or instruction made under the authority of the secretary of state or of a county clerk under any election law, may appeal therefrom to the district court for the county in which the act or failure to act occurred or in which

the order, rule, regulation, directive or instruction was made or in which such person resides.

(2) Any party to the appeal proceedings in the district court under subsection (1) of this section may appeal from the decision of the district court to the supreme court.

(3) The district courts and supreme court, in their discretion, may give such precedence on their dockets to appeals under this section as the circumstances may require.

(4) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against any act or failure to act by the secretary of state or a county clerk under any election law or against any order, rule, regulation, directive or instruction made under the authority of the secretary of state or a county clerk under any election law. (History: S.L. 1970, Ch. 140)

**34-216. Grievance procedures.** The secretary of state shall promulgate rules in compliance with chapter 52, title 67, Idaho Code, establishing state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252) (History: S.L. 2003, Ch. 48).

### CHAPTER 3 ELECTION PRECINCTS AND JUDGES

**34-301. Establishment of election precincts by county commissioners — Lists and maps to be furnished to secretary of state.** The board of county commissioners in each county shall establish a convenient number of election precincts therein. The board of county commissioners may establish an absentee voting precinct for each legislative district within the county. The boundaries of such absentee precincts shall be the same as those of the legislative districts for which they were established. The board shall have the authority to create new or consolidate established precincts only within the boundaries of the legislative districts provided by section 67-202, Idaho Code. No county shall have less than two (2) precincts. This board action shall be done no later than January 15 in a general election year. The January 15 deadline shall be waived during a general election year in which a legislative or court ordered redistricting plan is adopted. In such cases, any precinct boundary adjustments shall be accomplished by the county commissioners as soon as is practicable.

The county clerk of each county shall provide, and the secretary of state shall maintain in his office, a current and accurate report of the following:

- (a) A list of all precincts within the county;
- (b) A map of all precincts within the county;
- (c) A count of voters registered for the latest general election, by precinct;
- (d) A count of votes cast at the latest general election, by precinct. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 210; S.L. 1972, Ch. 141; S.L. 1973, Ch. 177; S.L. 1974, Ch. 212; S.L. 1976, Ch. 73; S.L. 1977, Ch. 8; S.L. 1992, Ch. 152)

**34-302. Designation of precinct polling places.** The board shall, not less than thirty (30) days before any election, designate a suitable polling place for each election

precinct. Insofar as possible, the board shall designate the same polling place for the general election which it designated for the primary election. The physical arrangements of the polling place shall be sufficient to guarantee all voters the right to cast a secret ballot. All polling places designated as provided herein, shall conform to the accessibility standards adopted by the secretary of state pursuant to the “Voting Accessibility for the Elderly and Handicapped Act,” P.L. 98-435. The expense of providing such polling places shall be a public charge and paid out of the county treasury. (History: S.L. 1970, Ch. 140; S.L. 1973, Ch. 304; S.L. 1978, Ch. 38; S.L. 1985, Ch. 115)

**34-303. Appointment of election judges by county clerk.** The county clerk shall appoint two (2) or more election judges, one (1) of whom shall be designated chief judge, and the number of clerks deemed necessary by him for each polling place. In the event a single polling place is designated for two (2) or more precincts, an individual may serve simultaneously on the election board for two (2) or more precincts thus served by a single polling place. The precinct committeemen shall recommend persons for the position in their respective precincts to the county clerk in writing at least ten (10) days prior to the date on which any appointment shall be made and the county clerk shall appoint the judges from such lists if the persons recommended are qualified.

The chief election judge shall be responsible for the conduct of the proceedings in the polling place. Compensation for all election personnel shall be determined by the board of county commissioners, and not less than the minimum wage as prescribed by the laws of the state of Idaho.

Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts at least sixty (60) days prior to the primary election.

In order to provide for a greater awareness of the elections process, the rights and responsibilities of voters and the importance of participating in the electoral process, as well as to provide additional members of precinct boards, a county clerk may appoint not more than two (2) students per precinct to serve under the direct supervision of election board members designated by the county clerk. A student may be appointed, notwithstanding lack eligibility to vote, if the student possesses the following qualifications:

(1) Is at least seventeen (17) years of age at the time of the election to which he or she is serving as a member of an election board.

(2) Is a citizen of the United States. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 210; S.L. 1977, Ch. 8; S.L. 2003, Ch. 48; S.L. 2004, Ch. 113)

**34-304. Challengers — Watchers.** The county clerk shall, upon receipt of a written request, such request to be received no later than five (5) days prior to the day of election, direct that the election judges permit one (1) person authorized by each political party to be at the polling place for the purpose of challenging voters, and shall, if requested, permit any one (1) person authorized by a candidate, several candidates or political party, to be present to serve as a watcher to observe the conduct of the election. Such authorization shall be evidenced by a writing signed by the county chairman and secretary of the political party, or by the candidate or candidates, and filed with the county clerk.

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Where the issue before the electors is other than the election of officers, the clerk shall, upon receipt of a written request, such request to be received no later than five (5) days prior to the date of voting on the issue or issues, direct that the election judges permit one (1) pro and one (1) con person to be at the polling place for the purpose of challenging voters and to observe the conduct of the election. Such authorization shall be evidenced in writing signed by the requesting person and shall state which position relative to the issue or issues the person represents. Persons who are authorized to serve as challengers or watchers shall wear a visible name tag which includes their respective titles. A watcher is entitled to observe any activity conducted at the location at which the watcher is serving, provided however, that the watcher does not interfere with the orderly conduct of the election. If the watchers are present at the polling place when ballots are counted they shall not absent themselves until the polls are closed. A watcher serving at the central counting station may be present at any time the station is open for the purpose of processing or preparing to process election results and until the election officers complete their duties at the station. If the county clerk does not receive the list of names of those desired to be present for the purpose of either poll watching or challenging within the time prescribed above, the clerk shall not allow the presence of such persons later seeking to serve in those capacities. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 141; S.L. 1973, Ch. 304; S.L. 2006, Ch. 70)

**34-305. County clerk chief county elections officer.** The county clerk is the chief elections officer of his county and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws. The county clerk shall comply with the lawful directives and instructions given him by the secretary of state. (History: S.L. 1971, Ch. 210)

**34-306. Precinct boundary requirements.** (1) Precinct boundaries shall follow visible, easily recognizable physical features, on the ground including, but not limited to, streets, railroad tracks, roads, streams, and lakes. The exception shall be when a precinct boundary coincides with a city, county, Indian reservation or school district boundary which does not follow a visible feature.

(2) In order to achieve compliance with the requirements of this section, and simultaneously maintain legislative district boundaries which may not follow visible features, a county may designate subprecincts within precincts, the internal boundaries of which do not follow visible features. (History: S.L. 1977, Ch. 8; S.L. 1989, Ch. 261, S.L. 1992, Ch. 284 )

**34-307. Precinct boundaries maintained.** From January 15 in any year ending in 8 through September 15 in any year ending in 1, the board of county commissioners shall make no changes in precinct boundaries, except that a single precinct may be divided into two (2) or more new precincts wholly contained within the original precinct. (History: S.L. 1998, Ch. 276)

**34-308. Mail ballot precinct.** A precinct within the county which contains no more than one hundred and twenty-five (125) registered electors at the last general election, may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-numbered year. Such a designation shall apply thereafter to all elections conducted within the precinct until revoked by the board of county commissioners. Having designated a mail ballot precinct, there shall be no voting place established within the precinct. Elections in a mail ballot precinct shall be conducted in a manner consistent with absentee voting with the following special provisions.

(1) The clerk shall issue a ballot, by mail, to every registered voter in a mail ballot precinct, and shall affix to the return envelope, postage sufficient to return the ballot.

(2) The ballot shall be mailed no sooner than twenty-four (24) days prior to the election day and no later than the fourteenth day prior to the election.

(3) The clerk shall make necessary provisions to segregate mail ballot precinct ballots by precinct, and for all purposes of the election, the precinct integrity shall be maintained.

(4) The clerk shall make available in the office of the clerk, registration on election day for any individual who is eligible to vote and who resides in a mail ballot precinct and has not previously registered. The clerk shall provide an official polling place in the office of the clerk and a qualified elector who registers on election day and resides in a mail ballot precinct shall be allowed to vote at the office of the clerk. (History S.L. 2004, Ch. 165)

#### CHAPTER 4

#### VOTERS— PRIVILEGES—QUALIFICATIONS AND REGISTRATION

**34-401. Electors privileged from arrest during attendance at polling place** — **Exception.** Electors are privileged from arrest, except for treason, a felony or breach of the peace, during their attendance at a polling place. (History: S.L. 1970, Ch. 140)

**34-402. Qualifications of electors.** Every male or female citizen of the United States, eighteen (18) years old, who has resided in this state and in the county for thirty (30) days where he or she offers to vote prior to the day of election, if registered within the time period provided by law, is a qualified elector. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 192; S.L. 1972, Ch. 392; S.L. 1973, Ch. 304; S.L. 1982, Ch. 253)

**34-403. Disqualified electors not permitted to vote.** No elector shall be permitted to vote if he is disqualified as provided in article 6, sections 2 and 3 of the state constitution. (History: S.L. 1970, Ch. 140)

**34-404. Registration of electors.** All electors must register before being able to vote at any primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a

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legible, accurate and complete registration card is received in the office of the county clerk or is received at the polls pursuant to section 34-408A, Idaho Code. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 192; S.L. 1972, Ch. 197; S.L. 1987, Ch. 256; S.L. 1997, Ch. 356)

**34-405. Gain or loss of residence by reason of absence from state.** For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his absence while employed in the service of this state or the United States, while a student of any institution of learning, while kept at any state institution at public expense, nor absent from the state with the intent to have this state remain his residence. If a person is absent from this state but intends to maintain his residence for voting purposes here, he shall not register to vote in any other state during his absence. (History: S.L. 1970, Ch. 140)

**34-406. Appointment of Registrars.** The county clerk shall provide for voter registration in the clerk's office and may appoint registrars to assist in voter registration throughout the county.

The county clerk shall provide all political parties within the county with a supply of the mail registration form prescribed in section 34-410, Idaho Code. (History S.L. 1994, Ch. 67)

**34-407. Procedure for registration.** (1) Any county clerk or official registrar shall register without charge any elector who personally appears in the office of the county clerk or before the official registrar, as the case may be, and requests to be registered.

(2) Upon receipt of a written application to the county clerk from any elector who, by reason of illness or physical incapacity is prevented from personally appearing in the office of the county clerk or before an official registrar, the county clerk or an official registrar so directed by the county clerk shall register such elector at the place of abode of the elector. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 192, S.L. 1991, Ch. 337; S.L. 1995, Ch. 215)

**34-408. Closing of register — Time limit.** (1) No elector may register in the office of the county clerk within twenty-four (24) days preceding any election held throughout the county in which he resides for the purpose of voting at such election; provided however, a legible, accurate and complete registration card received in the office of the county clerk during the twenty-four (24) day period preceding an election shall be accepted and held by the county clerk until the day following the election when registration reopens, at which time the registration shall become effective. This deadline shall also apply to any registrars the county clerk may have appointed.

(2) Any elector who will complete his residence requirement or attain the requisite voting age during the period when the register of electors is closed may register prior to the closing of the register.

(3) Notwithstanding subsection (1) of this section, an individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors'

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polling place” provided in section 34-1006, Idaho Code. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 192; S.L. 1974, Ch. 172; S.L. 1981, Ch. 105; S.L. 1994, Ch. 67; S.L. 2001, Ch. 99; S.L. 2005, Ch. 127)

**34-408A. Election day registration.** An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration card, making an oath in the form prescribed by the secretary of state and providing proof of residence. An individual may prove residence for purposes of registering by:

- (1) Showing a driver’s license or Idaho identification card issued through the department of transportation; or
- (2) Showing any document which contains a valid address in the precinct together with a picture identification card; or
- (3) Showing a current valid student identification card from a post-secondary educational institution in Idaho accompanied with a current student fee statement that contains the student’s valid address in the precinct together with a picture identification card.

Election day registration provided in this section shall apply to all elections conducted under title 34, Idaho Code, and to school district and municipal elections.

An individual who is eligible to vote may also register, upon providing proof of residence, at the “absent electors’ polling place” provided in section 34-1006, Idaho Code. (History: S.L. 1994, Ch. 67; S.L. 1995, Ch. 215; S.L. 1997, Ch. 356)

### **34-409. [Repealed - S.L. 2001, Ch. 99]**

**34-410. Mail registration.** Any elector may register by mail for any election. Any mail registration application must be received by the county clerk prior to the close of registration as provided in section 34-408, Idaho Code, provided that any mail registration application postmarked not later than twenty-five (25) days prior to an election shall be deemed timely.

The secretary of state shall prescribe the form for the mail registration application. This mail application form shall be available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

Any federal mail registration form adopted pursuant to the provisions of the national voter registration act of 1993 (P.L. 103-31) shall also be accepted as a valid registration, if such form is postmarked not later than twenty-five (25) days prior to an election.

The county clerk shall prepare and issue by first class nonforwardable mail to each elector registering by mail a verification of registration containing the name and residence of the elector and the name or number of the precinct in which the elector resides.

A verification returned undeliverable shall cause the county clerk to remove the elector’s card from the register of electors.

As required by the Help America Vote Act of 2002 (P.L. 107-252), a copy of proper identification will be required prior to issuance of a ballot to anyone who has registered

by mail and has not previously voted in an election for federal office in the state. Proper identification consists of:

- (1) A current and valid photo identification; or
- (2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. (History: S.L. 1994, Ch. 67; S.L. 1995, Ch. 215; S.L. 2003, Ch. 48)

**34-410A. Absentee registration for uniformed and overseas citizens.** Whenever provision is made for absentee voting by a statute of the United States, including the “Uniformed and Overseas Citizens Absentee Voting Act” (42 U.S.C. 1973 ff.), an application for an absentee ballot made under that law may be given the same effect as an application for an absentee ballot made under chapter 10, title 34, Idaho Code. (History: S.L. 1976, Ch. 353; S.L. 1994, Ch. 122; S.L. 1995, Ch. 215)

**34-411. Application for registration —Contents.** (1) Each elector who requests registration shall supply the following information under oath or affirmation:

- (a) His full name and sex.
  - (b) His mailing address, his residence address or any other necessary information definitely locating his residence.
  - (c) The period of time preceding the date of registration during which he has resided in the state.
  - (d) Whether or not he is a citizen.
  - (e) That he is under no legal disqualifications to vote.
  - (f) The county and state where he was previously registered, if any.
  - (g) Date of birth.
  - (h) Current driver's license number or, in the absence of an Idaho driver's license, the last four (4) digits of the elector's social security number.
- (2) Any elector who shall supply any information under subsection (1) of this section, knowing it to be false, is guilty of perjury.
- (3) Each elector who requests registration may, at the elector's option, supply elector's telephone number. If the telephone number is supplied by the elector, the telephone number shall be available to the public. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 192; S.L. 1972, Ch. 392; S.L. 1988, Ch. 233; S.L. 1995, Ch. 215; S.L. 2003, Ch. 48)

**34-411A. [Repealed - S.L. 1973, Ch. 123]**

**34-412. Qualifications for registration.** (1) The qualifications of any person who requests to be registered shall be determined in the first instance by the registering official from the evidence before him. If the registering official determines that such person is not qualified, he shall refuse to register the person.

(2) A person refused registration under subsection (1) of this section may make application to the county clerk for a hearing on his qualifications. Not more than ten (10) days after the date he receives such application, the county clerk shall hold a hearing on the qualifications of the applicant and shall notify the applicant of the place

and time of such hearing. At such hearing the applicant may present evidence as to his qualifications, provided that no hearing shall be held subsequent to any election which is held within said ten (10) day period. If the county clerk determines that the applicant is qualified, the county clerk shall register the applicant immediately upon the conclusion of the hearing. (History: S.L. 1970, Ch. 140; S.L. 1982, Ch. 216; S.L. 1995, Ch. 215)

**34-413. Reregistration of elector who changes residence.** An elector who moves to another county within the state or to another state within thirty (30) days prior to any election shall be permitted to vote in the ensuing election by absentee ballot. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 392; S.L. 1977, Ch. 15; S.L. 1982, Ch. 137; S.L. 1983, Ch. 213; S.L. 1995, Ch. 215)

**34-414. [Repealed - S.L. 1995, Ch. 215]**

**34-415. [Repealed - S.L. 1995, Ch. 215]**

**34-416. Registration cards.** (1) A registration card shall contain the following warning:

WARNING: Any elector who supplies any information, knowing it to be false, is guilty of perjury.

(2) The elector shall read the warning set forth in subsection (1) of this section and shall sign his name in an appropriate place on the completed card.

(3) The registration card completed and signed as provided in this section constitutes the official registration card of the elector. The county clerk shall keep and file all such cards in a convenient manner in his office. Such cards constitute the register of electors and shall be considered confidential and unavailable for public inspection and copying except as provided by subsection (25) of section 9-340C, Idaho Code. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 392; S.L. 2001, Ch. 99; S.L. 2003, Ch. 48; S.L. 2004, Ch. 163)

**34-417. Changes in boundaries of precinct — Alteration of registration cards.** When changes in the boundaries of any precinct are made, the county clerk shall alter the official registration card of any elector to conform with the change and shall mail a written notice thereof to such elector at his residence address indicated on the altered registration card. (History: S.L. 1970, Ch. 140)

**34-418. Weekly review of new registration cards — Report to interested officials.** Each week the county clerk shall review the registration cards of all newly registered electors for the past weekly period to determine whether they have been previously registered to vote in another state or in another county within this state. The county clerk or secretary of state, through the statewide voter registration system, shall notify the proper registration official or county clerk where the elector was previously registered so that the prior registration may be canceled. The form of such notice shall be prescribed by the secretary of state. (History: S.L. 1970, Ch. 140; S.L. 2006, S.L. 70)

**34-419. Suspension of registration of electors who appear not to be citizens of the United States.** The county clerk shall remove from the register of electors the official registration card of any elector who appears by the registration records in the office of the county clerk not to be a citizen of the United States and shall suspend the registration of such elector. The county clerk shall mail a written notice of such removal and suspension to the elector at his residence address indicated on the card. If the elector proves to the county clerk that he is in fact a citizen of the United States, his card shall be replaced in the register and his registration reinstated. (History: S.L. 1970, Ch. 140)

**34-420. No elector's registration shall be canceled while he is serving in the armed forces — Exception.** (1) Except as provided in section 34-435, Idaho Code, no elector's registration shall be canceled, nor shall he be deprived of his right to vote at any election by reason of the removal of his official registration card from the register of electors, during any period that he is serving in the armed forces of the United States or of any ally of the United States.

(2) In order to facilitate the implementation of the provisions of subsection (1) of this section, the one hundred twenty (120) day limitation in section 34-435, Idaho Code, shall be waived for the year 1987, in order to allow military registrations to be cancelled by the county clerk in calendar year 1987. (History: S.L. 1970, Ch. 140; S.L. 1987, Ch. 20)

**34-421. [Repealed - S.L. 1995, Ch. 215]**

**34-422. [Repealed - S.L. 1981, Ch. 255]**

**34-423. [Repealed - S.L. 1995, Ch. 215]**

**34-424 to 34-430. [Repealed - S.L. 1973, Ch. 123]**

**34-431. Challenges of entries in election register.** At the time of any election, any registered elector may challenge the entry of an elector's name as it appears in the election register. Such a challenge will be noted in the remarks column following the elector's name stating the reason, such as "died," "moved," or "incorrect address." The individual making the challenge shall sign his name following the entry. (History: S.L. 1970, Ch. 140)

**34-432. Correction of election register from challenges at election.** (1) Within sixty (60) days after each election, the county clerk shall examine the election register and note the challenges as described in section 34-431, Idaho Code. The county clerk shall mail a written inquiry to the challenged elector at his mailing address as indicated on his registration card. Such inquiry shall state the nature of the challenge and provide a suitable form for reply.

(2) Within twenty (20) days from date of mailing of the written inquiry the elector may, in person or in writing, state that the information on his registration card is correct.

Upon receipt of such a statement or request the county clerk shall determine whether the information satisfies the challenge. If the county clerk determines that the challenge has not been satisfied, the county clerk shall schedule a hearing on the challenge and shall notify the elector of the place and time of the hearing. The hearing shall be held no later than twenty (20) days after notice is given. At the hearing, the challenged elector may present evidence of qualification. If the county clerk, upon the conclusion of the hearing, determines that the challenged elector's registration is not valid, the county clerk shall cancel the registration. If a challenged elector fails to make the statement or request in response to the inquiry, the county clerk shall cancel the registration.

(3) The county clerk may make inquiry into the validity of any registration at any time. The inquiry shall proceed as provided in this section. (History: S.L. 1970, Ch. 140; S.L. 1982, Ch. 137; S.L. 1989, Ch. 146; S.L. 2006, Ch. 70)

**34-433. Monthly correction of election register from reported deaths.** The state board of health shall, on or about the 25th day of each month, furnish to the secretary of state a listing showing the name, age, county of residence and residence address of each Idaho resident who has died during the preceding month. The secretary of state shall sort this list by county and furnish a copy of same to each county clerk. Each county clerk shall immediately cancel all registrations of individuals reported as deceased by the state board of health in the board's report to the secretary of state. (History: S.L. 1970, Ch. 140)

**34-434. Retention of notices and correspondence relating to correction of election registers.** Copies of all notices and other correspondence issued pursuant to the directives contained in sections 67 and 68 of this act [34-432, 34-433, Idaho Code,] shall be retained by the county clerk for a period of two (2) years from date of mailing. (History: S.L. 1970, Ch. 140)

**34-435. Cancellation of registrations following any general election of those not voting for four years.** Within one hundred and twenty (120) days following the date of the general election in 1978 and every general election thereafter, the county clerk shall examine the election register and the signed statements of challenge made at that election. After this examination, the county clerk shall immediately cancel the registration of any elector who did not vote at any primary or general election in the past four (4) years.

This section shall be construed as to provide for a uniform four (4) year registration period for all electors. (History: S.L. 1970, Ch. 140; S.L. 1975, Ch. 124; S.L. 1977, Ch. 15; S.L. 1978, Ch. 27; S.L. 1995, Ch. 215)

**34-436. Retention of correspondence relating to cancellation of voter's registration.** All correspondence relating to the cancellation of an elector's registration shall be preserved by the county clerk for a period of two (2) years following the time of any general election. (History: S.L. 1970, Ch. 140)

**34-437. Furnishing lists of registered electors — Restrictions.** (1) Each of the county clerks, upon receiving a request shall supply to any individual, a current list of the registered electors of the county and their addresses, arranged in groups according to election precincts. The county clerks shall prepare an original of the above list from the state vote registration system at county expense. Any person desiring a copy of the original list shall be furnished the same, and the county clerk shall assess the individual an amount which will compensate the county for the cost of reproducing such copy.

(2) No person to whom a list of registered electors is made available or supplied under subsection (1) of this section and no person who acquires a list of registered electors prepared from such list shall use any information contained therein for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 392; S.L. 1973, Ch. 304; S.L. 1976, Ch. 344; S.L. 1982, Ch. 137; S.L. 2003, Ch. 48)

**34-437A. Statewide lists of registered electors.** (1) The secretary of state, in conjunction with county clerks, shall develop and implement a single, uniform official, centralized, interactive, computerized statewide voter registration system as required by the Help America Vote Act of 2002 (P.L. 107-252).

(2) The statewide system shall contain the name and registration information of every legally registered voter in the state and assign a unique identifier to each legally registered voter in the state, and include the following:

(a) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(b) The computerized list shall contain the name and registration information of every legally registered voter in the state.

(c) Under the computerized list, a unique identifier shall be assigned to each legally registered voter in the state.

(d) The computerized list shall be coordinated with other agency databases within the state.

(e) Any election official in the state, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(f) All voter registration information obtained by any local election official in the state shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(g) The secretary of state shall provide such support as may be required so that the local election officials are able to enter information as described in subsection (2) (f) of this section.

(h) The computerized list shall serve as the official voter registration list for the conduct of all elections for federal office in the state.

(3) Any person desiring a copy of the statewide list of registered electors shall be furnished the same, and the secretary of state shall assess the individual an amount which will compensate the state for the cost of reproducing such copy.

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No person to whom a list of statewide electors is furnished and no person who acquires a list of statewide electors prepared from such list shall use any information contained therein for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however that any such list and label may be used for any political purpose. (History: S.L. 1976, Ch. 344; S.L. 2003, Ch. 48)

**34-437B. Furnishing lists of registered electors to school districts.** Each of the county clerks, upon receiving a request therefor, not later than the thirtieth day prior to a school election, shall, not later than the seventh day prior to the election, supply to a requesting school board a list of registered electors, that are within the school district within which a school district election is to be held. The county clerk may assess the school board an amount which will compensate the county for the cost of preparing such a list. (History: S.L. 1987, Ch. 256; S.L. 1988, Ch. 71; S.L. 2006, Ch. 70)

### **34-438. [Repealed - S.L. 2003, Ch. 48]**

[34-439] **34-440. Disclosures in elections to authorize bonded indebtedness.** Notwithstanding any other provision of law, any taxing district which proposes to submit any question to the electors of the district that would authorize any bonded indebtedness shall provide a brief official statement setting forth in simple, understandable language, information on the proposal substantially as follows:

(1) The total existing indebtedness, including interest accrued, of the taxing district;

(2) The interest rate which is anticipated on the proposed bond issue, the range of anticipated rates, and the maximum rate if a maximum is specified in the submission of the question; and

(3) The total amount to be repaid over the life of the bond issue based on the anticipated interest rate, if the bond election is approved.

The verified, official district's statement shall be made a part of the official ballot and be included in the official notice of the election. (History: S.L. 1983, Ch. 108; S.L. 1984, Ch. 107; S.L. 1987, Ch. 19)

## CHAPTER 5 POLITICAL PARTIES — ORGANIZATION

### **34-501. "Political party" defined — Procedures for creation of a political party.**

(1) A "political party" within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the following three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name at the last general election, provided that those individuals seeking the office of president, vice president and president elector shall be considered one candidate, or

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(b) By polling at the last general election for any one of its candidates for state or national office at least three per cent (3%) of the aggregate vote cast for governor or for presidential electors.

(c) By an affiliation of electors who shall have signed a petition which shall:

(A) State the name of the proposed party in not more than six (6) words;

(B) State that the subscribers thereto desire to place the proposed party on the ballot;

(C) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to two per cent (2%) of the aggregate vote cast for presidential electors in the state at the previous general election at which presidential electors were chosen;

(D) Be filed with the secretary of state on or before August 30 of even numbered years;

(E) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures;

(F) The petitions and signatures so submitted shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(G) The petition shall be circulated no earlier than August 30 of the year preceding the general election.

(2) Upon certification by the secretary of state that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

The newly certified party shall proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 130; S.L. 1976, Ch. 344; S.L. 1978, Ch. 256; S.L. 1985, Ch. 42; S.L. 1987, Ch. 262)

**34-502. County central committee — Members — Officers — Duties of chairman — Notice to chairman.** The county central committee of each political party in each county shall consist of the precinct committeemen representing the precincts within the county and the county chairman elected by the precinct committeemen. The precinct committeemen within each county shall meet at the county seat within ten (10) days after the primary election and at the time and date designated by the incumbent county chairman, and shall organize by electing a chairman, vice chairman, a secretary, a state committeeman, a state committeewoman, and such other officers as they may desire who shall hold office at the pleasure of the county central committee or until their successors are elected.

Unless state party rules, adopted as provided in section 34-505, Idaho Code, provide otherwise, when a vacancy exists in the office of county central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct

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committeemen of the county, and the precinct committeemen shall proceed to elect a chairman of the county central committee for the balance of the unexpired term.

The county central committee shall fill by appointment all vacancies that occur or exist in the office of precinct committeeman who shall be a qualified elector of the precinct.

The county clerk shall deliver in writing to the chairman of the county central committee of each political party on or before January 20 of each year in which a general election is to be held, a list of the election precincts in the county and the names and addresses of the precinct committeemen who were elected at the last primary election, or who have since been appointed as precinct committeemen, as such election or appointment is shown on the records of the county clerk. If the county clerk has no record of precinct committeemen, he shall in writing, so inform the chairman of the county central committee.

The chairman of the county central committee shall on or before February 1 of each year in which a general election is to be held, and at such other times as changes occur, certify to the county clerk the names and addresses of the precinct committeemen of his political party. Immediately upon receipt of certification, the county clerk shall deliver in writing to each precinct committeeman a notice of the provisions of subsection (1) of section 34-406, Idaho Code. (History: S.L. 1970, Ch. 140; S.L. 1975, Ch. 21; S.L. 1976, Ch. 351)

### **34-503. Legislative district central committee — Membership — Officers.**

The legislative district central committee of each political party in each legislative district shall consist of the precinct committeemen representing the precincts within the legislative district, and the legislative district chairman elected by the precinct committeemen. The precinct committeemen within each legislative district shall meet within the legislative district or at a convenient location in a legislative district contiguous to the legislative district, or at a convenient location in a county in which any portion of the legislative district sits, within eleven (11) days after the primary election, the meeting time and place to be designated by the incumbent legislative district chairman. At this meeting the precinct committeemen shall organize by electing a chairman, vice chairman, a secretary and such other officers as they may desire, who shall hold office at the pleasure of the legislative district central committee or until their successors are elected.

Unless state party rules, adopted as provided in section 34-506, Idaho Code, provide otherwise, when a vacancy exists in the office of legislative district central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the legislative district, and the precinct committeemen shall proceed to elect a chairman of the legislative district central committee for the balance of the unexpired term. (History: S.L. 1970, Ch. 140; S.L. 1976, Ch. 351; S.L. 2006, Ch. 397)

**34-504. State central committee — Membership.** The state central committee of each political party shall consist of all legislative district chairmen, all county central committee chairmen, all state committeemen, and state committeewomen selected by the

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county central committees. Each of the above members of the state central committee shall be entitled to vote at all meetings of the state central committee. (History: S.L. 1970, Ch. 140)

### **34-504A. [Repealed - S.L. 1970, Ch. 140]**

**34-505. Powers and duties of county central committee.** The county central committee shall have all the powers and duties prescribed by state law and rules and regulations promulgated and adopted by the state conventions or the state central committee. (History: S.L. 1970, Ch. 140)

**34-506. Powers and duties of legislative district central committee.** The legislative district central committee shall have all the powers and duties prescribed by state law and rules and regulations promulgated and adopted by the state conventions or the state central committee. (History: S.L. 1970, Ch. 140)

**34-507. Selection of delegates to the state convention.** The delegates to the state convention of each political party shall be selected in the manner prescribed by rules and regulations promulgated and adopted by the state central committee. (History: S.L. 1970, Ch. 140; S.L. 1971, 1st E.S., Ch. 9)

## **CHAPTER 6 TIME OF ELECTIONS OFFICERS ELECTED**

**34-601. Dates on which elections shall be held.** Elections shall be held in this state on the following dates or times:

(1) A primary election shall be held on the fourth Tuesday in May, 1980, and every two (2) years thereafter on the above-mentioned Tuesday.

(2) A general election shall be held on the first Tuesday after the first Monday of November, 1972, and every two (2) years thereafter on the above-mentioned Tuesday.

(3) Special state elections shall be held on the dates ordered by the governor's proclamation, or as otherwise provided by law.

(4) A presidential primary shall be held in conjunction with the primary election, on the fourth Tuesday in May, 1980, and every four (4) years thereafter on the above-mentioned Tuesday. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 193; S.L. 1975, Ch. 174; S.L. 1979, Ch. 309)

**34-602. Publication of notices for primary, general or special elections — Contents.** The several county clerks shall publish at least two (2) times, the notices for any primary, general or special election. The notice shall state the date of the election, the polling place in each precinct and the hours during which the polls shall be open for the purpose of voting, and information about the accessibility of the polling places.

The first notice shall be published at least twelve (12) days prior to any election and the second notice shall be published not later than five (5) days prior to the election. The notice of election shall be published in at least two (2) newspapers published within the

county, but if this is not possible, the notice shall be published in one (1) newspaper published within the county or a newspaper which has general circulation within the county. (History: S.L. 1970, Ch. 140; S.L. 2004, Ch. 112)

**34-603. Certification of a proposed constitution, constitutional amendment or other question to be submitted to the people for vote.** Whenever a proposed constitution, constitutional amendment or other question is to be submitted to the people of the state for popular vote, it shall be certified by the secretary of state to the county clerks not later than September 7 in the year in which it will be voted upon. It shall be published in the form prescribed by the secretary of state. (History: S.L. 1970, Ch. 140; S.L. 1973, Ch. 304; S.L. 1984, Ch. 131; S.L. 1985, Ch. 42)

**34-604. Election of United States Senator — Qualifications.** (1) At the general election, 1972, and every six (6) years thereafter, there shall be elected one (1) United States senator. At the general election, 1974, and every six (6) years thereafter, there shall be elected one (1) United States senator.

(2) No person shall be elected to the office of United States senator unless he has attained the age of thirty (30) years at the time of his election, has been a citizen of the United States at least nine (9) years and shall reside within the state at the time of his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of five hundred dollars (\$500) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1996, Ch. 28)

**34-605. Election of United States Congressional Representatives — Qualifications.** (1) At the general election, 1972, and every alternate year thereafter, there shall be elected in each United States congressional district a member of the United States house of representatives and any additional number of representatives to which the state may be entitled in the state at large.

(2) No person shall be elected to the house of representatives unless he has attained the age of twenty-five (25) years at the time of his election, has been a citizen of the United States at least seven (7) years and shall reside within the state at the time of his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1983, Ch. 213; S.L. 1996, Ch. 28)

**34-606. Election of presidential electors.** (1) At the general election, 1972, and every four (4) years thereafter, there shall be elected such a number of electors of president and vice president of the United States as the state may be entitled to in the electoral college.

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(2) No person shall be elected to this position unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Such electors shall be certified to the secretary of state as provided for by law. (History: S.L. 1970, Ch. 140)

**34-607. Election of Governor — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, a governor shall be elected.

(2) No person shall be elected to the office of governor unless he shall have attained the age of thirty (30) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1996, Ch. 28)

**34-608. Election of Lieutenant Governor — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, there shall be elected a lieutenant governor.

(2) No person shall be elected to the office of lieutenant governor unless he shall have attained the age of thirty (30) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1996, Ch. 28)

**34-609. Election of Secretary of State — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, a secretary of state shall be elected.

(2) No person shall be elected to the office of secretary of state unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general account. (History: S.L. 1970, Ch. 140; S.L. 1996, Ch. 28)

**34-610. Election of State Controller — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, a state controller shall be elected.

(2) No person shall be elected to the office of state controller unless he shall have

attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1994, Ch. 181; S.L. 1996, Ch. 28)

**34-611. Election of State Treasurer — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, a state treasurer shall be elected.

(2) No person shall be elected to the office of state treasurer unless he shall have attained the age of twenty-five (25) years at the time of his election, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1996, Ch. 28)

**34-612. Election of Attorney General — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, an attorney general shall be elected.

(2) No person shall be elected to the office of attorney general unless he shall have attained the age of thirty (30) years at the time of his election, is admitted to the practice of law within the state, is a citizen of the United States and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1996, Ch. 28)

**34-612A - 34-612D. [Repealed - S.L. 1970, Ch. 140]**

**34-613. Election of Superintendent of Public Instruction — Qualifications.**

(1) At the general election, 1974, and every four (4) years thereafter, a superintendent of public instruction shall be elected.

(2) No person shall be elected to the office of superintendent of public instruction unless he shall have attained the age of twenty-five (25) years at the time of his election; is a citizen of the United States; has a bachelor's degree from an accredited college or university, and shall have resided within the state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of two hundred dollars (\$200) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1974, Ch. 182; S.L. 1994, Ch. 277; S.L. 1996, Ch. 28)

**34-614. Election of State Representatives and Senators — Qualifications.**

(1) At the general election, 1972, and every alternate year thereafter, there shall be elected in each legislative district such representatives and senators as they may be severally entitled.

(2) No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of thirty (\$30) dollars which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1981, 1st E.S., Ch. 2; S.L. 1996, Ch. 28)

**34-614A. Candidates for state legislature.** (1) A candidate for the office of state senator in a multi-member legislative district, and all candidates for the office of representative shall declare, in their declarations of candidacy, the specific seat or position that they seek.

(2) The secretary of state shall designate positions by using the terms “Position A”, “Position B”, and continuing in such fashion until all seats or positions in each district are properly labeled. The positions in each district shall be separately and distinctly placed on the primary and general election ballots, and for each position to be filled the ballot shall state “Vote for one”.

(3) The candidate receiving the greatest number of votes for the position he seeks shall be declared nominated, or elected, as the case may be. (History: S.L. 1975, Ch. 230; S.L. 1984, Ch. 121)

**34-615. Election of Justices of the Supreme Court — Qualifications.** (1) At the primary election, 1972, and every alternate year thereafter, subject to the provisions of section 34-1217, Idaho Code, there shall be elected justices of the Supreme Court to fill any vacancy or vacancies occasioned by the expiration of the term or terms of office of any member or members.

(2) No person shall be elected to the office of justice of the Supreme Court unless he has attained the age of thirty (30) years at the time of his election, is a citizen of the United States, shall have been admitted to the practice of law for an least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and has resided within this state two (2) years next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay

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a filing fee of three hundred dollars (\$300) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 46; S.L. 1985, Ch. 29; S.L. 1996, Ch. 28)

**34-616. Election of District Judges — Qualifications.** (1) At the primary election, 1974, and every four years thereafter, subject to the provisions of section 34-1217, Idaho Code, there shall be elected in each judicial district a sufficient number of district judges to fill any vacancy or vacancies occasioned by the expiration of the term or terms of office of any member or members.

(2) No person shall be elected to the office of judge of the district court unless he has attained the age of thirty (30) years at the time of his election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and shall have resided within the judicial district one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the secretary of state.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of one hundred fifty dollars (\$150) which shall be deposited in the general fund. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 46; S.L. 1985, Ch. 29; S.L. 1996, Ch. 28)

**34-617. Election of County Commissioners — Qualifications.** (1) A board of county commissioners shall be elected in each county at the general elections as provided by section 31-703, Idaho Code.

(2) No person shall be elected to the board of county commissioners unless he has attained the age of twenty-one (21) years at the time of the election, is a citizen of the United States, and shall have resided in the county one (1) year next preceding his election and in the district which he represents for a period of ninety (90) days next preceding the primary election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. (History: S.L. 1970, Ch. 140; S.L. 1982, Ch. 332; S.L. 1993, Ch. 159; S.L. 1996, Ch. 28)

**34-618. Election of County Sheriffs — Qualifications.** (1) At the general election, 1972, and every four (4) years thereafter, a sheriff shall be elected in every county.

(2) No person shall be elected to the office of sheriff unless he has attained the age of twenty-one (21) years and is not a convicted felon at the time of election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

(5) Each person who has been elected to the office of sheriff for the first time shall

complete a tutorial concerning current Idaho law and rules as prescribed by the Idaho peace officers standards and training academy, unless the person is already certified as a chief of police, peace officer or detention deputy in the state of Idaho, and shall attend the newly elected sheriffs' school sponsored by the Idaho sheriffs' association. (History: S.L. 1970, Ch. 140; S.L. 1996, Ch. 28; S.L. 2008, Ch. 329)

**34-619. Election of Clerks of District Court — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, a clerk of the district court shall be elected in every county. The clerk of the district court shall be the ex-officio auditor and recorder.

(2) No person shall be elected to the office of clerk of the district court unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. (History: S.L. 1970, Ch. 140; S.L. 1996, Ch. 28)

**34-620. Election of County Treasurers — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, a county treasurer shall be elected in every county. The county treasurer shall be the ex-officio public administrator and ex-officio tax collector.

(2) No person shall be elected to the office of county treasurer unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 193; S.L. 1996, Ch. 28)

**34-621. Election of County Assessors — Qualifications.** (1) At the general election, 1974, and every four (4) years thereafter, a county assessor shall be elected in every county.

(2) No person shall be elected to the office of county assessor unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 193; S.L. 1996, Ch. 28)

**34-622. Election of County Coroners — Qualifications.** (1) At the general election, 1986, and every four (4) years thereafter, a county coroner shall be elected in every county.

(2) No person shall be elected to the office of county coroner unless he has attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. (History: S.L. 1970, Ch. 140; S.L. 1994, Ch. 54; S.L. 1996, Ch. 28)

**34-623. Election of County Prosecuting Attorneys — Qualifications.** (1) At the general election, 1984, and every four (4) years thereafter, a prosecuting attorney shall be elected in every county.

(2) No person shall be elected to the office of prosecuting attorney unless he has attained the age of twenty-one (21) years at the time of his election, is admitted to the practice of law within this state, is a citizen of the United States and a qualified elector within the county.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 115; S.L. 1984, Ch. 80; S.L. 1996, Ch. 28)

**34-624. Election of Precinct Committeemen — Qualifications.** (1) At the primary election, 1980, and every two (2) years thereafter, a precinct committeeman for each political party shall be elected in every voting precinct within each county. The term of office of a precinct committeeman shall be from the eighth day following the primary election until the eighth day following the next succeeding primary election.

(2) No person shall be elected to the office of precinct committeeman unless he has attained the age of eighteen (18) years at the time of his election, is a citizen of the United States and shall have resided within the voting precinct for a period of six (6) months next preceding his election.

(3) Each candidate shall file a declaration of candidacy with the county clerk.

(4) No filing fee shall be charged any candidate at the time of his filing his declaration of candidacy. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 29; S.L. 1972, Ch. 128; S.L. 1975, Ch. 174; S.L. 1979, Ch. 309; S.L. 1996, Ch. 28)

**34-624A. Alternative to precinct committeeman — Precinct committeeman and voters' delegate to the party's county and district conventions.** (1) At least sixty (60) days prior to an election at which precinct committeemen are to be elected, the state chairman of any Idaho political party may request the secretary of state to replace, as to that party chairman's party, the ballot position title of "precinct committeeman" with the ballot position title "precinct committeeman and voters' delegate to the party's county and district conventions." The party chairman making such a request to the secretary of state shall include with his request a sworn and acknowledged affidavit stating that he is the party chairman for his political party and that it is the state policy of his party that precinct committeemen be delegates to the party's county and district conventions.

(2) Upon receipt of such request and affidavit, the secretary of state shall have the duty to implement the request when prescribing the form and content of ballots and related documents and when preparing ballot instructions for Idaho counties.

(3) After the secretary of state has ordered such use, whenever the title “precinct committeeman” or its plural form shall be used in the Idaho Code, the title shall be construed to include within its meaning the title “precinct committeeman and voters’ delegate to the party’s county and district conventions” or its plural form. (History: S.L. 1976, Ch. 346)

**34-625. Election of highway district commissioners in single countywide districts — Qualifications.** (1) In each general election, highway district commissioners in single countywide districts shall be elected as provided for in section 40-1404, Idaho Code.

(2) No person shall be elected to the office of highway district commissioner unless he shall have attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall be a resident of the highway district commissioner’s subdistrict for which he seeks office.

(3) Each candidate shall file a declaration of candidacy with the county clerk not less than ninety (90) days prior to the general election. Each declaration of candidacy shall also bear the following words: “I am a resident within the boundaries of Highway District Commissioner’s Subdistrict Number .....”

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ten dollars (\$10.00) which shall be deposited in the county current expense fund. (History: S.L. 1972, Ch. 345; S.L. 1985, Ch. 253; S.L. 1987, Ch. 75; S.L. 1998, Ch. 300; S.L. 2007, Ch. 313)

**34-625A. Election of Highway District Commissioners in certain single countywide districts — qualifications.** (1) In each general election, highway district commissioners in single countywide districts shall be elected as provided for in section 40-1404A, Idaho Code.

(2) No person shall be elected to the office of highway district commissioner unless he shall have attained the age of twenty-one (21) years at the time of his election, is a citizen of the United States, and shall be a resident of the highway district commissioner’s subdistrict for which he seeks office.

(3) Each candidate shall file a declaration of candidacy with the county clerk not less than ninety (90) days prior to the general election. Each declaration of candidacy shall also bear the following lowing words: “I am a resident within the boundaries of Highway District Commissioner’s Subdistrict Number .....”

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of ten dollars (\$10.00) which shall be deposited in the county current expense fund. (History: S.L. 1998, Ch. 300; S.L. 2007, Ch. 313)

**34-626. Petition in lieu of filing fee.** In lieu of paying the filing fee, candidates may qualify for the offices mentioned in Section 34-604 through Section 34-623, Idaho Code, by filing a declaration of candidacy and a nominating petition. The petition shall

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contain the signatures of qualified electors as follows:

- (a) One thousand (1,000) for any statewide office;
- (b) Five hundred (500) for any congressional district office (all signatures within proper district);
- (c) Two hundred (200) for the office of district judge (all signatures within proper district);
- (d) Fifty (50) for any legislative district office (all signatures within proper district);
- (e) Five (5) for any county office (County Commissioner signatures shall be within commissioner district).

Signatures on such nominating petitions shall be verified in the manner prescribed in section 34-1807, Idaho Code. (History: S.L. 1983, Ch. 213, S.L. 1986, Ch. 183; S.L. 1996, Ch. 28)

**34-627. Holders of partisan elective office changing political parties.** Whenever any holder of a partisan elective office desires to change political parties, the change shall only be effective if the holder files a declaration of intent to change political parties with the election official with whom the holder of the partisan elective office has filed his declaration of candidacy for the office that the holder of the partisan elective office currently holds. The party change shall be official five (5) calendar days after receipt of the declaration of intent provided in this section by the election official. After receiving the declaration of intent, the election official shall send a copy of the declaration to the affected political party central committees of both the political party, if any, that the holder of the partisan elective office desires to leave and the political party, if any, that the holder of the partisan elective office desires to join. A holder of a partisan elective office cannot change political parties between the date the holder of partisan elective office files for the primary election through three (3) months after the general election in which the partisan elective office was on the ballot. A holder of a partisan elective office only may change political parties pursuant to this section once per term. The election official shall be authorized to charge a holder of a partisan elective office desiring to change his political party a twenty-five dollar (\$25.00) fee to defray the election official's expenses in administering the provisions of this section. (History: S.L. 1997, Ch. 202)

### CHAPTER 7

#### NOMINATIONS—CONVENTIONS—PRIMARY ELECTIONS

**34-701. Declarations of candidacy and petitions — Form prescribed by secretary of state — Filing fees.** (1) The secretary of state shall prescribe the form for all declarations of candidacy and petitions required to be filed for any office. This form shall be uniform throughout the state; provided, however, that a candidate for judicial office must designate the particular office that he seeks, both in his petitions and declaration of candidacy.

(2) All filing fees shall be paid in cash, cashier's check, postal money orders, or personal check. (History: S.L. 1970, Ch. 140; S.L. 1983, Ch. 213)

**34-702. Requirements for Write-in Candidates at Primary.** In addition to possessing all other qualifications, in order to become a candidate of a political party at the general election, those candidates whose names are written in at the primary election must receive at least the following number of write-in votes at the primary election:

- (1) One thousand (1,000) for any statewide office;
- (2) Five hundred (500) for a congressional district office;
- (3) Fifty (50) for a legislative district office;
- (4) Five (5) for a county office,

file a declaration of candidacy for that office, and must pay the filing fee required for that office within ten (10) days following the primary election canvass; provided, however, that no write-ins shall be allowed for judicial office. (History: S.L. 1970, Ch. 140; S.L. 1976, Ch. 60; S.L. 1996, Ch. 28)

**34-702A. Declaration of intent for write-in candidates.** No write-in vote for any office in a primary, special, or general election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of said office if elected. The declaration of intent shall be filed with the secretary of state if for a federal, state, or legislative district office and with the county clerk if for a county office. Such declaration of intent shall be filed not later than fourteen (14) days before the day of election. The secretary of state shall prescribe the form for said declaration.

In those counties which utilize optical scan ballots an elector shall not place on the ballot a sticker bearing the name of a person, or use any other method or device, except writing, to vote for a person whose name is not printed on the ballot. (History: S.L. 1983, Ch. 213; S.L. 1992, Ch. 176; S.L. 1993, Ch. 313; S.L. 1999, Ch. 221; S.L. 2001, Ch. 272)

**34-703. Nomination at primary.** (1) All political party candidates for United States senator and representative in congress and all political party candidates for elective state, district and county offices, except candidates for judicial office, at general elections shall be nominated at the primary elections, or shall have their names placed on the general election ballot as provided by law, and shall comply with the provisions of this act.

(2) All candidates for judicial office shall be nominated or elected at the primary election, as provided by section 34-1217, Idaho Code.

(3) Independent candidates shall not be voted on at primary elections. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 46; S.L. 1976, Ch. 60)

**34-704. Declaration of candidacy.** Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party candidate for precinct, state, district or county office shall file his declaration of candidacy in the proper office between 8 a.m., on the twelfth Monday preceding the primary election and 5 p.m., on the tenth Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of candidacy, except candidates for nonpartisan office.

Candidates who file a declaration of candidacy under a party name and are not

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nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate. Independent candidates shall file their declaration of candidacy in the manner provided in section 34-708, Idaho Code. (History: S.L. 1971, Ch. 5; S.L. 1971, Ch. 188; S.L. 1972, Ch. 46; S.L. 1972, Ch. 346; S.L. 1975, Ch. 174; S.L. 1976, Ch. 60; S.L. 1979, Ch. 309; S.L. 1983, Ch. 213; S.L. 1984, Ch. 8; S.L. 1984, Ch. 173; S.L. 1989, Ch. 70; S.L. 2003, Ch. 48)

**34-705. With whom declarations filed.** All candidates for county offices, whether political party candidates or independent candidates, and all political party candidates for precinct offices shall file their declarations of candidacy with the county clerk of their respective counties. All candidates for district, state and federal offices shall file their declarations of candidacy with the secretary of state.

The secretary of state, shall certify to the county clerks, within ten (10) days after the filing deadline, the names of the political party candidates who filed for federal, state and district offices and are qualified and by not later than the tenth day prior to the primary shall certify the names of political party candidates who have been appointed by central committees to fill vacancies as provided by section 34-714, Idaho Code. (History: S.L. 1971, Ch. 5; S.L. 1971, E.S., Ch. 9; S.L. 1976, Ch. 60)

**34-706. Notification to parties.** Within three (3) days after the deadline for filing declarations of political party candidacy the county clerk shall notify the county central committee of each political party of the candidates who have filed for county and precinct offices under the party name and are qualified.

Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the legislative district central committee of each political party of the legislative candidates who have filed under the party name and are qualified.

Within three (3) days after the deadline for filing declarations of political party candidacy the secretary of state shall notify the state central committee of each political party of the candidates who have filed for federal and state offices under the party name and are qualified. (History: S.L. 1971, Ch. 5; S.L. 1971, Ch. 188; S.L. 1971, 1st E.S., Ch. 9; S.L. 1976, Ch. 60; S.L. 1989, Ch. 70; S.L. 2003, Ch. 293)

**34-707. Party conventions.** A state convention shall be held by each political party in each election year at a time and place determined by the state central committee. The state central committee chairman shall preside and cause notice to be given to each legislative district central committee and each county central committee at the earliest possible date.

Each state convention shall write and adopt rules and regulations governing the conduct of their respective conventions.

At their convention each political party may:

- (1) Adopt and write a party platform.
- (2) Elect any desired officers not otherwise provided for by law.
- (3) In the year of presidential elections (a) elect delegates to the national convention

in the manner prescribed by national party rules; (b) elect a national committeeman and a national committeewoman; and (c) select presidential electors.

(4) Adopt rules, regulations and directives regarding party policies, practices and procedures. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 5; S.L. 1971, 1st E.S., Ch. 9, S.L. 1972, Ch. 346; S.L. 1973, Ch. 122; S.L. 1980, Ch. 236; S.L. 2003, S.L. 94)

**34-708. Independent Candidates.** (1) No person may offer himself as an independent candidate at the primary election.

(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by section 34-705, Idaho Code, a declaration of candidacy as an independent candidate, during the period specified in section 34-704, Idaho Code. Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks election. Each such declaration must be accompanied by a petition containing the following number of signatures of qualified electors:

- (a) One thousand (1,000) for any statewide office;
- (b) Five hundred (500) for any congressional district office;
- (c) Fifty (50) for any legislative district office;
- (d) Five (5) for any county office.

(3) Signatures on the petitions required in this section shall be verified in the manner prescribed in Section 34-1807, Idaho Code.

(4) If all of the requirements of this section have been met, the proper officer shall cause the name of each independent candidate who has qualified to be placed on the general election ballot, according to instructions of the secretary of state. (History: S.L. 1976, Ch. 60; S.L. 1979, Ch. 309; S.L. 1995, Ch. 115; S.L. 1996, Ch. 28; S.L. 2003, Ch. 293)

**34-708A. Independent candidates for president and vice-president.** Persons who desire to be independent candidates for the offices of president and vice-president, must file, prior to August 25 of the election year, declarations of candidacy as independent candidates. Such declarations must state that such persons are offering themselves as independent candidates. Such declarations must state that such persons are offering themselves as independent candidates and must declare that they have no political party affiliation. The declaration shall have attached thereto a petition signed by a number of qualified electors not less than one percent (1%) of the number of votes cast in this state for presidential electors at the previous general election at which a president of the United States was elected.

The candidates for president and vice-president shall be considered as candidates for one (1) office, and only one (1) such petition need be filed for both offices.

Signatures on the petitions required by this section shall be verified in the manner prescribed in Section 34-1807, Idaho Code. (History: S.L. 1977, Ch. 14; S.L. 1979, Ch. 309; S.L. 1985, Ch. 42; S.L. 1987, Ch. 262; S.L. 1996, Ch. 28)

**34-709 - 34-710. [Repealed — S.L. 1971, 1st E.S., Ch. 9]**

**34-711. Certification of candidates for president, vice president and presidential electors.** The state chairman of each political party shall certify the names of the presidential and vice-presidential candidates and presidential electors to the secretary of state on or before September 1, unless a five (5) day extension is granted by the secretary of state in order for them to appear on the general election ballot. The secretary of state shall certify such candidates to the county clerks at the same time as certification of political party candidates nominated for state and federal offices by the voters in the primary election. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 346; S.L. 1976, Ch. 60; S.L. 1984; Ch. 131, S.L. 1985, Ch. 42; S.L. 2003, Ch. 94)

**34-711A. Certification of independent presidential electors.** Independent candidates who have qualified for ballot status pursuant to section 34-708A, Idaho Code, shall certify the names of presidential electors to the secretary of state on or before September 1, in order for them to appear on the general election ballot. The secretary of state shall certify the independent presidential electors, and the independent candidates for president and vice-president, to the county clerks on or before September 7. (History: S.L. 1977, Ch. 14; S.L. 1984, Ch. 131; S.L. 1985, Ch. 42)

**34-712. Sample form for primary election ballots.** The secretary of state shall provide the sample form of the primary election ballot to each of the county clerks no later than forty (40) days prior to the primary. The sample ballot shall contain the proper political party candidates to be voted upon within the county whose declarations were filed and certified in the office of the secretary of state with instructions for the placing of political party candidates seeking the political party nomination for county and precinct offices. If a county is within more than one (1) legislative district, the secretary of state shall provide a sample ballot for each legislative district which includes part of the county. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 188; S.L. 1971, 1st E.S., Ch. 9; S.L. 1972, Ch. 346; S.L. 1976, Ch. 60)

**34-713. Preparation of primary ballots.** Upon receipt of the sample ballot and instructions from the secretary of state, each county clerk shall print and prepare the official primary ballots for the forthcoming election. The printing of the ballots shall be a county expense and paid out of the county treasury except presidential preference primary ballots which shall be paid for as provided in section 34-739, Idaho Code.

Each county clerk shall cause to be published on the earliest date possible in May the names of all the political party candidates who shall appear on the primary ballot and the names of all political party candidates who shall appear on the presidential preference primary ballot. The names shall be listed alphabetically under each particular office title. (History: S.L. 1970, Ch. 140; S.L. 1975, Ch. 174; S.L. 1976, Ch. 60; S.L. 1979, Ch. 309)

**34-714. Filling vacancies in slate of political party candidates occurring prior to primary election.** (1) Vacancies that occur before the primary election in the slate of candidates of any political party because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate, shall be filled in the following manner if only one (1) candidate declared for that particular office:

(a) By the county central committee if the vacancy occurs for the office of precinct committeeman or for a county office.

(b) By the legislative district central committee if the vacancy occurs for the office of state representative or state senator.

(c) By the state central committee if the vacancy occurs for a federal or state office.

The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the primary ballot, file a declaration of candidacy and pay the required filing fee.

(2) No central committee shall fill any vacancy which occurs within ten (10) days prior to the primary election. Vacancies which occur during this ten (10) day period because of the death, disqualification for any reason, or withdrawal from the nomination process by the candidate shall be filled according to the provisions of section 34-715, Idaho Code.

(3) Vacancies that occur in a slate of candidates for precinct committeeman within ten (10) days prior to the primary election shall not be filled. (History: S.L. 1970, Ch. 140; S.L. 1971, 1st E.S., Ch. 9; S.L. 1975, Ch. 21; S.L. 1976, Ch. 60; S.L. 1989, Ch. 70; S.L. 1996, Ch. 28; S.L. 1999, Ch. 222)

**34-715. Filling of vacancies occurring before or after primary election.** Vacancies that occur during the ten (10) day period before a primary election, or after the primary election but at least ten (10) days before the general election in the slate of candidates of any political party, except candidates for precinct committeeman, shall be filled in the following manner:

(1) By the county central committee if it is a vacancy by a candidate for a county office.

(2) By the legislative district central committee if it is a vacancy by a candidate for the state legislature.

(3) By the state central committee if it is a vacancy by a candidate for a federal or a state office.

The county and legislative district central committee shall fill the vacancy within fifteen (15) days from the date the vacancy occurred. The state central committee shall fill the vacancy within thirty (30) days from the date the vacancy occurred.

Any political party candidate so appointed by the proper central committee must, in order to have his name on the general ballot, file a declaration of candidacy and pay the required filing fee.

Vacancies that occur in a slate of candidates for precinct committeeman within ten

(10) days prior to the primary election shall not be filled. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 346; S.L. 1976, Ch. 60; S.L. 1977, Ch. 21; S.L. 1983, Ch. 213; S.L. 1996, Ch. 28; S.L. 1999, Ch. 222)

**34-716. Vacancies of candidates for nonpartisan offices occurring before general election not filled — Exceptions — Judicial offices.** (1) All vacancies of candidates for nonpartisan offices that occur after the primary election but before the general election, except vacancies in the offices of nominated candidates for judicial office which shall be filled as provided in this section, shall not be filled.

(2) If a candidate for judicial office has received a majority of the votes cast for the office at the primary election, he shall be deemed elected as provided by section 34-1217, Idaho Code. Thereafter, if the judge-elect dies, moves from the state, or otherwise becomes ineligible to serve in the judicial office, the secretary of state shall declare that a vacancy exists in the judicial office, but that no other candidate for the office will be offered at the general election. The vacancy shall be filled as provided by law, as if the judge-elect had already assumed office.

(3) If three (3) or more candidates sought a judicial office at the primary election, and no candidate for the judicial office received a majority of the votes cast for the office at the primary election, and either of the candidates certified to be a nominee at the general election dies, moves from the state, or otherwise becomes ineligible to serve in the judicial office, the secretary of state shall cause the name or names of the candidate or candidates receiving the next highest number of votes cast at the primary election after the two (2) candidates certified, to be certified as nominees for the judicial office at the general election, so that two (2) candidates shall be offered for each judicial office to be filled. In the event only one (1) vacancy on the general election ballot is to be filled by the procedure outlined in this subsection, and there exists a tie among two (2) or more judicial candidates receiving the next highest number of votes, such candidates, or their personal designees, shall meet in the office of the secretary of state at a time fixed by him upon ten (10) days written notice to such interested candidates, or their designees, and a candidate to fill each such vacancy on the general election ballot shall be selected by lot from the candidates receiving the same number of votes at the primary election. The secretary of state shall cause the name of the persons so selected to appear on the general election ballot. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 333)

**34-717. Withdrawal of candidacy.** A candidate for nomination or candidate for election to an office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. The filing officer shall immediately notify the proper central committee of the party, if any, of the individual withdrawing. A candidate may not withdraw later than forty-five (45) days before an election, except in the case of a general election when the deadline shall be no later than September 7. Filing fees paid by the candidate shall not be refunded.

Any candidate who has filed a statement of withdrawal pursuant to this section shall

not be allowed to be appointed to fill a vacancy unless such vacancy occurs because of the death of a previous candidate. (History: S.L. 1983, Ch. 213; S.L. 1999, Ch. 222)

**34-718 - 34-722. [Repealed - S.L. 1972, Ch. 333]**

**34-723 - 34-730. [Reserved]**

**34-731. Presidential preference vote.** In years in which a president of the United States is to be nominated and elected, a presidential preference primary shall be held at which voters shall express their choice for candidates for nominations for president. The presidential preference primary shall be held in conjunction with the primary election, on the fourth Tuesday in May of each presidential year. (History: S.L. 1975, Ch. 174; S.L. 1979, Ch. 309)

**34-732. Selection of candidates for nomination in presidential primary.** Each qualified elector shall have the opportunity to vote on the official presidential preference primary ballot for one (1) person to be the candidate for nomination by a party for president of the United States. The name of any candidate for a political party nomination for president of the United States shall be printed on the ballots only:

(1) If the secretary of state shall have determined, in his sole discretion, that the person's candidacy is generally advocated or recognized in national news media throughout the United States. For the purpose of promoting the aspect of a regional primary in this regard, the secretary of state may consult with the chief election officers of neighboring states which conduct a presidential primary election on the fourth Tuesday in May. The secretary of state shall publish the names of such persons determined by him to be such candidates, together with their party affiliation, not less than sixty (60) days prior to the date of the presidential preference primary.

(2) Any candidate who was not placed upon the ballot by the secretary of state under the provisions of subsection (1) of this section shall be placed upon the ballot after filing a declaration of candidacy accompanied by a one thousand dollar (\$1,000) filing fee. The declaration shall be filed with the secretary of state no later than the fiftieth day prior to the date of the presidential preference primary. (History: S.L. 1975, Ch. 174; S.L. 2007, Ch. 202)

**34-733. Notification to candidates — No affidavit of candidacy required.** The secretary of state shall forthwith notify each person whom he has nominated and each such person nominated by petition in writing by registered mail that such person's name will be printed as a candidate on the Idaho presidential preference primary ballot. In the event the secretary of state is informed of a candidate's death or incapacity, or withdrawal from the nomination, the secretary of state may, in his sole discretion, remove the name of such nominated candidate from the ballot, but not later than thirty (30) days prior to said election. No declaration of candidacy or affidavit of candidacy shall be required of any candidate as a condition for printing the name of that candidate on the official ballot used in the presidential preference primary. (History: S.L. 1975, Ch. 174; S.L. 1983, Ch. 213)

**34-734. Voting in presidential primary.** At a presidential preference primary, qualified electors may vote for candidates for nomination for president of the United States from among the candidates of one (1) political party only. The elector shall be able to cast his ballot for one (1) of the presidential candidates of his party, or for “none of the names shown.” A vote of the latter kind shall express the preference for an uncommitted delegation from Idaho to the national convention of that elector’s party. (History: S.L. 1975, Ch. 174)

**34-735. Candidate’s list of proposed delegates to national convention.** No later than ten (10) days prior to the presidential primary election, each candidate for nomination by a party for president, or a designated representative of such candidate, shall file with the secretary of state a list of names and addresses of persons proposed by that candidate to be delegates to the national convention of the party of that candidate. The number of names set forth on such list of proposed delegates shall be equal to the number of delegates and alternates to the national party convention as are allotted to Idaho for that year by the national committee of that party. No person’s name shall be placed on such a list of proposed delegates unless that person has attained the age of eighteen (18) years at the time said delegates’ list is filed, is a citizen of the United States, is a qualified elector of the state of Idaho, and shall have resided in the state of Idaho for at least one (1) year next preceding filing of said list. The qualifications of each person, whose name appears on such list of proposed delegates, shall be verified by an affidavit of the candidate, or a representative of the candidate, and said affidavit shall be attached to said list so filed. The form of said affidavit shall be determined by the secretary of state. (History: S.L. 1975, Ch. 174)

**34-736. Delegates to national convention.** (1) Upon completion of the state canvass of the results of the presidential primary, the secretary of state shall certify to the state chairman of each political party participating in the presidential primary the number of votes received by each candidate of that party and the number of votes for an uncommitted delegation received by that party.

(2) Each political party shall then select as many delegates and alternates to the national party convention as are allotted to it by the national committee of that party, according to the provisions of the following subsections of this section.

(3) Eighty per cent (80%) of such delegates and eighty per cent (80%) of such alternates to a national party convention shall be selected by a party at its state convention, or as the party rules otherwise provide, from among:

(a) The persons named on the lists of proposed delegates to the national conventions filed with the secretary of state by that party’s respective candidates for nomination by the party for president of the United States; and

(b) The persons selected by that party at its state convention, or as the party rules otherwise provide, to comprise any uncommitted delegation.

(4) The number of delegates and the number of alternates selected by a party from a candidate’s list of proposed delegates, or selected by that party to comprise any uncommitted delegation, shall bear the same proportion to eighty per cent (80%) of the total number of delegates and alternates allotted to such party as the total vote received

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by such candidate or uncommitted delegation bears to the total combined vote cast in said primary election for all candidates and uncommitted delegation, if any, receiving more than five per cent (5%) of the votes cast for that party. Upon determination of the number of delegates and alternates that shall be selected from each candidate's list of proposed delegates and that shall be selected to comprise an uncommitted delegation, if any, the party shall then select delegates and alternates to that party's national convention in that respective number from each such list and to comprise the uncommitted delegation, if any. The delegates and alternates comprising any such uncommitted delegation shall be selected as the party rules determine.

(5) Twenty per cent (20%) of the delegates and twenty per cent (20%) of the alternates to a national party convention as are allotted to a party by the national committee of that party shall be selected as delegates and alternates to the national convention of that party as the party rules may determine.

(6) In the event a candidate in the presidential preference primary fails to file with the secretary of state a list of proposed delegates to his party's national convention, or to the extent that such list of proposed delegates provided by such candidate fails to name a sufficient number of persons qualified for the office of delegate, such number of delegates and alternates, as would be selected from said candidate's list of proposed delegates according to the election results, shall be selected by the party as delegates and alternates to that party's national convention, as the party rules may determine.

(7) When selecting a delegate or an alternate from a candidate's list of proposed delegates, as provided for in this section, the party shall have the authority to select any qualified person on that list for the office of such delegate or alternate.

(8) In calculating the apportionment of delegate votes in conjunction with the selection of delegates and alternates, as provided for in this section, such proportions of delegate votes shall be expressed as decimal-fractional votes or the nearest whole number of delegate votes as the rules of the particular national party or convention may provide.

(9) There shall be no unit rule applied to or by the delegation of any party to that party's national convention. No party or delegation shall commit or instruct delegates and alternates selected from that party's candidates' lists of proposed delegates or selected as uncommitted delegates and alternates. Other delegates and alternates may be committed and/or instructed as the party rules may provide. (History: S.L. 1975, Ch. 174)

**34-737. Uncommitted delegates.** The word "uncommitted" as applied to a delegate or an alternate in this act means that such delegate or alternate is not committed or bound to any one candidate at his party's national convention, and that he is free to vote his conscience at such convention. (History: S.L. 1975, Ch. 174)

**34-738. Conduct of election.** Insofar as practicable, and where the provisions of this act do not specifically indicate otherwise, the presidential preference primary election shall be conducted and canvassed in the manner provided by law for the conduct and canvassing of state primary elections. (History: S.L. 1975, Ch. 174)

**34-739. Costs of presidential preference primary notice and ballots.** Whenever a presidential preference primary election is held as provided by this act, the state of Idaho shall assume all costs of publication of legal notice and ballot preparation for the presidential preference primary. The county clerk shall determine the legal notice and ballot preparation costs and shall file a certified claim therefor which shall be examined, allowed and paid as other claims against the state are paid. (History: S.L. 1975, Ch. 174; S.L. 1979, Ch. 309)

**34-740. Rules and regulations.** The secretary of state as chief election officer may adopt such rules and regulations as are necessary to facilitate the operation, accomplishment and purpose of this act. (History: S.L. 1975, Ch. 174)

## CHAPTER 8 REGISTRATION OF ELECTORS

**34-801 - 34-818. [Repealed - S.L. 1970, Ch. 140]**  
(New law contained Chapter 4 herein)

## CHAPTER 9 BALLOTS

**34-901. Official election stamp.** The county clerk shall provide for an official election stamp of such character or device, and of such material as the board of county commissioners may select. Each stamp shall have upon its face the date and year of the election in which it is used and the words "Official Election Ballot." In the event such stamp is lost, destroyed or unavailable upon election day, the distributing clerk shall initial each ballot and write "stamped" upon the ballot in the appropriate place. (History: S.L. 1970, Ch. 140)

**34-902. County commissioners to provide sufficient ballots and ballot boxes for each polling place at all elections.** At its regular meeting in March, the board of county commissioners shall authorize that a suitable number of ballots be printed for each polling place. The county clerk shall cause such ballots to be printed upon receiving final instructions from the secretary of state, and the cost shall be paid from the county treasury. The board of county commissioners shall authorize the printing of ballots in the same manner for special elections when such special election is ordered by the governor or provided by law.

The board of county commissioners shall also provide a suitable number of ballot boxes for each polling place within the county, and shall have complete authority to determine the specifications for such ballot boxes. (History: S.L. 1970, Ch. 140; S.L. 1975, Ch. 174; S.L. 1979, Ch. 309)

**34-903. Secretary of state to prescribe form and contents of all ballots and related documents.** (1) The secretary of state shall, in a manner consistent with the election laws of this state, prescribe the form for all ballots, absentee ballots, diagrams, sample ballots, ballot labels, voting machine labels or booklets, certificates, notices, declarations of candidacy, affidavits of all types, lists, applications, poll books, tally sheets, registers, rosters, statements and abstracts if required by the election laws of this state.

(2) The secretary of state shall prescribe the arrangement of the matter to be printed on each kind of ballot and label, including:

(a) The placement and listing of all offices, candidates and issues upon which voting is statewide, which shall be uniform throughout the state.

(b) The listing of all other candidates required to file with him, and the order of listing all offices and issues upon which voting is not statewide.

(3) The names of candidates for legislative or special district offices shall be printed only on the ballots and ballot labels furnished to voters of such district.

(4) The names of all candidates which appear on any election ballot shall be rotated in the manner determined by the secretary of state.

(5) No candidate's name may appear on a ballot for more than one (1) office, except that a candidate for precinct committeeman may seek one (1) additional office upon the same ballot. The provisions of this subsection shall not apply to the election of electors of president and vice-president of the United States. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 189; S.L. 1987, Ch. 313)

**34-903A. Name on ballot.** Should it appear to the secretary of state or county clerk that a person has filed as a candidate and that such person has changed their name and has changed their name to words that convey or attempt to convey a political message, the secretary of state or county clerk shall make an inquiry to determine: (i) if such person has changed their name; and (ii) if such name contains words that convey a political message to voters on the ballot; and (iii) if an explanation on the ballot would clarify the ballot and would assist in eliminating voter confusion. If the secretary of state or county clerk finds affirmatively that all three (3) criteria have been met, the secretary of state or county clerk shall be required to note on the ballot immediately following the name that appears to be a political proposition the following statement in parentheses: ( A person, formerly known as .....), inserting in the blank within the parentheses the name by which the candidate who changed their name was formerly known. (History: S.L. 2008, Ch. 408)

**34-904. Primary election ballots.** There shall be a single primary election ballot on which the complete ticket of each political party shall be printed; however, a county may use a separate ballot for the office of precinct committeeman. Each political ticket shall be separated from the others by a perforated line that will enable the elector to detach the ticket of the political party voted from those remaining. All candidates who have filed their declarations of candidacy and are subsequently certified shall be listed under the proper office titles on their political party ticket. The secretary of state shall design

the primary election ballot to allow for write-in candidates under each office title.

The office titles shall be listed in order beginning with the highest federal office and ending with precinct offices. The secretary of state has the discretion and authority to arrange the classifications of offices as provided by law.

It is not necessary to print a primary ballot for a political party which does not have candidates for more than half of the federal or statewide offices on the ballot if no more than one (1) candidate files for nomination by that party for any of the offices on the ballot. The secretary of state shall certify that no primary election is necessary for that party if such is the case and shall certify to the county clerk the names of candidates for that party for the general election ballot only. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 189; S.L. 1972, Ch. 130; S.L. 1983, Ch. 213; S.L. 2001, Ch. 272)

**34-904A. [Repealed - S.L. 1966, Ch. 5]**

**34-905. Nonpartisan ballots for election of justices of supreme court and district judges.** There shall be a single nonpartisan ballot for the election of justices of the supreme court and district judges. The names of all candidates for each office shall be listed under the proper office title by the secretary of state. A similar ballot shall be prepared for any general election, whenever it shall be necessary to conduct an election for judicial office.

The ballot for each judicial office shall contain the words: "To succeed (Judge, Justice) .....", inserting the name of the or of each incumbent candidate for re-election, or retiring judge or justices as the case may be, whose successor is to be elected in that year followed by the words: "Vote for One," followed by the names of the candidates for that particular office. (History: S.L. 1970, Ch. 140; S.L. 1971, 1st E.S., Ch. 9)

**34-905A. Nonpartisan ballots for election of highway district commissioners — Plurality required for election.** There shall be a single nonpartisan ballot for the election of highway district commissioners in each highway district. The ballot shall designate the highway district commissioners subdistrict and the names of all candidates for that office shall be listed thereon. The ballot shall also contain the words: "Vote for One," followed by the names of the candidates for the office. The candidate with the most votes shall be declared the successful candidate. (History: S.L. 1972, Ch. 345)

**34-906. Ballots for general elections.** There shall be a single general election ballot on which the complete ticket of each political party shall be printed. Each political party ticket shall include that party's nominee for each particular office. The secretary of state shall design the general election ballot to allow for write-in candidates under each office title.

The office titles shall be listed in order beginning with the highest federal office. The secretary of state has the discretion and authority to arrange the above classifications of offices as provided by law.

At any general election at which the electors are to vote upon constitutional amendments or other issues, the secretary of state shall provide separate general election

ballot forms on which such amendments and issues shall be printed. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 189; S.L. 1977, Ch. 12)

**34-907. [Repealed - S.L. 2002, Ch. 1]**

**Ruled Unconstitutional by Simpson v. Cenarrusa 130 ID. 609 (1997)**

**34-907A. [Repealed - S.L. 2007, Ch. 202]**

**34-907B. [Repealed - S.L. 2007, Ch. 202]**

**34-908. Each ballot to carry official election stamp on outside — Marking of ballot by voter.** Every ballot used at any primary, general or special election shall be stamped on the outside with the official election stamp before it is given to the voter. At this time the election official distributing the ballots shall give the voter instructions in regard to folding the ballot after he has voted.

The voter shall mark his ballot with a cross (X) or other mark sufficient to show his intent in the place provided after the name of the candidate for whom he intends to vote for each office.

If a person votes by writing the name of a candidate on the ballot, such act shall constitute a vote for the person's name who appears without the necessity of placing a mark after the name written on the ballot, unless such a mark is required by a vote tally system. (History: S.L. 1970, Ch. 140; S.L. 1988, Ch. 293)

**34-909. General election sample ballots forwarded to counties by secretary of state.** The secretary of state, not later than September 7, shall prepare the necessary general election sample ballots for the various counties and forward them to the several county clerks. The secretary of state shall place the names of the candidates for all federal, state and district offices on the sample ballots, and by not later than the tenth day prior to the general election shall certify the names of candidates who have been appointed by central committees to fill vacancies as provided by section 34-715, Idaho Code. (History: S.L. 1970, Ch. 140; S.L. 1976, Ch. 60; S.L. 1984, Ch. 131; S.L. 1985, Ch. 42)

**34-910. Duty of county clerk to furnish sufficient ballots to each voting precinct — Record of number of ballots printed and furnished.** It shall be the duty of the county clerk to furnish and cause to be delivered a sufficient number of election ballots to the judges of elections of each voting precinct. The ballots shall be delivered to the polling place within the precinct on or before the opening of the polls for the election together with the official stamp and ink pad in sealed packages. Upon delivery of the ballots and supplies, the chief judge of elections must return a written receipt to the county clerk.

The county clerk shall keep a record of the number of ballots printed and furnished to each polling place within the county and preserve the same for one (1) year. (History: S.L. 1970, Ch. 140)

**34-911. County clerk to prepare full instructions for the guidance of voters at elections.** The county clerk shall prepare full instructions for the guidance of voters at such elections, as to obtaining ballots, as to the manner of marking them, and as to obtaining new tickets in place of those spoiled, and provide sample ballots. The form and manner of display of the above mentioned instructions shall be prescribed by the secretary of state and be uniform throughout the state. (History: S.L. 1970, Ch. 140)

**34-912. Procedure for correction of ballots when vacancy occurs after printing** — **Notice.** When any vacancy occurs after the printing of the ballots and is filled as provided by law, the county clerk shall thereupon have printed a sufficient number of stickers containing the name of the candidate designated to fill the vacancy and shall deliver them to the judges of elections of the precincts interested therein.

The distributing clerk shall affix such stickers on the ballot before it is given to the elector. The sticker shall be placed over the name of the previous candidate. If the vacancy occurs after the deadline for filling the same, the distributing clerk shall cross the name of such candidate off the ballot and no votes shall be cast for the candidate. The county clerk shall notify the precincts of this authorization as soon as a vacancy occurs. (History: S.L. 1970, Ch. 140)

**34-913, 34-914. [Repealed - S.L. 1970, Ch. 140]**

## CHAPTER 10 ABSENTEE VOTING

**34-1001. Voting by absentee ballot authorized.** Any registered elector of the state of Idaho may vote at any election by absentee ballot as herein provided. (History: S.L. 1970, Ch. 140)

**34-1002. Application for absentee ballot.** Any registered elector may make written application to the county clerk, or other proper officer charged by law with the duty of issuing official ballots for such election, for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address, county, and address to which such ballot shall be forwarded. The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be received by the county clerk not later than 5:00 p.m. on the sixth day before the election. An application for in person absentee voting at the absent elector's polling place described in section 34-1006, Idaho Code, shall be received by the county clerk not later than 5:00 p.m. on the day before the election. Application for an absentee ballot may be made by using a facsimile machine. In the event a registered elector is unable to vote in person at his designated polling place on the day of election because of an emergency situation which rendered him physically unable, he may nevertheless apply for an absent elector's ballot on the day of election by notifying the county clerk. No person, may, however, be entitled to vote under an emergency situation unless the situation claimed rendered him physically unable to vote at his designated polling place within forty-eight (48) hours prior to the

closing of the polls.

A person may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff, et seq.). A properly executed federal postcard application (F.P.C.A.) shall be considered as a request for an absent elector's ballot through the next two (2) regularly scheduled general elections for federal office following receipt of the application. The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

The county clerk shall, not later than seventy-five (75) days after the date of each general election, submit a report to the secretary of state containing information concerning absentee voters as required by federal law. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 157; S.L. 1973, Ch. 304; S.L. 1976, Ch. 353; S.L. 1987, Ch. 167; S.L. 1994, Ch. 122; S.L. 1995, Ch. 215; S.L. 2002, Ch. 236; S.L. 2003, Ch. 48)

**34-1002A. [Repealed - S.L. 1994, Ch. 122]**

**34-1003. Issuance of absentee ballot.** Upon receipt of an application for an absent elector's ballot within the proper time, the county clerk receiving it shall examine the records of his office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested and, if found to be so, he shall arrange for the applicant to vote by absent elector's ballot.

The absentee ballot may be delivered to the absent elector in the office of the county clerk, by postage prepaid mail or by other appropriate means, including use of a facsimile machine. A political party may supply a witness to accompany the clerk in the personal delivery of an absentee ballot. If the political party desires to supply a witness it shall be the duty of the political party to supply the names of such witnesses to the clerk no later than forty-five (45) days prior to the election. The clerk shall notify such witnesses of the date and the approximate hour the clerk or deputy clerk intends to deliver the ballot.

A candidate for public office or a spouse of a candidate for public office shall not be a witness in the personal delivery of absentee ballots.

An elector physically unable to mark his own ballot may receive assistance in marking such ballot from the officer delivering same or an available person of his own choosing. In the event the election officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. When such ballot is marked by an election officer, the witnesses on hand shall be allowed to observe such marking. No county clerk, deputy, or other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner. (History: S.L. 1970, Ch. 140; S.L. 1973, Ch. 304; S.L. 1975, Ch. 66; S.L. 1984, Ch. 131; S.L. 1993, Ch. 100; S.L. 1994, Ch. 122; S.L. 1996, Ch. 74)

**34-1004. Marking and folding of absentee ballot — Affidavit.** Upon receipt of the absent elector's ballot the elector shall thereupon mark and fold the ballot so as to conceal the marking, deposit it in the ballot envelope and seal the envelope securely. In the event an election requires a perforated ballot, the unvoted portion must be deposited in the unvoted ballot envelope and sealed. The ballot envelopes must then be deposited in the return envelope and sealed securely.

The elector shall then execute an affidavit on the back of the return envelope in the form prescribed, provided however, that such affidavit need not be notarized. (History: S.L. 1970, Ch. 140)

**34-1005. Return of absentee ballot.** The return envelope shall be mailed or delivered to the officer who issued the same; provided, that an absentee ballot must be received by the issuing officer by 8:00 p.m. on the day of election before such ballot may be counted.

Upon receipt of an absent elector's ballot the county clerk of the county wherein such elector resides shall verify the authenticity of the affidavit and shall write or stamp upon the envelope containing the same, the date and hour such envelope was received in his office. He shall safely keep and preserve all absent electors' ballots unopened until the time prescribed for delivery to the judges in accordance with this act. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 157; S.L. 1995, Ch. 215; S.L. 2007, Ch. 202)

**34-1006. County clerks shall provide one or more "absent electors' voting place."** Each county clerk shall provide one (1) or more "absent electors' polling places" as determined necessary by each county. Each polling place shall be provided with voting booths and other necessary supplies as provided by law. Electioneering is prohibited at an "absent electors' polling place" as provided in section 18-2318, Idaho Code. (History: S.L. 1970, Ch. 140; S.L. 1994, Ch. 21; S.L. 1998, Ch. 163)

**34-1007. Transmission of absentee ballots to polls.** On receipt of such absent elector's ballot or ballots, the officer receiving them shall forthwith enclose the same, unopened in a carrier envelope endorsed with the name and official title of such officer and the words: "absent electors' ballot to be opened only at the polls." He shall hold the same until the delivery of the official ballots to the judges of election of the precinct in which the elector resides and shall deliver the ballot or ballots to the judges with such official ballots. In those counties which count ballots at a central location, absentee ballots that are received may, in the discretion of the county clerk, be retained in a secure place in the clerk's office and such ballot shall be added to the precinct returns at the time of ballot tabulation. The clerk shall deliver to the polls a list of those absentee ballots received to record in the official poll book that the elector has voted. (History: S.L. 1970, Ch. 140; S.L. 2002, Ch. 236; S.L. 2007, Ch. 202)

**34-1008. Deposit of absentee ballots.** Between the opening and closing of the polls on such election day the judges of election of such precinct shall open the carrier envelope only, announce the absent elector's name, and in the event they find such applicant to be a duly registered elector of the precinct and that he has not heretofore

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voted at the election, they shall open the return envelope and remove the ballot envelopes and deposit the same in the proper ballot boxes and cause the absent elector's name to be entered on the poll books the same as though he had been present and voted in person. The ballot envelope shall not be opened until the ballots are counted. (History: S.L. 1970, Ch. 140; S.L. 1995, Ch. 215)

**34-1009. Challenging absentee elector's vote.** The vote of any absent elector may be challenged in the same manner as other votes are challenged and the receiving judges shall have power and authority to determine the legality of such ballot. If the challenge be sustained, or if the receiving judges determine, that the affidavit accompanying the absent elector's ballot is insufficient, or that the elector is not a qualified registered elector the envelope containing the ballot of such elector shall not be opened and the judges shall endorse on the back of the envelope the reason therefor. If an absent elector's envelope contains more than one (1) marked ballot of any one (1) kind, none of such ballots shall be counted and the judges shall make notations on the back of the ballots the reason therefor. Judges of election shall certify in their returns the number of absent electors' ballots cast and counted and the number of such ballots rejected. (History: S.L. 1970, Ch. 140; S.L. 2004, Ch. 248)

**34-1010. Rejection of defective ballots.** All absent electors' identification envelopes, ballot stubs and absent electors' ballots rejected by the judges in accordance with the provisions of this act shall be returned to the county clerk. All absent electors' ballots received by the county clerk after 8:00 p.m. on the day of the general, primary or special election, together with the rejected absent electors' ballots returned by the judges of election as provided in this section, shall remain in the sealed identification envelopes and be handled in the manner provided for other spoiled ballots. (History: S.L. 1970, Ch. 140; S.L. 1973, Ch. 304)

**34-1011. County clerk's record of applications for absent elector's ballots.** The county clerk shall keep a record in his office containing a list of names and precinct numbers of electors making application for absent elector's ballots, together with the date on which such application was made, the date on which such absent elector's ballot was returned. If an absent elector's ballot is not returned or if it be rejected and not counted, such fact shall be noted on the record. Such record shall be open to public inspection under proper regulations. (History: S.L. 1970, Ch. 140)

**34-1012 - 34-1027. [Repealed - S.L. 1970, Ch. 140]**

**CHAPTER 11  
CONDUCT OF ELECTIONS**

**34-1101. Opening and closing of polls.** (1) At all elections conducted pursuant to title 34, Idaho Code, the polls shall be opened at 8:00 A.M. and remain open until all registered electors of that precinct have appeared and voted or until 8:00 P.M. of the same day, whichever comes first. The county clerk, at his option, however, may open the polls in his county at 7:00 A.M. for a primary or general election.

(2) Upon opening the polls, one (1) of the judges shall make the proclamation of the same and thirty (30) minutes before closing the polls a proclamation shall be made in the same manner. Any elector who is in line at 8:00 P.M. shall be allowed to vote notwithstanding the pronouncement that the polls are closed. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 349; S.L. 1973, Ch. 304, S.L. 1993, Ch. 313)

**34-1102. Changing polling place — Proclamation and notice.** Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after assembling and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election and the county clerk shall be notified of the change.

Upon adjourning any election, the judges shall cause proclamation thereof to be made, and shall post a notice upon the place where the adjournment was made from notifying electors of the change of polling place. (History: S.L. 1970, Ch. 140)

**34-1103. Opening ballot boxes.** In the presence of bystanders the judges of elections shall break the sealed packages of election ballots, official stamp and other supplies.

Before receiving any ballots the judges shall open and exhibit, close and lock the ballot boxes, and thereafter they shall not be removed from the polling place until all ballots are counted. They shall not be opened until the polls are closed unless the precinct is using a duplicate set of ballot boxes. (History: S.L. 1970, Ch. 140)

**34-1104. Judges may administer oaths — Challenge of voters.** Any judge may administer and certify any oath required to be administered during the progress of an election or challenge any elector. (History: S.L. 1970, Ch. 140)

**34-1105. Duties of constable.** The judges of election may appoint some capable person to act as election constable during the election, and he shall have the power to make arrests for disturbance of the peace, as provided by law for constables, and he shall allow no one within the voting area except those who go to vote, and shall allow but one (1) elector in a compartment at one (1) time. He shall remain and keep order at the polling place until all of the votes are tallied. (History: S.L. 1970, Ch. 140)

**34-1106. Signing combination election record and poll book — Delivery of ballot to elector.** (1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book.

(2) Before receiving his ballot, each elector shall sign his name in the combination

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election record and poll book following his name therein.

(3) No person shall knowingly sign his name in the combination election record and poll book if his residence address is not within that precinct at the time of signing.

(4) If the residence address of a person contained in the combination election record and poll book is incorrectly given due to an error in preparation of the combination election record and poll book, the judge shall ascertain the correct address and make the necessary correction.

(5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots. (History: S.L. 1970, Ch. 140, S.L. 1972, Ch. 349)

**34-1107. Manner of voting.** On receipt of his ballot the elector shall retire to a vacant voting booth and mark his ballot according to the instructions provided by law.

After marking his ballot, the elector shall present himself to the judge at the ballot box and state his name and residence. The elector shall then deposit his ballot in the proper box or hand his ballot to the election judge, who shall deposit it. The judge shall then record that the elector has voted and proclaim the same in an audible voice. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 129; S.L. 1972, Ch. 349; S.L. 1973, Ch. 304; S.L. 2007, Ch. 202)

**34-1108. Assistance to voter.** (1) If any registered elector is unable, due to physical disability or other handicap, to enter the polling place, he may be handed a ballot outside the polling place but within forty (40) feet thereof by one (1) of the election clerks, and in his presence but in a secret manner, mark and return the same to such election officer who shall proceed as provided by law to record the ballot.

(2) If any registered elector, who is unable by reason of physical disability or other handicap to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be given assistance by the person of his choice or by one (1) of the election clerks. Such clerk or selected person shall mark the ballot in the manner directed by the elector and fold it properly and present it to the elector before leaving the voting compartment or area provided for such purpose. The elector shall then present it to the judge of election in the manner provided above. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 349; S.L. 1978, Ch. 37)

**34-1109. Spoiled ballots.** No person shall take or remove any ballot from the polling place. If an elector inadvertently or by mistake spoils a ballot, he shall return it folded to the distributing clerk, who shall give him another ballot. The ballot thus returned shall, without examination, be immediately canceled by writing across the back, or outside of the ballot as folded, the words "spoiled ballot, another issued," and deposit the spoiled ballot in a box provided for that purpose. (History: S.L. 1970, Ch. 140)

**34-1110. Officers not to divulge information.** No judge or clerk shall communicate to anyone any information as to the name or number on the registry list of any elector who has not applied for a ballot, or who has not voted at the polling place; and no

judge, clerk or other person whomsoever, shall interfere with, or attempt to interfere with, a voter when marking his ballot. No judge, clerk or other person shall, directly or indirectly, attempt to induce any voter to display his ticket after he shall have marked the same, or to make known to any person the name of any candidate for or against whom he may have voted. (History: S.L. 1970, Ch. 140)

**34-1111. Challenging voters.** In case any person offering to vote is challenged one (1) of the judges must declare the qualifications of an elector to such person. If the person so challenged then declares himself duly qualified, and the challenge is not withdrawn, one (1) of the judges shall then tender him the elector's oath, as prescribed by the secretary of state. No challenged elector shall have the right to vote until he has subscribed to the elector's oath. Upon a challenged elector's subscribing the elector's oath, he shall be entitled to vote. (History: S.L. 1970, Ch. 140)

**34-1112. Handbook of elector's qualifications.** The secretary of state shall prepare a handbook which sets forth the qualifications of an elector which shall aid the judges of election to determine whether a person is qualified to vote at the election.

A sufficient number of these handbooks shall be transmitted to each county clerk who shall provide each polling place with a sufficient number of copies. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 349)

**34-1113 - 34-1129. [Repealed - S.L. 1970, Ch. 140]**

## CHAPTER 12 CANVASS OF VOTES

**34-1201. Canvass of votes.** (1) When the polls are closed the judges must immediately proceed to count the ballots cast at such election. The counting must be continued without adjournment until completed and the result declared.

(2) If the precinct has duplicate ballot boxes, the counting shall begin after five (5) ballots have been cast. At this time, the additional clerks shall close the first ballot box and retire to the counting area and count the ballots. Upon completion of this counting the clerks shall return the ballot box and then proceed to count all of the ballots cast in the second box during this period. This counting shall continue until the polls are closed at which time all election personnel shall complete the counting of the ballots. (History: S.L. 1970, Ch. 140)

**34-1202. Comparison of poll lists, and ballots — Void ballots.** The counting must commence by comparison of the ballots and the poll lists from the commencement, and a correction of any mistake that may be found therein, until they are found to agree. The ballot box shall be opened and the ballots found therein counted by the judges, unopened and the number of ballots in the box must agree with the number marked in the poll book as having received a ballot, and this number, together with the number of spoiled ballots, must agree with the number of stubs or counterfoils in the books from which the ballots have been taken. If the number of ballots issued does not agree with

the number of stubs or counterfoils, the election judges shall have authority to make any decision to correct the situation; but this shall not be construed to allow the judges to void all ballots cast at that polling place.

When duplicate ballot boxes are used in a precinct, the duties herein prescribed shall be done after all of the votes have been tallied. (History: S.L. 1970, Ch. 140; S.L. 1995, Ch. 215)

**34-1202A. Void ballot not counted.** At any bond election conducted by the state of Idaho, its agencies, institutions, political subdivisions and municipal and quasi-municipal corporations, any ballot or part of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted. It is hereby declared that any qualified elector casting such ballot or part of a ballot shall be deemed not to have voted at or participated in such bond election and such ballot or part of a ballot shall not be counted in determining the number of qualified electors voting at or participating in such bond election. (History: S.L. 1978, Ch. 51)

**34-1203. Counting of ballots — Certificates of judges.** The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes cast. Under each office title the number of votes for each candidate and such other information required by the secretary of state shall be entered in the tally books together with the total of the above figures in the manner prescribed by the secretary of state. Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

Following the counting, the judges must post a correct copy of such results at the polling place and a copy transmitted to the county clerk.

In no event shall the results of any count be released to the public until all voting places in the state have closed on election day.

The secretary of state shall issue directives or promulgate administrative rules adopting standards that define what constitutes a vote and what will be counted as a vote for each category of voting systems used in this state. (History: S.L. 1970, Ch. 140; S.L. 1981, Ch. 109; S.L. 2003, Ch. 48)

**34-1204. Transmission of supplies to county clerk.** After the counting of the votes, the judges of the election shall enclose and seal the combination election record and poll book, tally books, all ballot stubs, unused ballot books, and other supplies in a suitable container and deliver them to the county clerk's office. If the office of the county clerk is closed, the articles shall be delivered to the sheriff or one (1) of his deputies who shall deliver them to the county clerk no later than the day after the election. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 193)

**34-1205. County board of canvassers — Meetings.** The county board of commissioners shall be the county board of canvassers and the county clerk shall serve as their secretary for this purpose. The county board of canvassers shall meet within

seven (7) days after the primary or presidential preference primary election and within ten (10) days after the general election for the purpose of canvassing the election returns of all precincts within the county. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 193; S.L. 1975, Ch. 174)

**34-1206. Board's statement of votes cast.** The board shall examine and make a statement of the total number of votes cast for all candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by precinct and the total number of affirmative and negative votes cast for any special question by precinct. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the county clerk. (History: S.L. 1970, Ch. 140)

**34-1207. Abstracts of returns.** After the canvass of the votes for each office the board shall cause the county clerk to make abstracts of the returns for each candidate which shall then be signed by each member of the board. The abstracts shall be in a form prescribed by the secretary of state and be uniform throughout the state.

The county clerk, by registered mail, shall forward to the secretary of state the abstracts for all candidates for federal, state or district offices. (History: S.L. 1970, Ch. 140)

**34-1208. Certificates of nomination or election.** Immediately after the primary election canvass the county clerk shall issue certificates of nomination to the political party candidates of each party who receive the highest number of votes for their particular county office, and the candidates so certified shall have their names placed on the general election ballot. On or before the eighth day after the primary election canvass, the county clerk shall issue certificates of election to the precinct committeemen of each political party who receive the highest number of votes in their precinct. Provided that to be elected, a precinct committeeman shall receive a minimum of five (5) votes. In the event no candidate receives the minimum number of votes required to be elected, a vacancy in the office shall exist and shall be filled as otherwise provided by law. The county clerk shall also certify by registered mail the results of both the primary and the presidential primary elections to the secretary of state. The form for such certificate shall be prescribed by the secretary of state and be uniform throughout the state. (History: S.L. 1970, Ch. 140; S.L. 1975, Ch. 174; S.L. 1977, Ch. 17; S.L. 1979, Ch. 309; S.L. 1991, Ch. 117)

**34-1209. Certificates of election to county candidates after general election.** Immediately after the general election canvass, the county clerk shall issue a certificate of election to the county candidates who received the highest number of votes for that particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term. (History: S.L. 1970, Ch. 140)

**34-1210. Tie votes in county elections.** In the case of a tie vote between candidates at a primary election or general election, the interested candidates shall appear before the county clerk within two (2) days after the canvass and the tie shall be determined by a toss of a coin. (History: S.L. 1970, Ch. 140)

**34-1211. State board of canvassers — Meetings.** The secretary of state, state controller and state treasurer shall constitute the state board of canvassers. The functions of the board shall be election functions, and the secretary of state shall be chairman of the board. The state board of canvassers shall meet within fifteen (15) days after the primary election and within fifteen (15) days after the general election in the office of the secretary of state for the purpose of canvassing the abstracts of votes cast for all candidates for federal, state and district offices. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 193; S.L. 1974, Ch. 5; S.L. 1994, Ch. 181)

**34-1212. Examination and certification of county canvasses by state board.** The board shall examine the abstracts of votes from the county canvasses and make a statement of the total number of votes cast for all federal, state and district candidates or special questions that shall have been voted upon at the election. The statement shall set forth the special questions and the names of the candidates for whom the votes have been cast. It shall also include the total number of votes cast for each candidate for office by county and legislative district, and the total number of affirmative and negative votes cast for any special question by county. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the secretary of state. (History: S.L. 1970, Ch. 140)

**34-1213. Certification of canvass of abstracts by board.** After the canvass of the abstracts, the board shall make a statement of the total number of votes cast at any such election for all the candidates for federal, state or district offices, which statement shall show the names of the persons to whom such votes shall have been cast for the particular offices and the total number cast to each, distinguishing the several districts, counties and precincts in which they were given. They shall certify such statement to be correct, and subscribe their names thereto. (History: S.L. 1970, Ch. 140)

**34-1214. Certificates of nomination or election to federal, state, district or nonpartisan offices after primary.** (1) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the political party candidates of each party who receive the highest number of votes for their particular federal, state or district office. The candidates so certified shall have their names placed on the general election ballot.

(2) Immediately after the primary election canvass, the secretary of state shall issue certificates of nomination to the nonpartisan candidate or candidates who receive the highest number of votes for the number of vacancies which are to be filled for a particular office and also to the same number of candidates who receive the second highest number of votes for the particular office. The candidates so certified shall have

their names placed on the general election ballot. If it appears from the canvass that a particular candidate has received a majority of the total vote cast for the particular office, he shall be issued a certificate of election instead of a certificate of nomination and no candidates shall run for the particular office in the general election. (History: S.L. 1970, Ch. 140)

**34-1215. Certificates of election to federal, state and district offices after general election.** Immediately after the general election canvass, the secretary of state shall issue certificates of election to the federal, state and district candidates who received the highest number of votes for the particular office and they shall be considered duly elected to assume the duties of the office for the next ensuing term. (History: S.L. 1970, Ch. 140)

**34-1216. Tie votes — In state or district elections.** In the case of a tie vote between the candidates at a primary or general election, the interested parties or their authorized agents shall appear before the secretary of state within two (2) days after the canvass and the tie shall be determined by a toss of a coin. (History: S.L. 1970, Ch. 140)

**34-1217. Canvassing returns of judicial elections — Certificates of nomination or election.** The board of county commissioners shall canvass the returns of the judicial nominating election at the time the returns of the primary election are canvassed, shall determine, and cause the county clerk to certify to the secretary of state, the result of said judicial nominating election. In such certificate the clerk shall set forth, following the name of each justice of the Supreme Court and each district judge for whom a successor is to be elected at the general election in that year, the vote received by each person who had declared himself to be, and who had been voted for as, a candidate to succeed such justice or district judge.

The returns so made to the secretary of state by the county clerk shall be canvassed by the state board of canvassers at the time the other returns of said primary election are canvassed.

If it appears to the state board of canvassers upon the official canvass that at such judicial nominating election any candidate received a majority of all the votes cast for candidates to succeed a particular justice of the supreme court or district judge, said board shall certify to the secretary of state as duly elected to such office the name of the candidate who received such majority and such candidate whose name is so certified shall receive and the secretary of state shall issue and deliver to him a certificate of election to such office and he shall not be required to stand for election at the general election following.

In the event no candidate received a majority of all votes cast for candidates to succeed a particular justice of the supreme court or a particular district judge, the two (2) candidates receiving the greater number of votes cast for all candidates to succeed such justice of the supreme court or such district judge shall be and shall be declared to be nominees to succeed such justice or such district judge and their names as such nominees shall be placed on the official judicial ballot at the general election next following. The secretary of state shall certify the names of such nominees, including

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with each the name of the incumbent in office whom such candidates were nominated to succeed, to the county clerks at the time he certifies the names of candidates for other offices certified by him; provided, however, if another be appointed to succeed the incumbent person named on such judicial nominating ballot, the secretary of state shall insert in such certificate or in amendment thereto the name of the appointee in the place of the name of the incumbent person named on such judicial nominating ballot. (History: S.L. 1970, Ch. 231; S.L. 1971, Ch. 131)

### CHAPTER 13 STATE BOARD OF CANVASSERS

#### **34-1301 - 34-1307. [Repealed - S.L. 1970, Ch. 140]**

(New law contained Chapter 12 herein)

### CHAPTER 14 UNIFORM DISTRICT ELECTION LAW

**34-1401. Election administration.** Notwithstanding any provision to the contrary, the election official of each political subdivision shall administer all elections on behalf of any political subdivision, subject to the provisions of this chapter, including all special district elections, and elections of special questions submitted to the electors as provided in this chapter. School districts governed by title 33, Idaho Code, and water districts governed by chapter 6, title 42, Idaho Code, irrigation districts governed by title 43, Idaho Code, ground water districts governed by chapter 52, title 42, Idaho Code, and municipal elections governed by the provisions of chapter 4, title 50, Idaho Code, are exempt from the provisions of this chapter. For the purposes of achieving uniformity, the secretary of state shall, from time to time, provide directives and instructions to the various county clerks and political subdivision election officials. Unless a specific exception is provided in this chapter, the provisions of this chapter shall govern in all questions regarding the conduct of elections on behalf of all political subdivisions. In all matters not specifically covered by this chapter, other provisions of title 34, Idaho Code, governing elections shall prevail over any special provision which conflicts therewith.

A political subdivision may contract with the county clerk to conduct the all or part of the elections for that political subdivision. In the event of such contract, the county clerk shall perform all necessary duties of the election official of a political subdivision including, but not limited to, notice of the filing deadline, notice of the election, and preparation of the election calendar. (History: S.L. 1992, Ch. 176; S.L. 1993, Ch. 379; S.L. 1996, Ch. 298)

**34-1402. Registration.** All electors must register with the county clerk before being able to vote in any primary, general, special or any other election conducted in this state. The county clerk shall determine, for each registered elector, the elections for which he is eligible to vote by a determination of the applicable code areas. The determination of tax code area shall be made for all political subdivisions including

those otherwise exempt from the provisions of this chapter.

The county clerk shall conform to the provisions of chapter 4, title 34, Idaho Code, in the administration of registration for all political subdivisions within the county. The county clerk shall appoint each city clerk for any city within the county and each election official designated by a political subdivision, as an at-large registrar as provided in section 34-406, Idaho Code, except that no compensation shall be paid by the county clerk for electors registered by these special registrars. (History: S.L. 1992, Ch. 176; S.L. 2003, Ch. 48)

**34-1403. Conduct of elections.** All elections conducted in this state on behalf of each political subdivision within the county shall be conducted in a uniform manner with regard to the qualifications of electors and shall be conducted on the dates as provided by law. In the event that a statute governing a political subdivision provides for qualifications more restrictive than the qualifications for an elector in section 34-402, Idaho Code, the election official of the district shall provide an elector's oath to be executed at the time of the election certifying to the elector's qualifications for the specific election. (History: S.L. 1992, Ch. 176, S.L. 1993, Ch. 313)

**34-1404. Declaration of candidacy.** Candidates for election in any political subdivision shall be nominated by nominating petitions, each of which shall bear the name of the nominee, the office for which the nomination is made, the term for which nomination is made, bear the signature of not less than five (5) electors of the candidate's specific zone or district of the political subdivision, and be filed with the election official of the political subdivision. The form of the nominating petition shall be as provided by the county clerk and shall be uniform for all political subdivisions. For an election to be held on the fourth Tuesday in May, in even-numbered years, the nomination petition shall be filed during the period specified in section 34-704, Idaho Code. The election official shall verify the qualifications of the nominees, and shall, no more than seven (7) days after the close of filing, certify the nominees and any special questions placed by action of the governing board of the political subdivision. For an election to be held on the first Tuesday after the first Monday of November, in even-numbered years, the nomination shall be filed on or before September 1. The election official shall verify the qualifications of the nominees, and shall no later than seven (7) days after the close of filing, certify the nominees and any special questions placed by action of the governing board of the political subdivisions. For all other elections, the nomination shall be filed not later than 5:00 p.m. on the sixth Friday preceding the election for which the nomination is made. The election official shall verify the qualifications of the nominee, and shall not more than seven (7) days following the filing certify the nominees and any special questions, placed by action of the governing board of the political subdivisions, to be placed on the ballot of the political subdivision. (History: S.L. 1992, Ch. 176; S.L. 1993, Ch. 313)

**34-1405. Notice of election filing deadline.** (1) Not more than fourteen (14) nor less than (7) days preceding the candidate filing deadline for an election, the election official of each political subdivision shall cause to be published a notice of the

forthcoming candidate filing deadline. The notice shall include not less than the name of the political subdivision, the place where filing for each office takes place, and a notice of the availability of declarations of candidacy. The notice shall be published in the official newspaper of the political subdivision.

(2) The secretary of state shall compile an election calendar annually which shall include not less than a listing of the political subdivisions which will be conducting candidate elections in the forthcoming year, the place where filing for each office takes place, and the procedure for a declaration of candidacy. Annually in December, the county clerk shall cause to be published the election calendar for the county for the following calendar year. It shall be the duty of the election official of each political subdivision to notify the county clerk, not later than the last day of November, of any election for that political subdivision to occur during the next calendar year. In the event of failure to so notify the county clerk, the election official of the political subdivision shall cause to be published notice of the omitted election as soon as he is aware of the omission. This publication shall be in addition to the publication required by paragraph (1) of this section. The election calendar for the county shall be published in at least two (2) newspapers published within the county, but if this is not possible, the calendar shall be published in one (1) newspaper which has general circulation within the county. Copies of the election calendar shall be available, without charge, from the office of the secretary of state or the county clerk. (History: S.L. 1992, Ch. 176; S.L. 1993, Ch. 313)

**34-1406. Notice of Election.** The election official of each political subdivision shall give notice for any election by publishing such notice in the official newspaper of the political subdivision. The notice shall state the date of the election, the polling places, and the hours during which the polls shall be open for the purpose of voting. The first publication shall be made not less than twelve (12) days prior to the election, and the last publication of notice shall be made not less than five (5) days prior to the election. (History: S.L. 1992, Ch. 176; S.L. 1993, Ch. 313)

**34-1407. Write-in candidates.** No write-in candidate for any nonpartisan elective office shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of the office. The declaration of intent shall be filed with the election official not less than twenty-five (25) days before the date of the election.

If the statutes governing elections within a specific political subdivision provide that no election shall be held in the event that no more than one (1) candidate has filed for an office, that statute shall be interpreted in such a manner as to allow for filing a declaration of intent for a write-in candidate until twenty-five (25) days preceding the election. However, if no candidate has filed within that time, no election shall be held for that political subdivision. The provisions of this section shall not apply to candidates in the primary or general election covered by the provisions of section 34-702A, Idaho Code. (History: S.L. 1992, Ch. 176; S.L. 1993, Ch. 313; S.L. 1997, Ch. 362)

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**34-1408. Absentee ballots.** Any registered elector may vote at any election by absentee ballot as provided in chapter 10, title 34, Idaho Code. In the event of a written application to the county clerk for an absentee ballot, the application shall be deemed to be an application for all ballots to be voted in the election, and the county clerk shall notify the election official of each political subdivision conducting an election at that date, and the election official shall provide the ballot of the political subdivision to the elector. (History: S.L. 1992, Ch. 176)

**34-1409. Conduct of election on election day.** At all elections conducted by any political subdivision, the polls shall be opened at 8:00 a.m. and remain open until all registered electors of that precinct have appeared and voted or until 8:00 p.m. of the same day, whichever comes first. However, the election official may, at his option, open the polls in his jurisdiction at 7:00 a.m.

All political subdivisions conducting election on the same date shall, whenever practicable, use the same polling places. (History: S.L. 1992, Ch. 176)

**34-1410. Canvassing of election results.** Each political subdivision shall conduct the canvass of the election results, in the manner provided in chapter 12, title 34, Idaho Code. Each political subdivision shall issue the appropriate certificates of election. (History: S.L. 1992, Ch. 176)

### CHAPTER 15 PRESIDENTIAL ELECTORS

**34-1501. Certificates of election.** The secretary of state shall prepare lists of the names of the electors of president and vice-president of the United States, elected at any election, procure thereto the signature of the governor, affix the seal of the state to the same, and deliver one (1) of such certificates thus signed to each of said electors on or before the second Wednesday in December next after such election. (History: 1890-1891, p. 57, section 110; reen. 1899, p. 33, section 101; reen. R.C. & C.L., section 459; C.S., section 643; I.C.A., section 33-1401)

**34-1502. Election for presidential electors.** There shall be an election held in this state for the election of such electors, at the times appointed by any law of the Congress or the Constitution of the United States for such election, and when such election shall be special, the same shall be called and held, and the votes polled and canvassed, in all respects as at a general election, and the duties of the electors so elected shall be the same as prescribed by law for electors elected at a general election. (History: 1890-1891, p. 57, latter part of section 115; reen. 1899, p. 33, section 102; am. R.C. & C.L., section 460; C.S., section 644; I.C.A., section 33-1402)

**34-1503. Meeting of electors.** The electors chosen to elect a president and vice-president of the United States shall, at twelve (12) o'clock noon on the day which is or

may be directed by the Congress of the United States, meet at the seat of government of this state, and then and there perform the duties enjoined upon them by the Constitution and laws of the United States. (History: 1890-1891, p. 57, section 111; reen. 1899, p. 66, section 1; am. R.C. & C.L., section 461; C.S., section 645; I.C.A., section 33-1403)

**34-1504. Notice to governor — Vacancies, how filled.** Each elector of president and vice-president of the United States shall, before the hour of twelve (12) o'clock on the day next preceding the day fixed by the law of Congress to elect a president and vice-president, give notice to the governor that he is at the seat of government and ready at the proper time to perform the duties of an elector; and the governor shall forthwith deliver to the electors present a certificate of all the names of the electors; and if any elector named therein fails to appear before nine (9) o'clock on the morning of the day of election of president and vice-president as aforesaid, the electors then present shall immediately proceed to elect, by ballot, in the presence of the governor, persons to fill such vacancies. (History: 1890-1891, p. 57, section 112; reen. 1899, p. 66, section 2; am. R.C. & C.L., section 462; C.S., section 646; I.C.A., section 33-1404)

**34-1505. Filling vacancies — Tie vote.** If more than the number of persons required to fill the vacancies, as aforesaid, have the highest and an equal number of votes, then the governor, in the presence of the electors attending, shall decide by lot which of said persons shall be elected; otherwise they, to the number required, having the greatest number of votes, shall be considered elected to fill such vacancies. (History: 1890-1891, p. 57, section 113; reen. 1899, p. 66, section 3; reen. R.C. & C.L., section 463; C.S., section 647; I.C.A., section 33-1405)

**34-1506. Notification of election to fill vacancy.** Immediately after such choice is made the names of the persons so chosen shall forthwith be certified to the governor by the electors making such choice; and the governor shall cause immediate notice to be given in writing to the electors chosen to fill such vacancies; and the said persons so chosen shall be electors, and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on them as electors aforesaid by the Constitution and laws of the United States and of this state. (History: 1890-1891, p. 57, section 114; reen. 1899, p. 66, section 4; reen. R.C. & C.L., section 464; C.S., section 648; I.C.A., section 33-1406)

**34-1507. Compensation and mileage of electors.** Every elector of this state for the election of president and vice president of the United States, hereafter elected, who shall attend and give his vote for those offices at the time and place appointed by law, shall be compensated as provided by section 59-509(d), Idaho Code. (History: 1890-1891, p. 57, section 115; reen. 1899, p. 66, section 5; am. R.C. & C.L., section 465; C.S., section 649; I.C.A., section 33-1407; S.L. 1980, Ch. 247)

**CHAPTER 16  
SPECIAL ELECTIONS**

**34-1601 - 34-1605. [Repealed - S.L. 1970, Ch. 140]**

(New law contained throughout Title 34 with laws governing General Election applicable)

**CHAPTER 17  
RECALL ELECTIONS**

**34-1701. Officers subject to recall.** The following public officers, whether holding their elective office by election or appointment, and none other, are subject to recall:

(1) State officers:

(a) The governor, lieutenant-governor, secretary of state, state controller, state treasurer, attorney general, and superintendent of public instruction;

(b) Members of the state senate, and members of the state house of representatives.

(2) County officers:

(a) The members of the board of county commissioners, sheriff, treasurer, assessor, prosecuting attorney, clerk of the district court, and coroner.

(3) City officers:

(a) The mayor;

(b) Members of the city council.

(4) Special district elected officers for whom recall procedure is not otherwise provided by law.

(History: S.L. 1972, Ch. 283; S.L. 1975, Ch. 137; S.L. 1994, Ch. 181; S.L. 1995, Ch. 266)

**34-1702. Required signatures on petition.** A petition for recall of an officer shall be instituted by filing with the appropriate official a verified written petition requesting such recall.

(1) If the petition seeks recall of any of the officers named in subsection (1)(a) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held to elect a governor.

(2) If the petition seeks recall of any of the officers named in subsection (1)(b) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors of the legislative district equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the legislative district at which the member was elected.

(3) If the petition seeks recall of any of the officers named in subsection (2)(a) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk, and must

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be signed by registered electors of the county equal in number to twenty percent (20%) of the number of electors registered to vote at the last general election held in the county for the election of county officers at which the officer was elected.

(4) If the petition seeks recall of any of the officers named in subsection (3) of section 34-1701, Idaho Code, the petition shall be filed with the city clerk, and must be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers.

(5) If the petition seeks recall of any of the officers named in subsection (4) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk of the county wherein the district is located. If the district is located in two (2) or more counties, the clerk in each county shall perform the functions within that county. The petition must be signed by registered electors of the district equal in number to fifty percent (50%) of the number of electors who cast votes in the last election of the district. If no district election has been held in the last six (6) years, the petition must be signed by twenty percent (20%) of the number of electors registered to vote in the district at the time the petition is filed. (History: S.L. 1972, Ch. 283; S.L. 1995, Ch. 266; S.L. 2003, Ch. 57)

**34-1703. Form of petition.** (1) The recall petition for state officers other than members of the state legislature shall be in substantially the following form:

RECALL PETITION

To the honorable \_\_\_\_\_, Secretary of State for the State of Idaho:

We, the undersigned citizens and registered electors of the State of Idaho respectfully demand that \_\_\_\_\_, holding the office of \_\_\_\_\_, be recalled by the registered electors of this state for the following reasons, to-wit: (setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the State of Idaho; my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence	City or	Date
		Street and	Post Office	
		Number		

(Here follow twenty numbered lines for signatures.)

(2) The recall petition for members of the state legislature shall be in substantially the following form:

RECALL PETITION

To the honorable \_\_\_\_\_, Secretary of State for the State of Idaho:

We, the undersigned citizens and registered electors of Legislative District No. \_\_, respectfully demand that \_\_\_\_\_, holding the office of \_\_\_\_\_, be recalled

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by the registered electors of Legislative District No. \_\_\_\_ for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of Legislative District No. \_\_\_\_, my residence, post office address and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence	City or	Date
		Street and	Post Office	
		Number		

(Here follow twenty numbered lines for signatures.)

(3) The recall petition for county officers shall be in substantially the following form:

RECALL PETITION

To the honorable \_\_\_\_\_, County Clerk for the County of \_\_\_\_\_:

We, the undersigned citizens and registered electors of the County of \_\_\_\_\_, respectfully demand that \_\_\_\_\_, holding the office of \_\_\_\_\_, of the County of \_\_\_\_\_, be recalled by the registered electors of the County of \_\_\_\_\_ for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the County of \_\_\_\_\_, my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence	City or	Date
		Street and	Post Office	
		Number		

(Here follow twenty numbered lines for signatures.)

(4) The recall petition for city officers shall be in substantially the following form:

RECALL PETITION

To the honorable \_\_\_\_\_, City Clerk for the City of \_\_\_\_\_:

We, the undersigned citizens and registered electors of the City of \_\_\_\_\_, respectfully demand that \_\_\_\_\_, holding the office of \_\_\_\_\_, of the City of \_\_\_\_\_, be recalled by the registered electors of the City of \_\_\_\_\_ for the following reasons, to-wit:

(setting out the reasons for recall in not more than 200 words); that a special election therefor be called; that we, each for himself say: I am a registered elector of the City of \_\_\_\_\_, my residence, post office address, and the date I signed this petition

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are correctly written after my name.

Signature	Printed Name	Residence	City or	Date
		Street and	Post Office	
		Number		

(Here follow twenty numbered lines for signatures.)

(5) The recall petition for special district officers shall be in substantially the following form:

RECALL PETITION

To the honorable \_\_\_\_\_, County Clerk of the County of \_\_\_\_\_:

We, the undersigned citizens and registered electors of (here insert the official name of the district), respectfully demand that \_\_\_\_\_, holding the office of \_\_\_\_\_, of the (district), be recalled by the registered electors of the (district) for the following reasons, to-wit:

(insert the reasons for the recall in two hundred 200 words or less); that a special election therefor be called, that we, each for himself say: I am a registered elector of the (district), my residence, post office address, and the date I signed this petition are correctly written after my name.

Signature	Printed Name	Residence	City or	Date
		Street and	Post Office	
		Number		

(Here follow twenty numbered lines for signatures.)

(History: S.L. 1972, Ch. 283; S.L. 1989, Ch. 344; S.L. 1995, Ch. 266)

**34-1704. Printing of petition and sheets for signatures — Time limits for perfecting petition.** (1) Before or at the time of beginning to circulate any petition for the recall of any officer subject to recall, the person or persons, organization or organizations under whose authority the recall petition is to be circulated, shall send or deliver to the secretary of state, county clerk, or city clerk, as the case may be, a copy of a prospective petition duly signed by at least twenty (20) electors eligible to sign such petition. The receiving officer shall immediately examine the petition and specify the form and kind and size of paper on which the petition shall be printed and circulated for further signatures. All petitions and signature sheets for recall shall be printed on a good quality bond or ledger paper of standardized size in substantial conformance within the provisions of section 34-1703, Idaho Code. To every sheet of petitioners' signatures shall be attached a full and correct copy of the recall petition.

(2) The secretary of state, county clerk, or city clerk, as the case may be, shall indicate in writing on the prospective recall petition that he has approved it as to form and the date of such approval. Upon approval as to form, the secretary of state, county

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clerk, or city clerk, shall inform the person or persons, organization or organizations under whose authority the recall petition is to be circulated, in writing, that the petition must be perfected with the required number of certified signatures within seventy-five (75) days following the date of approval as to form. Signatures on the prospective petition shall not be counted toward the required number of certified signatures. Any petition that has not been perfected with the required number of certified signatures within the seventy-five (75) days allowed shall be declared null and void ab initio in its entirety. (History: S.L. 1972, Ch. 283; S.L. 1975, Ch. 137; S.L. 2004, Ch. 164)

**34-1705. Verification on sheets for signatures.** Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho

ss.

County of

I, \_\_\_\_\_, swear, under penalty of perjury, that I am a resident of the State of Idaho and at least eighteen (18) years of age; and that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

(Signature) \_\_\_\_\_  
Post office address \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(Notary Seal)

\_\_\_\_\_  
Notary Public  
Residing at \_\_\_\_\_

(History: S.L. 1972, Ch. 283; S.L. 2004, Ch. 164)

**34-1706. Examination and certification of signatures.** All petitions with attached signature sheets shall be filed on the same day with the secretary of state, county clerk, or city clerk, as the case may be. The secretary of state or the city clerk shall promptly transmit the petitions and attached signature sheets to the county clerk. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk as provided in section 34-1807, Idaho Code. This examination shall not exceed fifteen (15) business days from the date of receipt of the petitions. (History: S.L. 1972, Ch. 283; S.L. 1975, Ch. 137; S.L. 1995, Ch. 266; S.L. 2004, Ch. 164)

**34-1707. Sufficiency of petition — Notification — Effect of resignation — Special election.**

(1) In the event that a petition filed with the secretary of state is found by the secretary of state to contain the required number of certified signatures, the secretary of state shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the secretary of state, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the secretary of state, a special election shall be ordered by the secretary of state, unless he is the officer being recalled, in which event the governor shall order such special election. The special election must be held on the date prescribed in section 34-106, Idaho Code. If the officer being recalled is one (1) specified in section 34-1701(1)(a), Idaho Code, the special election shall be conducted statewide. If the officer being recalled is one (1) specified in section 34-1701(1)(b), Idaho Code, the special election shall be conducted only in the legislative district.

(2) In the event that a petition filed with the county clerk is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the county clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted countywide.

(3) In the event that a petition filed with the county clerk concerning the recall of an official of a special district is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, and the governing board and election officials of the special district that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the governing board of the special district. The special election must be held on the date prescribed in section 34-106, Idaho Code. The election shall be conducted by the special district in the manner provided in section 34-1401, Idaho Code, and the special district

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may contract with the county clerk as provided in section 34-1401, Idaho Code.

(4) In the event that a petition filed with the city clerk is found by the city clerk to contain the required number of certified signatures, the city clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(a) If the officer being recalled resigns his office within five (5) business days after notice from the city clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(b) If the officer being recalled does not resign his office within five (5) business days after notice from the city clerk, a special election shall be ordered by the city clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted citywide.

(5) In the event that a petition is found not to have the required number of signatures, the officer shall continue in office and no new recall petition may be circulated for a period of ninety (90) days against the same officer. (History: S.L. 1972, Ch. 283; S.L. 1975, Ch. 137; S.L. 1989, Ch. 344; S.L. 1993, Ch. 313; S.L. 1994, Ch. 54; S.L. 1995, Ch. 266; S.L. 2004, Ch. 164)

**34-1708. Form of recall ballot.** The ballot at any recall election shall be headed "RECALL BALLOT" and on the ballot shall be printed in not more than two hundred (200) words the reason for demanding the recall of the officer named in the recall petition, and in not more than two hundred (200) words the officer's justification of his course in office. Then the question of whether the officer should be recalled shall be placed on the ballot in a form substantially similar to the following:

- FOR recalling \_\_\_\_\_ who holds office of \_\_\_\_\_
- AGAINST recalling \_\_\_\_\_ who holds office of \_\_\_\_\_

(History: S.L. 1972, Ch. 283; S.L. 1989, Ch. 344)

**34-1709. Officer to continue in office.** The officer named in the recall petition shall continue to perform the duties of his office until the results of the special recall election are officially declared. (History: S.L. 1972, Ch. 283)

**34-1710. Conduct of Special recall election.** Special elections for the recall of an officer shall be conducted and the results thereof canvassed and certified in all respects as general elections, except as otherwise provided. Nothing in this chapter shall preclude the holding of a recall election with another election. (History: S.L. 1972, Ch. 283; S.L. 1989, Ch. 344; S.L. 1995, Ch. 118)

**34-1711. Canvass of returns.** (1) The board of county commissioners shall act as the board of canvassers for all special recall elections involving state and county officers that involve elections held wholly or partly within their county.

(a) For all special recall elections involving state officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and shall immediately transmit to the secretary of state an abstract of the votes cast.

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(b) Within fifteen (15) days following the special recall election held to recall a state officer, the state board of canvassers shall meet and canvass the votes cast at such election, and the secretary of state shall immediately after the completion thereof, proclaim the results.

(c) For all special recall elections involving county officers, the board of county commissioners shall meet within ten (10) days after said election to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results.

(d) For all special recall elections involving city officers, the mayor and council shall meet within six (6) days after said election to canvass the votes cast at such election, and the city clerk shall immediately after the completion thereof, proclaim the results. (History: S.L. 1972, Ch. 283, S.L. 2004, Ch. 164)

**34-1712. General Election Laws Control.** (1) The provisions relating to general elections, including the payment of expenses of conducting the recall election, shall govern special recall elections except where otherwise provided for.

(2) Whenever a special recall election is ordered, notice must be issued and posted in the same manner as for a general election.

(3) To recall any officer, a majority of the votes cast at the special recall election must be in favor of such recall, and additionally, the number of votes cast in favor of the recall must equal or exceed the votes cast at the last general election for that officer. If the officer was appointed or was not required to stand for election, then a majority of the votes cast in the recall election shall be the number necessary for recall.

(4) If recalled, an officer shall be recalled as of the time when the results of the special recall election are proclaimed, and a vacancy in the office shall exist.

(5) If an officer is recalled from his office the vacancy shall be filled in the manner provided by law for filling a vacancy in that office arising from any other cause. (History: S.L. 1972, Ch. 283; S.L. 1975, Ch. 137; S.L. 2003, Ch. 57)

**34-1713. Time Within Which Recall May Be Filed — Removal of Signatures.**

(1) No petition for a recall shall be circulated against any officer until he has actually held his office ninety (90) days.

(2) After one (1) special recall election, no further recall petition shall be filed against the same officer during his current term of office, unless the petitioners first pay into the public treasury which has paid such special recall election expenses the whole amount of the expenses for the preceding recall election. The specific reason for recall in one (1) recall petition cannot be the basis for a second recall petition during that current term of office.

(3) The signer of any recall petition may remove his own name from the petition by crossing out, obliterating, or otherwise defacing his own signature at any time prior to the time when the petition is filed. (History: S.L. 1972, Ch. 283; S.L. 1975, Ch. 137; Ch. 2004, Ch. 164)

**34-1714. Prohibited Acts — Penalties.** (1) A person is guilty of a felony who:

- (a) Signs any name other than his own to any recall petition;
- (b) Knowingly signs his name more than once on the same recall petition;
- (c) Knowingly signs his name to any recall petition for the recall of any state, county or city officer if he is not a registered elector;
- (d) Wilfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purport or effect of any recall petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such recall petition.
- (e) Presents to any officer for filing any recall petition to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent, or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto;
- (f) Circulates or causes to circulate any recall petition, knowing the same to contain false, forged or fictitious names;
- (g) Makes any false affidavit concerning any recall petition or the signatures appended thereto;
- (h) Offers, proposes or threatens for any pecuniary reward or consideration;
  - (i) To offer, purpose, threaten or attempt to sell, hinder or delay any recall petition or any part thereof or any signatures therein;
  - (ii) To offer, propose or threaten to desist from beginning, promoting or circulating any recall petition;
  - (iii) To offer, propose, attempt or threaten in any manner or form to use any recall petition or any power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest.

(2) A public officer is guilty of a felony of the third degree, who:

- (a) Knowingly make any false return, certification or affidavit concerning any recall petition, or the signatures appended thereto. (History: S.L. 1972, Ch. 283)

**34-1715. Refusal to accept petition — Mandate — Injunction.** If the secretary of state, county clerk, or city clerk, refuses to accept and file any petition for the recall of a public officer, with the requisite number of eligible signatures, any citizen may apply within ten (10) business days after such refusal to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state, county clerk, or city clerk shall then accept and file the recall petition, with a certified copy of the judgement attached thereto, as of the date on which it was originally offered for filing in his office, except that the time limitations required by section 34-1704 (2), Idaho Code, shall begin to run only as of the date of the court judgement, which shall be so stated in the judgement. On a showing that the petition is not legally sufficient, the court may enjoin the secretary of state, county clerk, or city clerk, and all other officers from certifying or printing any official ballot for a recall election. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal

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to the court of appeals within ten (10) business days after a decision is rendered. The district court of the state of Idaho in and for Ada County shall have jurisdiction in all cases involving the recall of state officers. (History: S.L. 1972, Ch. 283; S.L. 2004, Ch. 164)

**CHAPTER 18  
INITIATIVE AND REFERENDUM ELECTIONS**

**34-1801. Statement of legislative intent and legislative purpose.** The legislature of the state of Idaho finds that there have been incidents of fraudulent and misleading practices in soliciting and obtaining signatures on initiative or referendum petitions, or both, that false signatures have been placed upon initiative or referendum petitions, or both, that difficulties have arisen in determining the identity of petition circulators and that substantial danger exists that such unlawful practices will or may continue in the future. In order to prevent and deter such behavior, the legislature determines that it is necessary to provide easy identity to the public of those persons who solicit or obtain signatures on initiative or referendum petitions, or both, and of those persons for whom they are soliciting and obtaining signatures and to inform the public concerning the solicitation and obtaining of such signatures. It is the purpose of the legislature in enacting this act to fulfill the foregoing statement of intent and remedy the foregoing practices. (S.L. 1997, Ch. 266)

**34-1801A. Petition.** The following shall be substantially the form of petition for any law proposed by the initiative:

**WARNING**

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

**INITIATIVE PETITION**

To the Honorable . . . . , Secretary of State of the State of Idaho:

“We, the undersigned citizens and qualified electors of the State of Idaho, respectfully demand that the following proposed law, to-wit: (setting out full text of measure proposed) shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular general election, to be held on the . . . . day of . . . . , A.D., . . . . , and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and post office are correctly written after my name.

Signature	Printed Name	Residence	City or
		Street and Number	Post Office

(Here follow twenty numbered lines for signatures.)

The petition for referendum on any act passed by the state legislature of the state of Idaho

shall be in substantially the same form with appropriate title and changes, setting out in full the text of the act of the legislature to be referred to the people for their approval or rejection. (History: S.L. 1933, Ch. 210; S.L. 1988, Ch. 48; S.L. 1997, Ch. 266)

**34-1802. Initiative petitions - Time for gathering signatures – Time for submission of signatures to the county clerk – Time for filing.** (1) Except as provided in section 34-1804, Idaho Code, petitions for an initiative shall be circulated and signatures obtained beginning upon the date that the petitioners receive the official ballot title from the secretary of state and extending eighteen (18) months from that date or April 30 of the year that an election on the initiative will be held, whichever occurs earlier. The last day for circulating petitions and obtaining signatures shall be the last day of April in the year an election on the initiative will be held.

(2) The person or persons or organization or organizations under whose authority the measure is to be initiated shall submit the petitions containing signatures to the county clerk for verification pursuant to the provisions of section 34-1807, Idaho Code. The signatures required shall be submitted to the county clerk not later than the close of business on the first day of May in the year an election on the initiative will be held, or eighteen (18) months from the date the petitioner receives the official ballot title from the secretary of state, whichever is earlier.

(3) The county clerk shall, within sixty (60) calendar days of the deadline for the submission of the signatures, verify the signatures contained in the petitions, but in no event shall the time extend beyond the last day of June in the year an election on the initiative will be held.

(4) Initiative petitions with the requisite number of signatures attached shall be filed with the secretary of state not less than four (4) months before the election at which they are to be voted upon. (History: S.L. 1933, Ch. 210; S.L. 1997, Ch. 266)

**34-1803. Referendum petitions — Time for filing — When election held — Effective date of law.** Referendum petitions with the requisite number of signatures attached shall be filed with the secretary of state not more than sixty (60) days after the final adjournment of the session of the state legislature which passed on the bill on which the referendum is demanded. All elections on measures referred to the people of the state shall be had at the biennial regular election. Any measure so referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon, and not otherwise. (History: S.L. 1933, Ch. 210)

**34-1803B. Initiative and referendum petitions – Removal of signatures.** (1) The signer of any initiative or referendum petition may remove his or her own name from the petition by crossing out, obliterating or otherwise defacing his or her own signature at any time prior to the time when the petition is presented to the county clerk for signature verification.

(2) The signer of any initiative or referendum petition may have his or her name removed from the petition at any time after presentation of the petition to the county clerk but prior to verification of the signature, by presenting or submitting to the county clerk a signed statement that the signer desires to have his name removed from the petition.

The statement shall contain sufficient information to clearly identify the signer. The county clerk shall immediately strike the signer's name from the petition, and adjust the total of certified signatures on the petition accordingly. The statement shall be attached to, and become a part of the initiative or referendum petition. (History: S.L. 1997, Ch. 266)

**34-1804. Printing of petition and signature sheets.** Before or at the time of beginning to circulate any petition for the referendum to the people on any act passed by the state legislature of the state of Idaho, or for any law proposed by the initiative, the person or persons or organization or organizations under whose authority the measure is to be referred or initiated shall send or deliver to the secretary of state a copy of such petition duly signed by at least twenty (20) qualified electors of the state which shall be filed by said officer in his office, and who shall immediately transmit a copy of the petition to the attorney general for the issuance of the certificate of review as provided in section 34-1809, Idaho Code. All petitions for the initiative and for the referendum and sheets for signatures shall be printed on a good quality of bond or ledger paper in the form and manner as approved by the secretary of state. To every sheet of petitioners' signatures shall be attached a full and correct copy of the measure so proposed by initiative petition; but such petition may be filed by the secretary of state in numbered sections for convenience in handling. Every sheet of petitioners' signatures upon referendum petitions shall be attached to a full and correct copy of the measure on which the referendum is demanded, and may be filed in numbered sections in like manner as initiative petitions. Not more than twenty (20) signatures on one (1) sheet shall be counted. Each signature sheet shall contain signatures of qualified electors from only one (1) county. (History: S.L. 1933, Ch. 210; S.L. 1988, Ch. 48)

**34-1805. Sponsors to print petition - Number of signers required.** After the form of the initiative or referendum petition has been approved by the secretary of state as in sections 34-1801A through 34-1822, Idaho Code, provided, the same shall be printed by the person or persons or organization or organizations under whose authority the measure is to be referred or initiated and circulated in the several counties of the state for the signatures of legal voters. Before such petitions shall be entitled to final filing and consideration by the secretary of state there shall be affixed thereto the signatures of legal voters equal in number to not less than six per cent (6%) of the qualified electors of the state at the time of the last general election. (History: S.L. 1933, Ch. 210; S.L. 1997, Ch. 266; S.L. 2007, Ch. 202)

**34-1806. Binding of petition and signature sheets — Approved measures to be printed with session laws.** When any such initiative or referendum petition shall be offered for filing the secretary of state shall detach the sheets containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petitions. The secretary of state shall file and keep such petitions as official public records. The secretary of state shall cause

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every such measure so approved by the people to be printed with the general laws enacted by the next ensuing session of the state legislature with the date of the governor's proclamation declaring the same to have been approved by the people. (History: S.L. 1933, Ch. 210; S.L. 1988, Ch. 48)

**34-1807. Circulation of petitions - Verification of petition and signature sheets - Comparison of signatures with registration oaths and records – Certain petitions and signatures void.**

Any person who circulates any petition for an initiative or referendum shall be a resident of the state of Idaho and at least eighteen (18) years of age. Each and every sheet of every such petition containing signatures shall be verified on the face thereof in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon, and as a part thereof:

State of Idaho,

ss.

County of . . . . .

I, . . . . ., being first duly sworn, say: That I am a resident of the State of Idaho and at least eighteen (18) years of age; that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence: I believe that each has stated his or her name, post-office address and residence correctly, that each signer is a qualified elector of the State of Idaho, and a resident of the county of . . . . .

Signed . . . . .

Post-office address . . . . .

Subscribed and sworn to before me this . . . . . day of . . . . .

(Notary Seal)

Notary Public . . . . .

Residing at . . . . .

In addition to said affidavit the county clerk shall carefully examine said petitions and shall attach to the signature sheets a certificate to the secretary of state substantially as follows:

State of Idaho

ss.

County of . . . . .

To the honorable . . . . ., Secretary of State for the State of Idaho: I, . . . . ., County Clerk of . . . . . County, hereby certify that . . . . . signatures on this petition are those of qualified electors.

Signed . . . . .

County Clerk or Deputy.

(Seal of office)

The county clerk shall deliver the petition or any part thereof to the person from whom he received it with his certificate attached thereto as above provided. The forms herein given are not mandatory and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical error.

Any petition upon which signatures are obtained by a person not a resident of the

state of Idaho and at least eighteen (18) years of age, shall be void. The definition of resident in section 34-107, Idaho Code, shall apply to the circulators of initiative and referendum petitions. In addition to being a resident, a petition circulator shall be at least eighteen (18) years of age. (History: S.L. 1933, Ch. 210; S.L. 1988, Ch. 48; S.L. 1997, Ch. 266; S.L. 1999, Ch. 47)

**34-1808. Filing of petition — Mandate — Injunction.** If the secretary of state shall refuse to accept and file any petition for the initiative or for the referendum with the requisite number of signatures of qualified electors thereto attached, any citizen may apply, within ten (10) days after such refusal to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state shall then file it, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office. On a showing that any petition filed is not legally sufficient, the court may enjoin the secretary of state and all other officers from certifying or printing on the official ballot for the ensuing election the ballot title and numbers of such measure. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the Supreme Court within ten (10) days after a decision is rendered. The district court of the fourth judicial district of the state of Idaho in and for Ada County shall have jurisdiction in all cases of measures to be submitted to the qualified electors of the state at large. (History: S.L. 1933, Ch. 210; S.L. 1988, Ch. 48)

**34-1809. Review of initiative and referendum measures by attorney general - Certificate of review prerequisite to assignment of ballot title - Ballot title - Judicial review.** (1) After receiving a copy of the petition from the secretary of state as provided in section 34-1804, Idaho Code:

- (a) The attorney general may confer with the petitioner and shall, within twenty (20) working days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate.
- (b) The recommendations of the attorney general shall be advisory only and the petitioner may accept or reject them in whole or in part.
- (c) The attorney general shall issue a certificate of review to the secretary of state certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall be issued whether or not the petitioner accepts such recommendations. The certificate of review shall be available for public inspection in the office of the secretary of state.

(2) Within fifteen (15) working days after the issuance of the certificate of review, the petitioner, if he desires to proceed with his sponsorship, shall file the measure, as herein provided, with the secretary of state for assignment of a ballot title and the secretary of state shall thereupon submit to the attorney general two (2) copies of the measure filed.

- (a) Within ten (10) working days after receiving copies of the petition, the attorney

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general shall provide ballot titles as provided for below and return one (1) copy of the petition to the secretary of state, with its ballot title.

(b) A copy of the ballot title as prepared by the attorney general shall be furnished by the secretary of state with the approved form of any initiative or referendum petition, as provided herein, to the person or persons or organization or organizations under whose authority the measure is initiated or referred.

(c) The ballot titles shall be used and printed on the covers of the petition when in circulation; the short title shall be printed in type not less than twenty (20) points on the covers of all such petitions circulated for signatures.

(d) The ballot title shall contain:

(i) Distinctive short title in not exceeding twenty (20) words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition.

(ii) A general title expressing in not more than two hundred (200) words the purpose of the measure.

(iii) The ballot title shall be printed with the numbers of the measure on the official ballot.

(e) In making the ballot title the attorney general shall, to the best of his ability, give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure.

(3) Any person dissatisfied with the ballot title or the short title provided by the attorney general for any measure, may appeal from his decision to the supreme court by petition, praying for a different title and setting forth the reason why the title prepared by the attorney general is insufficient or unfair.

(a) No appeal shall be allowed from the decision of the attorney general on a ballot title unless made within twenty (20) days after the ballot title is filed in the office of the secretary of state; provided however, that this section shall not prevent any later judicial proceeding to determine the sufficiency of such title, nor shall it prevent any judicial decision upon the sufficiency of such title.

(b) A copy of every such ballot title shall be served by the secretary of state upon the person offering or filing such initiative or referendum petition, or appeal. The service of the ballot title may be by mail, telegraph or facsimile and shall be made forthwith when it is received from the attorney general by the secretary of state.

(c) The supreme court shall thereupon examine said measure, hear argument, and in its decision thereon certify to the secretary of state a ballot title and a short title for the measure in accord with the intent of this section. The secretary of state shall print on the official ballot the title thus certified to him.

(4) Any qualified elector of the state of Idaho may, at any time after the attorney general has issued a certificate of review, bring an action in the supreme court to determine the constitutionality of any initiative. (History: S.L. 1933, Ch. 210; S.L. 1979, Ch. 106; S.L. 1988, Ch. 48; S.L. 1994, Ch. 400; S.L. 1997, Ch. 266; S.L. 2003, Ch. 147)

**34-1810. Printing and designation of ballot titles on official ballots.**

(1) The secretary of state, at the time he furnishes to the county clerks of the several counties certified copies of the names of candidates for state and district offices shall furnish to each of said county clerks a certified copy of the ballot titles and numbers of the several measures to be voted upon at the ensuing general election, and he shall use for each measure the ballot title designated in the manner herein provided.

(a) Such ballot title shall not resemble, so far as to probably create confusion, any such title previously filed for any measure to be submitted at that election.

(b) The ballot shall include a clear and concise statement as to the effect of a "yes" or "no" vote, prepared jointly by the attorney general and secretary of state.

(2) The secretary of state shall number the measures consecutively beginning with number (1), in the order in which the measures were finally filed with the secretary. The measures shall be designated on the ballot as a "Proposition One," "Proposition Two," et cetera. (History: S.L. 1933, Ch. 210, S.L. 1988, Ch. 48; S.L. 2003, Ch. 147)

**34-1811. Manner of voting — Procedure when conflicting measures approved.**

The manner of voting upon measures submitted to the people shall be the same as is now or may be required and provided by law; no measure shall be adopted unless it shall receive an affirmative majority of the aggregate number of votes cast on such measure. If two (2) or more conflicting laws shall be approved by the people at the same election, the law receiving the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such law may not have received the greatest majority of affirmative votes. If two (2) or more conflicting amendments to the constitution shall be approved by the people at the same election, the amendment which receives the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such amendment may not have received the greatest majority of affirmative votes. (History: S.L. 1933, Ch. 210)

**34-1812. [Repealed - S.L. 1979, Ch. 135]**

**34-1812A. Arguments concerning initiative and referendum measures.** Any voter or group of voters may on or before July 20 prepare and file an argument, not to exceed five hundred (500) words, for or against any measure. Such argument shall not be accepted unless accompanied by the name and address or names and addresses of the person or persons submitting it, or, if submitted on behalf of an organization, the name and address of the organization and the names and addresses of at least two (2) of its principal officers.

If more than one (1) argument for or more than one (1) argument against any measure is filed within the time prescribed, the secretary of state shall select one (1) of the arguments for printing in the voters' pamphlets. In selecting the argument the secretary of state shall be required to give priority in the order named to the arguments of the following:

- (1) The proponent of the initiative or referendum petition.
- (2) Bona fide associations of citizens.
- (3) Individual voters. (History: S.L. 1979, Ch. 135)

**34-1812B. Submission of rebuttal arguments.** When the secretary of state has received the arguments which will be printed in the voters' pamphlet, the secretary of state shall immediately send copies of the arguments in favor of the proposition to the authors of the arguments against and copies of the arguments against to the authors of the arguments in favor. The authors may prepare and submit rebuttal arguments not exceeding two hundred and fifty (250) words. The rebuttal arguments must be filed no later than August 1. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut. (History: S.L. 1979, Ch. 135)

**34-1812C. Voters' pamphlet.** (1) Not later than September 25 before any regular general election at which an initiative or referendum measure is to be submitted to the people, the secretary of state shall cause to be printed a voters' pamphlet which shall contain the following:

(a) A complete copy of the title and text of each measure with the number and form in which the ballot title thereof will be printed on the official ballot;

(b) A copy of the arguments and rebuttals for and against each state measure.

(2) The secretary of state shall mail or distribute a copy of the voters' pamphlet to every household in the state. Sufficient copies of the voters' pamphlet shall also be sent to each county clerk. The county clerk and the secretary of state shall make copies of the voters' pamphlet available upon request.

(3) The voters' pamphlet shall be printed according to the following specifications:

(a) The pages of the pamphlet shall be not smaller than 6 x 9 inches in size;

(b) It shall be printed in clear readable type, no less than 10-point, except that the text of any measure may be set forth in no less than 7-point type;

(c) It shall be printed on a quality and weight of paper which in the judgment of the secretary of state best serves the voters;

(d) If the material described in subsections (a) and (b) of this section is combined in a single publication with constitutional amendments, the entire publication shall be treated as a legal notice. (History: S.L. 1979, Ch. 135; S.L. 1984, Ch. 114)

**34-1813. Counting, canvassing and return of votes.** The votes on measures and questions shall be counted, canvassed and returned by the regular boards of judges, clerks and officers, as votes for candidates are counted, canvassed and returned, and the abstract made by the several county auditors of votes on measures shall be returned to the secretary of state on separate abstract sheets in the manner provided for abstract of votes for state and county officers. It shall be the duty of the secretary of state, in the presence of the governor, to proceed within thirty (30) days after the election, and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against such measure and question, and declaring such measures as are approved by a majority of those voted thereon to be in full force and effect as the law of the state of Idaho from the date of said proclamation; provided,

that if two (2) or more measures shall be approved at said election which are known to conflict with each other or to contain conflicting provisions he shall also proclaim which is paramount in accordance with the provisions of sections 34-1801—34-1822. (History: S.L. 1933, Ch. 210)

**34-1814. Who may sign petition - Effect of wrongful signing - Penalty for wrongful signing.** Every person who is a qualified elector of the state of Idaho may sign a petition for the referendum or for the initiative for any measure which he is legally entitled to vote upon. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or person wilfully violating any provision of this statute, shall, upon conviction thereof be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the penitentiary not exceeding two (2) years, or by both such fine and imprisonment, in the discretion of the court before which such conviction shall be had. Any such wrongful signatures are null and void and shall not be counted as a qualified signature. Any person circulating a petition, who knows, or who in the exercise of reasonable care should know, that a signature is forged and who shall thereafter fail to strike through and thereby void such signature, and any person in a position of supervision of such person who suffers or permits a forged signature to remain on a petition shall pay a fine of not less than one thousand dollars (\$1,000) for each such signature. (History: S.L. 1933, Ch. 210; S.L. 1997, Ch. 266)

**34-1814A. [Repealed - S.L. 1999, Ch. 47]**

**34-1815. False statements spoken or written concerning petition unlawful - Failure to disclose material provisions.** It shall be unlawful for any person to wilfully or knowingly circulate, publish or exhibit any false statement or representation, whether spoken or written, or to fail to disclose any material provision in a petition, concerning the contents, purport or effect of any petition mentioned in sections 34-1801A- through 34-1822, Idaho Code, for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such petition. It shall be unlawful for any person to solicit or obtain any signature on a petition without first showing the signer both the short title and the general title as defined in section 34-1809, Idaho Code, so that the signer has an opportunity to read them before signing the petition.

Any signature obtained without compliance with this section is null and void. (History: S.L. 1933, Ch. 210; S.L. 1997, Ch. 266)

**34-1816. Filing petition with false signatures unlawful.** It shall be unlawful for any person to file in the office of any officer provided by law to receive such filing any petition mentioned in sections 34-1801—34-1822, to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto. (History: S.L. 1933, Ch. 210)

**34-1817. Circulating petition with false, forged or fictitious names unlawful.**

It shall be unlawful for any person to circulate or cause to be circulated any petition mentioned in sections 34-1801—34-1822, knowing the same to contain false, forged or fictitious names. (History: S.L. 1933, Ch. 210)

**34-1818. False affidavit by any person unlawful.**

It shall be unlawful for any person to make any false affidavit concerning any petition mentioned in sections 34-1801—34-1822, or the signatures appended thereto. (History: S.L. 1933, Ch. 210)

**34-1819. False return, certification or affidavit by public official unlawful.**

It shall be unlawful for any public official or employee knowingly to make any false return, certification or affidavit concerning any petition mentioned in sections 34-1801—34-1822, or the signatures appended thereto. (History: S.L. 1933, Ch. 210)

**34-1820. Signing more than once or when not qualified unlawful.**

It shall be unlawful for any person to knowingly sign his own name more than once to any petition mentioned in sections 34-1801—34-1822, or to sign his name to any such petition knowing himself at the time of such signing not to be qualified to sign the same. (History: S.L. 1933, Ch. 210)

**34-1821. Felonious acts enumerated.**

It shall be a felony for any person to offer, propose or threaten to do any act mentioned in this section of or concerning any petition mentioned in sections 34-1801—34-1822, for any pecuniary reward or consideration: (a) To offer, propose, threaten or attempt to sell, hinder or delay any petition or any part thereof or of any signatures thereon mentioned in sections 34-1801—34-1822; (b) To offer, propose, or threaten to desist, for a valuable consideration, from beginning, promoting or circulating any petition mentioned in sections 34-1801—34-1822, or soliciting signatures to any such petition; (c) To offer, propose, attempt or threaten in any manner or form to use any petition or power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest. (History: S.L. 1933, Ch. 210)

**34-1822. Penalty for violations.**

Any person, either as principal or agent, violating any of the provisions of sections 34-1801—34-1822 shall be punished upon conviction by imprisonment in the penitentiary or in the county jail not exceeding two (2) years, or by a fine not exceeding \$5000.00, or by both, excepting that imprisonment in the penitentiary and punishment by a fine shall be the only penalty for violation of any provision of section 34-1821. (History: S.L. 1933, Ch. 210)

**34-1823. Severability.**

In the event that any part of chapter 18, title 34, Idaho Code, shall for any reason be determined void or unenforceable in any part thereof, the remainder thereof shall remain in full force and effect. (S.L. 1997, Ch. 266)

**CHAPTER 19  
CONGRESSIONAL DISTRICTS**

Sections 34-1901 through 34-1903 have been superceded and replaced by the Commission on Reapportionment as authorized by Article 3, Section 2, Idaho Constitution.

**CHAPTER 20  
ELECTION CONTESTS OTHER THAN LEGISLATIVE AND  
STATE EXECUTIVE OFFICES**

**34-2001. Grounds of contest.** The election of any person to any public office, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

1. For malconduct, fraud, or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any member of either board sufficient to change the result.

2. When the incumbent was not eligible to the office at the time of the election.

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights.

4. When the incumbent has given or offered to any elector, or any judge, clerk or canvasser of the election, any bribe or reward in money or property for the purpose of procuring his election, or has committed any violation as set out in chapter 23, title 18, Idaho Code.

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result.

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result.

7. When the incumbent is in default as a collector and custodian of public money or property.

8. For any cause which shows that another person was legally elected. (History: 1890-1981, p. 57, section 132; reen. 1899, p. 33, section 119; reen. R.C. & C.L., section 5026; C.S., section 7274; I.C.A., section 33-1701; S.L. 1982, Ch. 209)

**34-2001A. Bond election and mill levy contests — Time for filing — Validation of elections and bonds.** A. The provisions of this chapter with respect to the contest of elections shall be applicable to bond elections conducted by cities, counties, school districts and water and sewer districts, and to elections conducted by school districts for mill levy increases as authorized by sections 33-802, 33-803 and 33-804, Idaho Code. Any such contest shall be regarded as one contesting the outcome of the vote on the bond or mill levy proposition, rather than election to office, and the public entity calling the election rather than a person declared to have been elected to office, shall be regarded as the defendant.

B. When the validity of any bond or mill levy election is contested upon any of the grounds enumerated in section 34-2001, Idaho Code, or upon any other grounds whatsoever the plaintiff or plaintiffs must, within forty (40) days after the votes are canvassed and the results thereof declared, file in the proper court a verified written

complaint setting forth, in addition to the other requirements of this chapter, the following:

(1) The name of the party contesting the bond or mill levy election, and that he is an elector of the public entity conducting the bond or mill levy election.

(2) The proposition or propositions voted on at the election which are contested.

(3) The particular grounds of such contest.

C. No such election contest shall be maintained and no bond or mill levy election shall be set aside or held invalid unless a complaint is filed as permitted hereunder within the period prescribed in this section. As to bond or mill levy elections which have been held prior to the effective date of this act, no such contest shall be maintained wherein it is alleged that the election should be set aside or held on any ground enumerated in section 34-2001, Idaho Code, or on any other ground, unless such election contest be filed as herein provided within forty (40) days from and after the effective date of this act.

D. All bond elections conducted by cities, counties, school districts and water and sewer districts prior to the effective date of this act, and all proceedings had in the authorization and issuance of the bonds authorized thereat, are hereby validated, ratified and confirmed and all such bonds are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which is being contested at the time this act takes effect, or any election the legality of which is contested within the forty (40) day period from and after the effective date of this act. (History: I.C., section 34-2001A, as added by 1969, Ch. 208; S.L. 1976, Ch. 291)

**34-2002. Term incumbent defined.** The term “incumbent” in this chapter means the person whom the canvassers declare elected. (History: 1890-1891, p. 57, section 133; reen. 1899, p. 33, section 120; reen. R.C. & C.L., section 5027; C.S., section 7275; I.C.A., section 33-1702)

**34-2003. Misconduct of judges.** When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election, unless the vote of the precinct, township or ward would change the result as to that office. (History: 1890-1891, p. 57, section 134; reen. 1899, p. 33, section 121; reen. R.C. & C.L., section 5028; C.S., section 7276; I.C.A., section 33-1703)

**34-2004. Jurisdiction — Contests over judicial offices.** The Supreme Court shall hear and determine contests of the election of judges of the Supreme Court and appellate court and judges of the district courts, and in case they shall disagree, the governor shall act with them in determining the contest, but no judge of the Supreme Court shall sit upon the hearing of any case in which he is a party. The appropriate district court shall hear and determine contests of the retention election of judges of the magistrate courts. (History: 1890-1891, p. 57, section 137; am. 1899, p. 33, section 124; reen. R.C. & C.L., section 5029; C.S., section 7277; I.C.A., section 33-1704; S.L. 1982, Ch. 209)

**34-2005. Jurisdiction — Removal of county seats and special questions.** The district courts of the respective counties shall hear and determine contests of election in regard to the removal of county seats, and in regard to any other subject which may by law be submitted to the vote of the people of the county, and the proceedings therein shall be conducted as near as may be hereinafter provided for contesting the election of county officers. (History: 1890-1891, p. 57, section 138; reen. 1899, p. 33, section 125; reen. R.C. & C.L., section 5030; C.S., section 7278; I.C.A., section 33-1705)

**34-2006. Jurisdiction — County and precinct officers.** The district courts shall hear and determine contests of all other county, township and precinct officers, and officers of the cities and incorporated villages within the county. (History: 1890-1891, p. 57, section 139; reen. 1899, p. 33, section 126; reen. R.C. & C.L., section 5031; C.S., section 7279; I.C.A., section 33-1706)

**34-2007. Who may contest elections.** The election of any person declared elected to any office, other than executive state officers and members of the legislature, may be contested by any elector of the state, judicial district, county, township, precinct, city or incorporated village in and for which the person is declared elected. (History: 1890-1891, p. 57, section 148; reen. 1899, p. 33, section 135; reen. R.C. & C.L., section 5032; C.S., section 7280; I.C.A., section 33-1707)

**34-2008. Complaint and security for costs.** The contestants shall file in the proper court, within twenty (20) days after the votes are canvassed, a complaint setting forth the name of the contestant, and that he is an elector competent to contest such election; the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which complaint shall be verified by the affidavit of the contestant, that the causes set forth are true as he verily believes. The contestant must also file a bond, with security to be approved by the clerk of the court or district judge, as the case may be, conditioned to pay all costs in case the election be confirmed, the complaint dismissed, or the prosecution fail. (History: 1890-1891, p. 57, section 149; reen. 1899, p. 33, section 136; reen. R.C. & C.L., section 5033; C.S., section 7281; I.C.A., section 33-1708)

**34-2009. Complaint — Specific allegations.** When the rejection of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, if known, with the precinct, township or ward where they voted or offered to vote, shall be set forth in the complaint. (History: 1890-1891, p. 57, section 150; reen. 1899, p. 33, section 137; reen. R.C. & C.L., section 5034; C.S., section 7282; I.C.A., section 33-1709)

**34-2010. Issuance of summons.** Upon the filing of such complaint summons shall issue against the person whose office is contested, as prescribed in the Idaho Rules of Civil Procedure. (History: 1890-1891, p. 57, section 151; reen. 1899, p. 33, section 138; reen. R.C. & C.L., section 5035; C.S., section 7283; I.C.A., section 33-1710; S.L. 1982, Ch. 209)

**34-2011. Time for trial.** The cause shall stand for trial at the expiration of thirty (30) days from the time of service of the summons and complaint, if the court shall then be in session; otherwise, on the first day of the next term thereafter. (History: 1890-1891, p. 57, section 152; reen. 1899, p. 33, section 139; reen. R.C. & C.L., section 5036; C.S., section 7284; I.C.A., section 33-1711)

**34-2012. Postponement of trial.** The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court. (History: 1890-1891, p. 57, section 153; reen. 1899, p. 33, section 140; reen. R.C. & C.L., section 5037; C.S., section 7285; I.C.A., section 33-1712)

**34-2013. Procedure in general.** The proceedings shall be held according to the Idaho Rules of Civil Procedure so far as practicable, but shall be under the control and direction of the court, which shall have all the powers necessary to the right hearing and determination of the matter; to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence or by disobedience to its lawful mandate; to adjourn from day to day; to make any order concerning immediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case. (History: 1890-1891, p. 57, section 154; reen. 1899, p. 33, section 141; reen. R.C. & C.L., section 5038; C.S., section 7286; I.C.A., section 33-1713; S.L. 1982, Ch. 209)

**34-2014. Testimony — Subpoena for witnesses.** The testimony may be oral, or by depositions taken pursuant to the Idaho Rules of Civil Procedure. Subpoenas for witnesses may be issued pursuant to the Idaho Rules of Civil Procedure. (History: 1890-1891, p. 57, section 155; reen. 1899, p. 33, section 142; reen. R.C. & C.L., section 5039; C.S., section 7287; I.C.A., 33-1714; S.L. 1982, Ch. 209)

**34-2015. Amendments.** The proceedings shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. If any part of the causes are held insufficient they may be amended, but the incumbent will be entitled to an adjournment if he state on oath that he has a matter to answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court deems reasonable; but if all the causes are held insufficient, and an amendment is asked the adjournment shall be at the cost of the contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed. (History: 1890-1891, p. 57, section 156; reen. 1899, p. 33, section 143; reen. R.C. & C.L., section 5040; C.S., section 7288; I.C.A., section 33-1715)

**34-2016. Form and service of process.** The style, form and manner of service of process and papers, and the fees of officers and witnesses shall be the same as in other

cases in the court where the cause is tried. (History: 1890-1891, p. 57, section 157; reen. 1899, p. 33, section 144; reen. R.C. & C.L., section 5041; C.S., section 7289; I.C.A., section 33-1716)

**34-2017. Voters to testify as to qualifications.** (a) The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter; and if he was not a qualified voter in the county where he voted, then to answer for whom he voted; and if the witness answer such questions no part of his testimony on that trial shall be used against him in any criminal action.

(b) No testimony shall be received as to any illegal votes unless the party contesting the election delivers to the opposing party at least three (3) days before trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial. No testimony shall be received as to any illegal votes, except as to such as are specified in this list. (History: 1890-1891, p. 57, section 158; reen. 1899, p. 33, section 145; reen. R.C. & C.L., section 5042; C.S., section 7290; I.C.A., section 33-1717; S.L. 1982, Ch. 209)

**34-2018. Inspection of ballots and poll books.** If an inspection of the ballots or poll books of any election district in this state shall become necessary for the determination of any election contest before any court, the presiding judge thereof may, by order naming the district or districts, require the proper officer to procure the same from the county auditor, or other person in whose possession or custody the same may be, and such clerk or person shall deliver the same to said officer, who shall deliver them unopened to such presiding judge. (History: 1890-1891, p. 57, section 159; reen. 1899, p. 33, section 146; reen. R.C. & C.L., section 5043; C.S., section 7291; I.C.A., section 33-1718)

**34-2019. Ballots and poll books — Return to county auditor.** The presiding officer shall open and inspect the same in open court, in the presence of the parties or their attorneys, and immediately after such inspection shall again seal them in an envelope and return them, by mail or otherwise, to the office of the county auditor in which they were at first required to be filed. (History: 1890-1891, p. 57, section 160; reen. 1899, p. 33, section 147; reen. R.C. & C.L., section 5044; C.S., section 7292; I.C.A., section 33-1719)

**34-2020. Liability for costs.** (a) The contestant and the incumbent are liable to the officers and witnesses for the costs made by them respectively. But if the election be confirmed, or the complaint be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs, and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs.

(b) If the election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the returns, the contest costs shall be a charge against the county or political subdivision where the election was held. (History: S.L. 1890-1891, p. 57, section 161; reen. 1899, p. 33, section 148; reen. R.C. & C.L., section 5045; C.S., section 7293; I.C.A., section 33-1720; S.L. 1982, Ch. 209)

**34-2021. Form of judgment.** The judgment of the court in cases of contested election shall confirm or annul the election according to the right of the matter; or, in case the contest is in relation to the election of some person to an office, shall declare as elected the person who shall appear to be duly elected or, in the alternative, order the office to be filled according to chapter 9, title 59, Idaho Code, or order a new election to be held at a time and place as determined by the court. (History: 1890-1891, p. 57, section 162; reen. 1899, p. 33, section 149; reen. R.C. & C.L., section 5046; C.S., section 7294; I.C.A., section 33-1721; S.L. 1982, Ch. 209)

**34-2022. Determination of tie vote.** If it appears that two (2) or more persons have—or would have had if the legal ballots cast or intended to be cast for them had been counted—the highest and an equal number of votes for the same office, the persons receiving such votes shall decide by lot, in such manner as the court shall by written order direct, which of them shall be declared duly elected, and the judgment shall be entered accordingly. (History: 1890-1891, p. 57, section 163; reen. 1899, p. 33, section 150; reen. R.C. & C.L., section 5047; C.S., section 7295; I.C.A., section 33-1722)

**34-2023. Order for possession.** When either the contestant or incumbent shall be in possession of the office by holding over, or otherwise, the court shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the court, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs. (History: 1890-1891, p. 57, section 164; reen. 1899, p. 33, section 151; reen. R.C. & C.L., section 5048; C.S., section 7296; I.C.A., section 33-1723)

**34-2024. Election declared void.** When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void. (History: 1890-1891, p. 57, section 165; reen. 1899, p. 33, section 152; reen. R.C. & C.L., section 5049; C.S., section 7297; I.C.A., section 33-1724)

**34-2025. Appeal and supersedeas.** (a) The party against whom judgment is rendered in cases tried in the district court may appeal to the Supreme Court, and if the appellant be in possession of the office, such appeal shall not supersede the execution of the judgment of the court, as provided in the preceding section, unless he give a bond with security, to be approved by the court, in a sum to be fixed by the court, and which shall be at least double the probable compensation of such officer for six (6) months, which bond shall be conditioned that he will prosecute his appeal without delay, and that if the judgment appealed from be affirmed he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered, and such bond shall contain the express consent that judgment may be rendered against the sureties on the appeal as provided in the

following section.

(b) All appeals to the Supreme Court shall be brought within ten (10) days of the judgment by the district court. (History: 1890-1891, p. 57, section 166; reen 1899, p. 33, section 153; reen R.C. & C.L., section 5050; C.S., section 7298; I.C.A., section 33-1725; S.L. 1982, Ch. 209)

**34-2026. Judgment of affirmance.** If upon the appeal the judgment be affirmed, the appellate court shall render judgment against the appellant and the sureties on his bond, or either of them, for the amount which the appellee is entitled to recover from the appellant on account of such contest, together with the costs; but in such case the sureties, or either of them, shall be entitled to produce and examine witnesses concerning the amount of such recovery. (History: 1890-1891, p. 57, section 167; reen. 1899, p. 33, section 154; reen. R.C. & C.L., section 5051; C.S., section 7299; I.C.A., section 33-1726)

**34-2027. Cost of bond on appeal.** If upon appeal the appellant shall not be in possession of the office, he shall give bond, with security to be approved by the court where the judgment is rendered, conditioned to pay all costs that may be adjudged against him upon such appeal. (History: 1890-1891, p. 57, section 168; reen. 1899, p. 33, section 155; reen. R.C. & C.L., section 5052; C.S., section 7300; I.C.A., section 33-1727)

**34-2028. Contest of nomination at primaries.** A candidate at a primary election may contest the nomination of any candidate for the same office based upon the grounds as set out in this chapter. (History: S.L. 1982, Ch. 209)

**34-2029. Jurisdiction over primary contest.** The district court in the respective county in which the alleged error or omission occurred shall be the court in which jurisdiction shall rest. (History: S.L. 1982, Ch. 209)

**34-2030. Filing of affidavit.** A candidate wishing to contest a primary election shall file an affidavit with the appropriate court within five (5) days of the completion of the canvass of the election. The affidavit shall set forth information as required in section 34-2008, Idaho Code. The affidavit shall be served on all necessary parties in the same manner as a complaint and summons are served pursuant to the Idaho Rules of Civil Procedure. (History: S.L. 1982, Ch. 209)

**34-2031. Security for costs.** Upon filing of the affidavit the contestant shall file with the court a bond, in the amount of five hundred dollars (\$500), to be used to pay costs of the contestee in the event the primary election be confirmed or the prosecution fail. (History: S.L. 1982, Ch. 209)

**34-2032. Fraud or error by the election official.** If the primary election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the

election or in canvassing the election returns, the contest costs shall be a charge against the county or city where the election was held. (History: S.L. 1982, Ch. 209)

**34-2033. Discovery.** The court may order the production of such evidence as it deems necessary for the proper disposition of the primary contest pursuant to the Idaho Rules of Civil Procedure. The election contest shall be given priority on the court's calendar. (History: S.L. 1982, Ch. 209)

**34-2034. Remedies.** The court shall render an opinion in a primary contest as soon as is reasonably possible and shall prescribe such remedies as provided in this chapter as it deems just. (History: S.L. 1982, Ch. 209)

**34-2035. Appeals.** (a) In primary election contests, the party against whom judgment is rendered on cases filed in the district court may appeal to the Supreme Court. The appeal shall be taken within ten (10) days of the judgment by the district court.

(b) The Supreme Court shall give the primary contest appeal priority on its calendar. (History: S.L. 1982, Ch. 209)

**34-2036. Cost on appeal.** The appellant shall file a bond sufficient to cover the cost of appeal of a primary contest. Costs shall be awarded to the prevailing party on appeal. The amount of the bond on appeal shall be set by the court. (History: S.L. 1982, Ch. 209)

## CHAPTER 21

### ELECTION CONTESTS — LEGISLATIVE AND STATE EXECUTIVE OFFICES

**34-2101. Grounds of contest.** The election of any person to any legislative or state executive office may be contested:

1. For malconduct, fraud or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or by any member of either board sufficient to change the result;

2. When the incumbent was not eligible to the office at the time of the election;

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights;

4. When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money or property, for the purpose of procuring his election, or has committed any violation as set out in chapter 23, title 18, Idaho Code;

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result;

7. When the incumbent is in default as a collector and custodian of public money or property;

8. For any cause which shows that another person was legally elected. (History: R.S., section 5026; am. 1890-1891, p. 57, section 132; reen. 1899, p. 33, section 119; am. R.C., section 39; reen. 1909, p. 333; reen. C.L., section 39; C.S., section 80; I.C.A., section 33-1801; S.L. 1982, Ch. 209)

**34-2102. Incumbent defined.** The term “incumbent” as used in the preceding section means the person whom the canvassers declare elected. (History: 1890-1891, p. 57, section 133; reen. 1899, p. 33, section 120; reen. R.C., section 40; reen. C.L., section 40; C.S., section 81; I.C.A., section 33-1802)

**34-2103. Misconduct of election judges — When sufficient to vitiate election.** When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election unless the vote of the precinct, township or ward would change the result as to that office. (History: 1890-1891, p. 57, section 134; reen. 1899, p. 33, section 121; reen. R.C., section 41; reen. C.L., section 41; C.S., section 82; I.C.A., section 33-1803)

**34-2104. Jurisdiction — Contests over executive offices.** The legislature, in joint meeting, shall hear and determine cases of contested election for all officers of the executive department. The meeting of the two (2) houses to decide upon such elections shall be held in the house of representatives and the speaker of the house shall preside. (History: 1890-1891, p. 57, section 135; reen. 1899, p. 33, section 122; am. R.C., section 42; reen. C.L., section 42; C.S., section 83; I.C.A., section 33-1804)

**34-2105. Jurisdiction — Contests over legislative offices.** The senate and house of representatives shall severally hear and determine contests of the election of their respective members. (History: 1890-1891, p. 57, section 136; reen. 1899, p. 33, section 123; reen. R.C., section 43; reen. C.L., section 43; C.S., section 84; I.C.A., section 33-1805)

**34-2106. Notice of contest.** Whenever any elector of this state chooses to contest the validity of the election of any of the officers of the executive department of the state, or whenever any elector of the proper county or district chooses to contest the election of any member of the legislature from such county or district, such person shall give notice thereof, in writing, and leave a copy thereof with the person whose election he intends to contest, within twenty (20) days after the election (if the person can not be found in his district, then a copy to be left at his last place of residence in the district), naming the points on which the election shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same; the adverse party may also select one such person on his part to attend at the time and place of taking such depositions. (History: 1890-1891, p. 57, section 140; reen. 1899, p. 33, section 127; reen. R.C. & C.L., section 44; C.S., section 85; I.C.A., section 33-1806)

**34-2107. Examination of witnesses.** Any party may take the testimony of any person by deposition upon oral examination pursuant to the provisions of the Idaho Rules of Civil Procedure. All such testimony shall be completed on or before December 29 following the election. (History: 1890-1891, p. 57, section 141; reen. 1899, p. 33, section 128; reen. R.C. & C.L., section 45; C.S., section 86; I.C.A., section 33-1807; S.L. 1982, Ch. 209)

**34-2108. Subpoenas — Application for.** When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena pursuant to the Idaho Rules of Civil Procedure. (History: 1881, p. 257, section 13; am. R.S., section 131; am. R.C. & C.L., section 46; C.S., section 87; I.C.A., section 33-1808; a.m. 1969, Ch. 115, section 3, p. 373; S.L. 1982, Ch. 209)

**34-2109. Subpoenas — How issued.** The subpoena obtained pursuant to section 34-2108, Idaho Code, shall be issued according to the provisions of the Idaho Rules of Civil Procedure. (History: 1881, p. 257, section 14; am. R.S., section 132; reen. R.C. & C.L., section 47; C.S., section 88; I.C.A., section 33-1809; S.L. 1982, Ch. 209)

**34-2110. Disobedience of subpoena — Penalty.** Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, forfeits the sum of twenty dollars (\$20.00), to be recovered, with costs of suit, by the party at whose instance the subpoena was issued, and for his use, and is guilty of a misdemeanor. (History: 1881, p. 257, section 16; am. R.S., section 134; reen. R.C. & C.L., section 48; C.S., section 89; I.C.A., section 33-1810)

**34-2111. Production of papers — Refusal or neglect to produce a misdemeanor.** The officers have power to require the production of papers to the extent allowed under the Idaho Rules of Civil Procedure; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they be official papers, such person is guilty of a misdemeanor. (History: 1881, p. 257, section 19; am. R.S., section 137; reen. R.C. & C.L., section 49; C.S., section 90; I.C.A., section 33-1811; S.L. 1982, Ch. 209)

**34-2112. Witnesses' fees and mileage.** Every witness attending by virtue of any subpoena herein directed to be issued is entitled to receive the witness fees as allowed under the Idaho Rules of Civil Procedure. (History: 1881, p. 257, section 20; am. R.S., section 138; reen. R.C. & C.L., section 50; C.S., section 91; I.C.A., section 33-1812; S.L. 1982, Ch. 209)

**34-2113. Testimony — How taken, certified and preserved.** The testimony by deposition upon oral examination shall be taken and preserved pursuant to the provisions of the Idaho Rules of Civil Procedure. The deposition record shall be entitled "Deposition taken in the matter of the contest of the election of A.B. to the office of ....." and directed

to the secretary of state, who shall preserve the same, unopened, till the meeting of the legislature. (History: 1890-1891, p. 57, section 142; reen. 1899, p. 33, section 129; am. R.C. & C.L., section 51; C.S., section 92; I.C.A., section 33-1813; S.L. 1982, Ch. 209)

**34-2114. Examination of poll books and ballots.** If, at the time of taking depositions to be used before the legislature, or either branch thereof, in the case of a contested election, the notice shall allege that it is necessary for the determination of such contest that the ballots or the poll books of any election district or districts should be inspected, the officer or officers before whom such depositions shall be taken shall, on the request of either party to the contest, issue an order requiring the county auditor, or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons therein named, who shall deliver them to the person or persons issuing such order. Such officer or officers shall transmit such ballots or poll books, unopened, in the same envelope with the depositions, as provided in the preceding section. (History: 1890-1891, p. 57, section 143; reen. 1899, p. 33, section 130; reen. R.C. & C.L., section 52; C.S., section 93; I.C.A., section 33-1815)

**34-2115. Fees of officers.** Officers performing services in a contested election case, may charge and collect from the party at whose instance such services were performed, the same fees as are allowed for similar services in civil cases. (History: 1881, p. 257, section 21, am.R.S., section 139; reen. R.C. & C.L., section 53; C.S., section 94; I.C.A., section 33-1815)

**34-2116. Contest papers delivered to presiding officers.** On the second day of the regular session of the legislature, the secretary of state shall deliver to the speaker of the house all papers relating to the contested elections of executive officers, and to the presiding officers of each house, all papers relating to contested elections of the members of their respective houses. (History: 1890-1891, p. 57, section 144; reen. 1899, p. 33, section 131; reen. R.C. & C.L., section 54; C.S., section 95; I.C.A., section 33-1816; S.L. 1982, Ch. 209)

**34-2117. Notice of receiving papers.** Upon the reception by such presiding officers of papers relating to contested elections, they shall immediately give notice to their respective houses that such papers are in their possession. Where the papers relate to the contest of a state executive officer, the house of representatives shall notify the senate, and the day shall be fixed by both houses, by concurrent resolution, for the uniting of the two (2) houses to decide upon the same, in which decision the yeas and nays shall be taken and entered upon the journal. (History: 1890-1891, p. 57, section 145; reen. 1899, p. 33, section 132; am. R.C. & C.L., section 55; C.S., section 96; I.C.A., section 33-1817)

**34-2118. Opening and custody of papers.** The papers relating to any such contest shall be opened only in the presence of the body by the presiding officer, to whom the same shall be delivered. If ballots or poll books are contained therein, they shall, after being opened, remain in the custody of such presiding officer, subject to the inspection of the members, unless they shall by vote be temporarily committed to the chairman of a committee, in which case such chairman shall return them to the proper presiding officer; and they shall, upon the decision of the contest, be again sealed up in an envelope, and returned by mail or otherwise to the office of the county auditor in which they were first required to be filed. (History: 1890-1891, p. 57, section 146; reen. 1899, p. 33, section 133; reen. R.C. & C.L., section 56; C.S., section 97; I.C.A., section 33-1818)

**34-2119. Preservation of evidence.** All the evidence in any contest provided for in the last preceding section, except ballots or poll books, shall, after a decision thereof, be preserved in the office of the secretary of state. (History: 1890-1891, p. 57, section 147; reen. 1899, p. 33, section 134; reen. R.C. & C.L., section 57; C.S., section 98; I.C.A., section 33-1819)

**34-2120. Security for costs — Assessment of costs.** (a) The contestant shall file with the secretary of state a bond in the amount of five hundred dollars (\$500) conditioned to pay the contestee's costs in case the election be confirmed by the legislature.

(b) The contestants are liable for witness fees and the costs of discovery made by them respectively. If the election is upheld by the legislature, the legislature may assess costs against the contestant. If the election is annulled by the legislature, the legislature may assess costs against the contestee.

(c) If the election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the returns, the contest costs shall be a charge against the county in which the fraud or error occurred.

(d) If a special election is called by the legislature pursuant to section 34-2121, Idaho Code, the costs associated with the special election shall be allocated in equal amounts to the state of Idaho and the county or counties where the special election is held. (History: S.L. 1982, Ch. 209)

**34-2121. Form of relief.** (a) The legislature shall confirm or annul the election and shall declare as elected the person who shall appear duly elected.

(b) If two (2) or more persons have, or would have had if the legal ballots cast or intended to be cast for them had been counted, the highest and an equal number of votes for the same office, the persons receiving such votes shall decide by lot, in a manner as the legislature shall direct, which of them shall be declared duly elected.

(c) When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the legislature shall declare the election void. If a vacancy is created pursuant to this section, the legislature may declare the office vacant and order the office filled pursuant to chapter 9, title 59, Idaho Code, or, in the alternative

the legislature shall have the authority to call for a special reelection regarding a specific contested office in which an accurate vote count cannot be obtained or discovered by the legislature. The legislature shall have the authority to set the time of the election and the office and candidates to be placed on the ballot. (History: S.L. 1982, Ch. 209)

**34-2122. Contest of nomination at primaries.** Any candidate at a primary election may contest the nomination of any candidate for the same office based upon the grounds as set out in this chapter. (History: S.L. 1982, Ch. 209)

**34-2123. Jurisdiction over primary contests.** A district court in the respective legislative district shall have jurisdiction over the primary contest involving a legislative election. For election contests involving statewide executive offices, the district court whose jurisdiction includes the state capitol shall have jurisdiction. (History: S.L. 1982, Ch. 209)

**34-2124. Filing of affidavit.** A candidate wishing to contest a primary election shall file an affidavit with the appropriate court within five (5) days of the completion of the canvass of the election. The affidavit shall set forth information as required in section 34-2106, Idaho Code. The affidavit shall be served on all necessary parties in the same manner as a complaint and summons are served pursuant to the Idaho Rules of Civil Procedure. (History: S.L. 1982, Ch. 209)

**34-2125. Security for costs.** Upon filing of the affidavit the contestant shall file with the court a bond, in the amount of five hundred dollars (\$500), to be used to pay costs of the contestee in the event the primary election be confirmed or the prosecution fail. (History: S.L. 1982, Ch. 209)

**34-2126. Fraud or error by the election official.** If the primary election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the election returns, the court costs shall be a charge against the state of Idaho. (History: S.L. 1982, Ch. 209)

**34-2127. Discovery.** The court may order the production of such evidence as it deems necessary for the proper disposition of the primary contest pursuant to the Idaho Rules of Civil Procedure. The election contest shall be given priority on the court's calendar. (History: S.L. 1982, Ch. 209)

**34-2128. Remedies.** Not more than ten (10) days after the hearing, the court shall render an opinion in a primary contest as soon as is reasonably possible and shall prescribe such remedies as provided in this chapter as it deems just. (History: S.L. 1982, Ch. 209)

**34-2129. Appeals.** (a) In primary election contests, the party against whom judgment is rendered on cases filed in the district court may appeal to the Supreme Court. The appeal shall be taken within ten (10) days of the judgment of the district court.

(b) The Supreme Court shall give the primary contest appeal priority and in no case shall it render a decision more than ten (10) days after the receipt of an appeal. (History: S.L. 1982, Ch. 209)

**34-2130. Cost on appeal.** The appellant shall file a bond sufficient to cover the cost of appeal of a primary contest. The amount of the bond on appeal shall be set by the court. (History: S.L. 1982, Ch. 209)

## CHAPTER 22 CONSTITUTIONAL CONVENTION ACT

**34-2201. Election of delegates.** Whenever the Congress of the United States has proposed, or shall hereafter propose, an amendment to the Constitution of the United States, and proposes that it be ratified by conventions in the several states, the governor shall fix by proclamation the date of an election, subject to the provisions of section 34-106, Idaho Code, for the purpose of electing delegates to such convention in the state of Idaho. The proclamation for such election shall be issued by the governor under his hand and the great seal of the state of Idaho at least ninety (90) days before such election and copies thereof shall be transmitted to the board of county commissioners of the counties in which such elections are to be held. Such election shall be held at least as soon as the next general election occurring more than three (3) months after the amendment has been proposed by the Congress of the United States. (History: S.L. 1933, Ch. 179; S.L. 1995, Ch. 118)

**34-2202. Qualifications of voters.** At such election all persons qualified to vote for presidential electors shall be entitled to vote. (History: 1933, Ch. 179, section 2, p. 328)

**34-2203. Ascertainment and certification of results — General election laws applicable.** Except as in this act otherwise provided, such election shall be conducted and the results thereof ascertained and certified in the same manner as in the case of the election of presidential electors in this state, and all the provisions of the laws of this state relative to general elections, except in so far as inconsistent with sections 34-2201—34-2216, are hereby made applicable to such election. (History: 1933, Ch. 179, section 3, p. 328)

**34-2204. Number of delegates.** The number of delegates to be chosen to such convention shall be twenty-one (21), to be elected from the state at large. (History: 1933, Ch. 179, section 4, p. 328)

**34-2205. Qualifications of delegates — Nominating petitions — Declarations of candidates and signers — Certification.** Candidates for the office of delegate to the convention shall be qualified electors of the state of Idaho. Nomination shall be by petition and not otherwise. A single petition shall nominate but one (1) candidate, who may have one (1) or more separate petitions. Nominations shall be without party or

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political designation, but the nominating petitions shall each contain a declaration of the candidate that he is a candidate for election to the office of delegate to the constitutional convention, and a statement to the effect that he favors ratification of, or that he is against ratification of the proposed constitutional amendment to be acted upon by the constitutional convention, and the total number of voters joining in the nomination of a candidate shall not be less than one hundred (100).

The candidate's declaration in the nominating petition shall be in substantially the following form, to-wit:

I, the undersigned, being a qualified elector of \_\_\_\_\_ precinct, \_\_\_\_\_ County, State of Idaho, hereby declare myself to be a candidate for the office of delegate to the constitutional convention, to be voted for at the election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and that I \_\_\_\_\_ (insert one only of the following: "favor ratification of" \_\_\_\_\_ or "am against ratification of") the proposed constitutional amendment to be acted upon by the constitutional convention, and certify that I possess the legal qualifications to fill said office, and that my post-office address is \_\_\_\_\_.

I further certify and declare that if nominated I hereby accept said office.

(Signed) \_\_\_\_\_

All blank spaces shall be properly filled in with the necessary information and the declaration of candidacy shall be subscribed and sworn to before an officer authorized to administer oaths, and the signatures of the voters joining in such petitions, each of which signatures shall be followed by the signer's residence address and date, shall be prefaced by a declaration in substantially the following form, to-wit:

I, the undersigned, being a qualified elector of the State of Idaho, do hereby declare that I am in accord with the statement and declaration of \_\_\_\_\_, a candidate for the office of delegate to the constitutional convention, to be voted for at the election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and do hereby join in this petition for his nomination for such office.

Name of Petitioner      Post Office      Date of Signing

Each nominating petition shall, at the time of filing in the office of the secretary of state, bear an affidavit in substantially the following form, executed and verified by a citizen and resident of the State of Idaho:

State of Idaho

ss.

County of \_\_\_\_\_

I do solemnly swear (or affirm) that I am a citizen and resident of the State of Idaho; that each of the petitioners whose name is affixed to the above paper signed the same personally, together with his post-office address and date of signing, and that each signed the same with full knowledge of its contents; that to the best of my knowledge each is a qualified elector of the State of Idaho.

(Signed) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

\_\_\_\_\_  
Notary Public for the State of Idaho;

residence \_\_\_\_\_

No voter shall sign more than twenty-one (21) nominating petitions nor more than one (1) petition for the same candidate, and if he does either, his signatures shall not be counted on any nominating petition.

All acceptances and petitions shall be filed with the secretary of state not less than forty-five (45) days before the date fixed for the election. No nomination shall be effective except those of the twenty-one (21) candidates in favor of ratification and the twenty-one (21) candidates against ratification whose nominating petitions have respectively been signed by the largest number of voters, ties, if any, to be decided by lot drawn by the secretary of state; provided, however, that if there be less than twenty-one (21) candidates in favor of ratification, all such candidates shall be considered as nominated, or if there be less than twenty-one (21) candidates against ratification all such candidates shall be considered as nominated.

Within ten (10) days after the petitions are filed with him, the secretary of state shall certify to each county auditor within the state, a certified list of the candidates of each group entitled to be voted for at such election, as appears from the acceptances and nominating petitions filed in the office of the secretary of state. (History: 1933, Ch. 179, section 5, p. 328, S.L. 2007, Ch. 90)

**34-2206. Ballots.** The election shall be by ballot, separate from any ballot to be used at the same election, which ballot shall be prepared as follows: It shall first state the substance of the proposed constitutional amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width headed respectively, in plain type, "For Ratification" and "Against Ratification." In the column headed "For Ratification" shall be placed the names of the candidates nominated in favor of ratification. In the column headed "Against Ratification" shall be placed the names of the candidates nominated as against ratification. The voter shall indicate his choice by making one or more cross-marks in the appropriate spaces provided on the ballot. No ballot shall be held void because any such cross-mark is irregular in character. The ballot shall be so arranged that the voter may, by making a single cross-mark, vote for the entire group of candidates whose names are comprised in any column:

The ballot shall be in substantially the following form:

PROPOSED AMENDMENT TO THE CONSTITUTION  
OF THE UNITED STATES

Delegates to the Convention to Ratify the  
Proposed Amendment.

The Congress has proposed an amendment to the Constitution of the United States which provides (insert here the substance of the proposed amendment).

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The Congress has also proposed that the said amendment shall be ratified by conventions in the several states.

INSTRUCTIONS TO VOTERS

Do not vote for more than 21 candidates altogether.

To vote for all candidates in favor of ratification, or for all candidates against ratification, make a cross-mark in the CIRCLE at the head of the list of candidates for whom you wish to vote. If you do this, make no other mark.

To vote for an individual candidate make a cross-mark in the SQUARE at the left of the name.

FOR RATIFICATION	AGAINST RATIFICATION
○	○
<input type="checkbox"/> John Doe	<input type="checkbox"/> Charles Coe
<input type="checkbox"/> Richard Roe	<input type="checkbox"/> Michael Moe
<input type="checkbox"/>	<input type="checkbox"/>

All circular spaces in said ballot shall be one-half (1/2) inch in diameter.

All square spaces in said ballot shall be one-half (1/2) inch square.

Except as herein otherwise provided, ballots and supplies for said election shall be prepared and furnished as provided by chapter 9 of this title. (History: 1933, Ch. 179, section 6, p. 328)

**34-2207. Result of election — Vacancies, how filled.** The twenty-one (21) candidates who shall receive respectively the highest numbers of the total number of votes cast at said election shall be the delegates to the convention. If there shall be a vacancy in the convention caused by the death or disability of any delegate or any other cause, the same shall be filled by appointment by the majority vote of the delegates comprising the group from which such delegate was elected and if the convention contains no other delegate of that group, shall be filled by the governor. (History: 1933, Ch. 179, section 7, p. 328)

**34-2208. Meeting and organization of delegates.** The delegates to the convention shall meet and assemble in the house of representatives in the capitol at Boise, Idaho, on the twenty-eighth day after their election, at twelve (12) o'clock noon, and shall thereupon organize as, be and constitute a convention to pass upon the question of whether or not the proposed amendment shall be ratified. (History: 1933, Ch. 179, section 8 p. 328)

**34-2209. Organizational powers of convention.** The convention shall be the judge of the election and qualification of its members; and shall have the power to elect its president, secretary and other officers and/or employees and to adopt its own rules. (History: 1933, Ch. 179, section 9, p. 328)

**34-2210. Journal of proceedings.** The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of ratification of the proposed amendment. Upon final adjournment the journal shall be certified to by the president and secretary of the convention and be filed with the secretary of state. (History: 1933, Ch. 179, section 10, p. 328)

**34-2211. Certificate of ratification.** If the convention shall agree, by a vote of a majority of the total number of delegates, to the ratification of the proposed amendment, a certificate to that effect shall be executed by the president and secretary of the convention and transmitted to the secretary of state of this state, who shall transmit the certificate under the great seal of the state to the secretary of state of the United States. (History: 1933, Ch. 179, section 11, p. 328)

**34-2212. No compensation — Expenses, how allowed.** No delegate to a constitutional convention shall receive any compensation except that such delegate shall be paid his actual, necessary and reasonable expenses in traveling to and from and attendance at said convention. (History: 1933, Ch. 179, section 12, p. 328)

**34-2213. Expenses, how paid.** All the expenses of the constitutional convention and the expenses allowed delegates thereto shall be allowed and paid by the state of Idaho in the same manner as other claims against the state are allowed and paid, and from such appropriations as are, or may be, available therefor. (History: 1933, Ch. 179, section 13, p. 328)

**34-2214. Federal statute to control.** If at or about the time of submitting any such amendment, Congress shall either in the resolution submitting the same or by statute, prescribe the manner in which the conventions shall be constituted, and shall not except from the provisions of such statute or resolution such states as may theretofore have provided for constituting such conventions, the preceding provisions of this act shall be inoperative, the convention shall be constituted and shall operate as the said resolution or Act of Congress shall direct, and all officers of the state who may by the said resolution or statute be authorized or directed to take any action to constitute such a convention for this state are hereby authorized and directed to act thereunder and in obedience thereto with the same force and effect as if acting under a statute of this state. (History: 1933, Ch. 179, section 14, p. 328)

**34-2215. Separability.** If any part or parts of sections 34-2201—34-2216 shall be adjudged by the courts to be unconstitutional or invalid, the same shall not effect the validity of any part or parts thereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid. The legislature hereby declares that it would have passed the remaining parts of sections 34-2201—34-2216 if it had been known that such other part or parts thereof would be declared to be unconstitutional or invalid. (History: 1933, Ch. 179, section 15, p. 328)

**34-2216. Short title.** This act, sections 34-2201—34-2216, may be cited as the “Constitutional Convention Act.” (History: 1933, Ch. 179, section 16, p. 328)

**34-2217. [Repealed - S.L. 1995, Ch. 227]**

**CHAPTER 23  
RECOUNT OF BALLOTS**

**34-2301. Application for recount of ballots.** Any candidate for federal, state or county office desiring a recount of the ballots cast in any nominating or general election may apply to the attorney general therefor, within twenty (20) days of the canvass of such election, by the state board of canvassers if for federal and state office, or within twenty (20) days of the canvass of such election by the county commissioners if for a county office. (History: S.L. 1957; Ch. 198; S.L. 1985, Ch. 41)

**34-2302. Precincts specified for recount — Remittance.** In his application he shall state the precinct or precincts in which he desires recount to be made and shall remit to the attorney general together with his application the sum of \$100.00 for each such precinct in which he desires a recount made. (History: S.L. 1957, Ch. 198)

**34-2303. Ballots ordered impounded by attorney general.** Upon receiving the application for recount together with the remittance required by the preceding section the attorney general shall cause all ballot boxes used in such election in the precinct or precincts in which recount is to be made to be immediately impounded and taken into custody by the sheriff of the county or counties in which precinct or precincts are located. In the event that the recount is of the results of a primary election the ballot boxes used to hold the blank half of the ballot shall also be impounded. (History: S.L. 1957, Ch. 198)

**34-2304. Order for recount — Procedure — Notice.** The attorney general shall then issue an order for recount. The order shall name the prior election judges and clerks of the precinct to act in the same capacity and receive the same compensation as they did on election day. The order shall provide for the place where the recount is to be made; that all candidates named on the ballot for the office contested, or a representative of either or all of them, may be present to watch the counting; and that every other person interested may be present. The order shall state the date on which the recount is to be made which shall not be more than ten (10) days from the date of the order. Copies of the order shall be mailed to each candidate named on the ballot for the office to be recounted. (History: S.L. 1957, Ch. 198; S.L. 1985, Ch. 41)

**34-2305. Manner of recounting.** At the time and place fixed for recounting the ballots cast in any precinct all ballots shall be recounted in plain view of the candidates or their representatives, and if the recount is of a primary election the blank ballots shall be counted against the ballots that were voted. The recount shall commence at the time and place so ordered, and shall continue until the recount is finished and the results

tabulated. The recount shall be conducted under the same conditions and in the same manner as the original count. The attorney general shall be the final authority concerning any question which arises during the recount. (History: S.L. 1957, Ch. 198; S.L. 1985, Ch. 41)

**34-2306. Difference revealed by recount — Candidate relieved of costs.** If the results of the recount indicate a difference which if projected across all the precincts of the office in question would change the result of the election in favor of the candidate requesting the recount, then the cost of such recount shall be borne by the county or state and the sums of money theretofore paid for the recount shall be returned to the candidate.

In order to be relieved of the costs of the recount, the candidate must request that at least twenty (20) precincts containing not less than five thousand (5,000) votes cast be recounted if for a federal or state office, or five (5) precincts containing not less than one thousand two hundred fifty (1,250) votes cast be recounted for a state legislative district office, or two (2) precincts having not less than five hundred (500) votes cast be recounted for a county office. (History: S.L. 1957, Ch. 198; S.L. 1985, Ch. 41)

**34-2307. When general recount ordered.** If the candidate who requested the recount is relieved of the costs of the recount as described in section 34-2306, Idaho Code, the attorney general shall require a recount to be made in all the remaining precincts of the office in question. The state shall pay for a general recount of a federal, state, or legislative district office, while the county shall pay for a general recount of a county office. (History: S.L. 1957, Ch. 198; S.L. 1985, Ch. 41)

**34-2308. Candidate disagreeing with recount results — Appeal.** (1) Any candidate may appeal the results of a recount or the determination that a recount is not necessary when:

(a) Any candidate for the office for which recount has been requested disagrees with the results of the recount and alleges that the law has been misinterpreted or misapplied;

(b) It appears that a different application or interpretation of the law would have required a general recount where no general recount was ordered; or

(c) It appears that a different application or interpretation of the law would not have required a general recount where a general recount was ordered; then the candidate claiming the misinterpretation or the misapplication of law may appeal to the district court in the county concerned if the office is a county or municipal office or to the district court in Ada county if the office is a federal or state office.

(2) The submittal on appeal shall be by brief and submitted within twenty-four (24) hours following the recount. The appeal submittal shall be served upon the attorney general of Idaho within twenty-four (24) hours of filing it within the district court. The appeal upon the opposing candidate(s) within twenty-four (24) hours of filing the appeal in the district court.

(3) The attorney general, in consultation with the secretary of state, may respond to the submittal by brief.

(4) The opposing candidate(s) may respond to the submittal by brief.

(5) At the discretion of the district court judge, a hearing may be ordered within five (5) days of the filing of the appeal. All parties required to be served with the appeal may participate fully in the hearing. The judge may determine that the appeal may be decided on the brief without a hearing.

(6) A decision thereon shall be given within five (5) days. Any appeal from the decision of the district court must be taken within twenty-four (24) hours after a decision is rendered. A decision on the appeal shall be given within five (5) days. No further appeal shall be allowed. (History: S.L. 1957, Ch. 198; S.L. 1985, Ch. 41; S.L. 2004, Ch. 48)

**34-2309. Automatic recount.** A losing candidate for nomination, or election to a federal, state, or county office may request a recount of the votes cast for the nomination or election to that office if the difference between the vote cast for that candidate and for the winning candidate for nomination or election is less than or equal to one-tenth of one percent (0.1%) of the total votes cast for that office. All requests shall be in writing, and filed with the attorney general during the time mentioned in section 34-2301, Idaho Code.

The state shall pay for the automatic recount of a federal, state, or legislative district office, while the county shall pay for the automatic recount of a county office. (History: S.L. 1957, Ch. 198; S.L. 1985, Ch. 41; S.L. 1986, Ch. 97)

**34-2310. "Costs" defined.** As used in this chapter, costs of recount shall include the following:

- (1) Travel costs of the office of the attorney general including meals and lodging.
- (2) Normal hourly rate for election judges and clerks who are not employees of the county.
- (3) Mileage for election judges who are not employees of the county.
- (4) Any other costs directly attributable to the recount. (History: S.L. 1985, Ch. 41)

## CHAPTER 24

### VOTING BY MACHINE OR VOTE TALLY SYSTEM

**34-2401. Definitions.** As used in this chapter:

- (1) "Ballot" means any material used or the voting surface of a direct recording electronic system on which votes are cast for offices, candidates and measures.
- (2) "Ballot card" means the tabulating card or cards of any size upon which the voter records his vote.
- (3) "Ballot label" means the cards, papers, booklet or other material containing the names of offices and candidates and measures to be voted on.
- (4) "Election" means all state, county, city, district and other political subdivision elections including bond issue elections.
- (5) "Governing body" means the board of county commissioners of any county or the governing body of any city, district or other political subdivision elections including bond issue elections.

(6) "Measure" means a proposed law, act or part of an act of the legislative assembly or amendment to the constitution of the state of Idaho to be submitted to the people for their approval or rejection at an election. "Measure" also means other propositions which can be submitted to the voters at any election by counties, cities, districts or other political subdivisions.

(7) "Model" means a mechanically operated model of a portion of the face of the machine illustrating the means of voting.

(8) "Precinct" includes all election districts.

(9) "Voting machine" means:

(a) Any mechanical or electronic device which will record every vote cast by any voter on candidates and measures and which will either internally or externally total all votes cast on that device;

(b) Any device into which a ballot card may be inserted and which is so designed and constructed that the vote for any candidate or measure may be indicated by punching or marking the ballot card.

(10) "Vote tally system" means one (1) or more pieces of machinery or equipment necessary to examine and tally automatically paper ballots having marks placed thereon by a written mark or by a marking stamp. The examination shall be accomplished by either mark sensing or optical scanning. (History: S.L. 1970, Ch. 140; S.L. 1974, Ch. 3; S.L. 2001, Ch. 272; S.L. 2003, Ch. 48)

**34-2402. Authority to use.** It is the policy of this state that at all elections, including bond issue elections, that ballots or votes may be cast, registered, recorded and counted by means of voting machines or vote tally systems as provided in this chapter. (History: S.L. 1974, Ch. 3)

**34-2403. Applicability of other laws.** All election laws, including, but not limited to, bond election laws, city charters or ordinances, not inconsistent with this chapter, shall apply to all elections in election precincts where voting machines or vote tally systems are used. No provision of law, city charter or ordinance which in any way conflicts with this chapter or with the use of voting machines or vote tally systems as provided in this chapter, shall operate to prohibit use of voting machines or vote tally systems in any election or bond issue election. (History: S.L. 1974, Ch. 3)

**34-2404. Tampering with machines prohibited.** (1) No person shall:

(a) Tamper with or injure or attempt to injure any voting machine or vote tally system to be used or being used in an election.

(b) Tamper with any voting machine or vote tally system that has been used in an election.

(c) Prevent or attempt to prevent the correct operation of any voting machine or vote tally system.

(2) An unauthorized person shall not make or have in his possession a key to a voting machine to be used or being used in an election.

(3) Neither the secretary of state nor any officer or employee of any county, city, district or other political subdivision using voting machines or vote tally systems,

shall solicit or accept any compensation, other than amounts paid by the governmental unit, in connection with the sale, lease or use of voting machines or vote tally systems. (History: S.L. 1970, Ch. 140)

**34-2405. Authority for procurement of machines.** (1) After consultation with the county clerk as chief elections officer of his county, the governing body at any regular meeting or a special meeting called for the purpose, may rent, purchase or otherwise procure, and provide for the use of, in all or a portion of the election precincts of the county, any voting machine or vote tally system which the governing body deems to be in the best interest of that county and which machine or system is approved by the secretary of state.

(2) Thereafter the voting machine or vote tally system shall be used for voting and for receiving, registering and counting the votes in all primary and general elections held in such precincts.

(3) In all other elections, the voting machine or vote tally system may be used for voting, receiving, registering and counting the votes at the direction of the county clerk. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 129)

**34-2406. Joint purchase and use of machines authorized.** (1) In procuring the necessary voting machines or vote tally systems to be used, a governing body of any county, city, district or other political subdivision in the county, may by agreement entered into by the board of county commissioners and the governing bodies of cities, districts or other political subdivisions, provide for the joint purchase and subsequent ownership of voting machines or vote tally systems and for the care, maintenance and use of the machines or vote tally systems.

(2) The governing body of two (2) or more counties may by agreement provide for the joint use of voting machines or vote tally systems. (History: S.L. 1970, Ch. 140)

**34-2407. Purchase of machines — Manner of payment.** (1) The governing body may, on the adoption and purchase of voting machines or vote tally systems, provide for their payment in the method it determines to be for the best interest of the county, city, district or other political subdivision. The governing body may make contracts for the purchase of the machines or vote tally systems with such provisions with regard to price, manner of purchase and time of payment that the governing body determines are proper.

(2) For the purpose of paying for voting machines or vote tally systems, the governing body may:

(a) Issue bonds, warrants, notes or other negotiable obligations. The bonds, warrants, certificates, notes or other obligations shall be a charge upon the county, city, district or other political subdivisions.

(b) Pay for the voting machines or vote tally system in cash out of the general fund.

(c) Provide for the payment for the voting machines or vote tally systems by other means.

(3) In estimating the amount of taxes for the general fund, if any, the amount required

for payment for voting machines or vote tally systems shall be added, extending over the time required to pay for the machines or vote tally systems. (History: S.L. 1970, Ch. 140)

**34-2408. Prior approval required for issuance of bonds.** The governing body of any county shall, prior to authorizing the issuance of bonds obtain the approval in writing of the secretary of state as to the type and number of machines or vote tally systems to be purchased and the price to be paid therefor. (History: S.L. 1970, Ch. 140)

**34-2409. Examination of machines by secretary of state prior to adoption.**  
(1) The secretary of state shall publicly examine all makes of voting machines or vote tally systems submitted to him and determine whether the machines or vote tally systems comply with the requirements of this chapter, and can safely be used by voters at elections under the provisions of this chapter. In order for any voting machine or vote tally system to be certified in Idaho it must meet the federal election commission standards and be approved for use by an independent testing authority sanctioned by the national association of state election directors (NASED) or be certified by the Federal Election Assistance Commission.

(2) Any person owning or interested in a voting machine or vote tally system may submit it to the secretary of state for examination. No examination shall be conducted unless documentation is provided indicating that the voting machine or vote tally system meets the federal election commission standards. For the purpose of assistance in examining the machine or vote tally system the secretary of state may employ not more than three (3) individuals who are expert in one (1) or more of the fields of data processing, mechanical engineering and public administration. The compensation of these assistants shall be paid by the person submitting the machine or vote tally system.

(3) Within thirty (30) days after completing the examination and approval of any voting machine or vote tally system the secretary of state shall make and file in his office his report on the machine or vote tally system, together with a written or printed description and drawings and photographs clearly identifying the machine or vote tally system and the operation thereof. As soon as practicable after such filing, the secretary of state upon request shall send a copy of the report to any governing body within the state.

(4) Any voting machine or vote tally system that receives the approval of the secretary of state may be used for conducting elections in this state. Any machine or vote tally system that does not receive such approval shall not be adopted for or used at any election. After a voting machine or vote tally system has been approved by the secretary of state, any change or improvement in the machine or vote tally system that does not impair its accuracy, efficiency or capacity shall not render necessary a reexamination or reapproval of the machine or vote tally system.

(5) Any voting system, including paper ballots, that was used in the 2004 general election shall be continued to be authorized for use as long as the voting system meets the requirements of the "Help America Vote Act of 2002," Public Law 107-252.

(6) For all elections conducted after 2004, no direct recording electronic voting

device shall be used unless the direct recording electronic voting device has a voter verifiable paper audit trail. Any certifications of a direct recording electronic voting device without a voter verifiable paper audit trail are hereby declared null and void.

(7) The secretary of state may periodically review the various voting systems that have been certified for use in the state to ensure such systems meet the standards set forth by the federal election assistance commission and the national institute of standards and technology. Any voting system that does not meet such standards may be decertified after a public hearing. (History: S.L. 1970, Ch. 140; S.L. 2001, Ch. 272; S.L. 2005, Ch. 282; S.L. 2007, Ch. 202)

**34-2410. Specifications for voting machines or vote tally systems.** (1) No voting machine or vote tally system shall be approved by the secretary of state unless it is constructed so that it:

(a) Secures to the voter secrecy in the act of voting.

(b) Provides facilities for voting for the candidates of as many political parties or organizations as may make nominations and for or against as many measures as may be submitted.

(c) Permits the voter to vote for any person for any office and upon any measure that he has the right to vote for.

(d) Permits the voter, except at primary elections, to vote for all the candidates of one (1) party or in part for the candidates of one (1) party and in part for the candidates of one or more other parties.

(e) Permits the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more.

(f) Prevents the voter from voting for the same person more than once for the same office.

(g) Correctly registers or records all votes cast for any and all persons and for or against any and all measures.

(h) Can be adjusted so that the counting mechanism rejects any vote cast on the tabulating card in excess of the number which the voter is entitled to vote.

(i) Provides that a vote for more than one (1) candidate cannot be cast by one (1) single operation of the machine or vote tally system.

(2) A vote tally system shall be:

(a) Capable of correctly counting votes on ballots or ballot cards on which the proper number of votes have been marked for any office or question or issue that has been voted.

(b) Capable of ignoring the votes marked for any office or question or issue where more than the allowable number of votes have been marked, but shall correctly count the properly voted portions of the ballot card.

(c) Capable of accumulating a count of the specific number of ballots or ballot cards tallied for a precinct, accumulating total votes by a candidate for each office; and accumulating total votes for and against each question and issue of the ballots or ballot cards tallied for a precinct.

(d) Capable of tallying votes from ballots or ballot cards of different political parties,

from the same precinct, in the case of a primary election.

(e) Capable of accommodating rotation of candidates' names on the ballot or ballot card, provided that all ballots or ballot cards from one (1) precinct shall be of the same rotation sequence.

(f) Capable of automatically producing precinct totals in either printed, marked, or punched form, or combinations thereof. (History: S.L. 1970, Ch. 140)

**34-2411. Duties of clerks of election boards.** (1) The secretary of state shall issue an administrative order outlining the duties of each of the clerks on the election board. He shall devise and prescribe for use by each local election officer the contents, form, character and kinds of ballots, ballot labels, ballot cards, formats, records, papers and documents and other materials and supplies and procedures necessary in the use of voting machines or vote tally systems and in the process of counting and tabulating the ballots by mechanical or electrical counting devices or equipment or computers.

(2) The secretary of state shall prescribe rules and regulations to achieve and maintain the maximum degree of correctness, impartiality and efficiency on the procedures of voting, and of counting, tabulating and recording votes, by the devices, machines or vote tally systems and methods provided by this act. (History: S.L. 1970, Ch. 140)

**34-2412. Composition of precinct election boards.** (1) The election board of each election precinct in which a voting machine or vote tally system is used shall consist of an election judge and one (1) or more clerks. Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts at least sixty (60) days prior to the primary election. The county clerk shall establish the number of election board clerks.

(2) The qualifications and duties of election judges shall apply to the appointment of election board clerks in counties or precincts where voting machines or vote tally systems are used.

(3) The board of county commissioners or the governing body of a city, district or other political subdivision, not later than forty (40) days before an election, may create, unite, combine or divide one (1) or more election precincts for the purpose of using one (1) or more voting machines or vote tally systems therein at the election. The number of registered voters to be included in each of the election precincts shall be determined by such board of county commissioners or governing body of a city, district or other political subdivision. (History: S.L. 1970, Ch. 140; S.L. 1974, Ch. 75; S.L. 1989, Ch. 346)

**34-2413. Preparation of machines for use — Instructions.** (1) Before each election at which voting machines or vote tally systems are to be used, the county clerk of a county, or the clerk of a city, district or other political subdivision, in which voting machines or vote tally systems are to be used, shall cause them to be properly prepared and shall cause the election board to be properly instructed in their use.

(2) For the purpose of giving such instruction, the county clerk shall call the meeting

or meetings of the election board that are necessary. Each election board shall attend the meetings and receive the instruction necessary for the proper conduct of the election with the machine or vote tally system.

(3) No election board judge or clerk shall serve in any election at which a voting machine or vote tally system is used unless he has received the required instruction and is fully qualified to perform the duties in connection with the machine or vote tally system; but this requirement shall not prevent the appointment of an election board clerk to fill a vacancy in an emergency. (History: S.L. 1970, Ch. 140)

**34-2414. Printed matter and supplies.** (1) The election officer charged with the duty of providing ballots shall provide all necessary instruction, forms and supplies required for the proper use of the voting machines or vote tally systems.

(2) Within a proper and reasonable time before the first election at which voting machines or vote tally systems are to be used, the secretary of state shall prepare samples of the printed matter and supplies required. He shall furnish one (1) of each of the samples to the election officer in charge of the election of each county, city, district or other political subdivision in which the machines or vote tally systems are to be used.

(3) The county clerk or other election officer shall deliver voting machines to each election board as provided for election supplies. (History: S.L. 1970, Ch. 140)

**34-2415. Preparation of polling place for election.** (1) The election board of each election precinct in which a voting machine is to be used shall meet at the polling place for the election precinct at least thirty (30) minutes before the time set for opening the polls. Before preparing the machine for voting, the election board shall proceed as prescribed in subsection (2) of this section.

(2) The election board shall:

(a) Cause the voting machine to be placed where it can be conveniently attended by the election board and conveniently operated by the voters and where the ballot labels on the machines can be plainly seen by the election board and the public when not being voted on.

(b) Cause the model to be placed where each voter can conveniently operate it and receive instructions on the model as to the manner of voting before entering the voting machine booth.

(c) Determine that the ballot labels are in the proper place on the machine.

(3) After performing their duties as provided in this section, the election board shall certify to the fact in the appropriate places in the poll book. (History: S.L. 1970, Ch. 140)

**34-2416. Procedure for preparing machines for an election.** (1) In preparing a voting machine for an election, the county clerk or the clerk of the city, district or other political subdivision, as the case may be, shall:

(a) Arrange the machine and the ballot labels so that it shall in every particular case meet the requirements of voting and counting at such elections.

(b) Thoroughly inspect and test the machine, and file a certificate in his office that

the ballot labels have been properly arranged.

(2) The arrangement of offices and names of candidates upon the ballot labels shall conform as nearly as practicable to the provisions of law for the arrangement of names on paper ballots, and in the event that there are more candidates for any office than can be placed upon one (1) page, the labels shall be clearly marked to indicate that the names of candidates for the office are continued on the following page.

(3) Representatives of political parties and candidates shall be permitted to examine the voting machines or vote tally systems. (History: S.L. 1970, Ch. 140)

**34-2417. Notice of locations of voting machines and polling places.** Before preparing the voting machines or vote tally systems for any election, the county clerk shall mail to the chairman of the county or legislative district central committees of each political party who has notified such clerk that notice is desired, a written notice stating the time and place or places where voting machines or vote tally systems will be prepared for the election. At such times and places, one (1) representative of each political party is entitled to be present and see that the machines or vote tally systems are properly prepared and placed in proper condition and order for use at the election. In nonpartisan elections each candidate may designate one (1) representative who has the same powers as the political party representatives. The political party and candidate representatives shall certify that they have witnessed the testing and preparation of the machines or vote tally systems. The certificates shall be filed in the office of the county clerk. (History: S.L. 1970, Ch. 140)

**34-2418. Ballots and ballot labels.** (1) The ballots and ballot labels required to be furnished for general or special elections shall be printed in black ink on clear white material of such size and arrangements as to suit the construction of the machine. The ballot labels for measures may contain a condensed statement of purpose for each measure to be voted on, accompanied by the words "Yes" and "No." The title of the offices on the ballot labels shall be printed in type as large as the space for the office will reasonably permit. Where more than one (1) candidate can be voted for an office, there shall be printed below the office title words indicating the number the voter is lawfully entitled to vote for out of the whole number of candidates, such as "Vote for Two."

(2) The ballots and ballot labels required to be furnished for primary elections may be of different colors for the political parties who are nominating or electing candidates.

(3) The "judiciary ballot" may be added to the ballot labels for the political parties. Candidates for the above offices will be shown under the general title of nonpartisan judicial candidates.

(4) When a vote tally system is used, the county clerk shall prepare the ballots as nearly as practicable as required by law. (History: S.L. 1970, Ch. 140; S.L. 1994, Ch. 54)

**34-2419. Rotation of names of candidates.** In each primary and general election when two (2) or more persons are candidates for nomination or election to the same office, the county clerk or the clerk of a city, district or other municipality in which

voting machines or vote tally systems are used shall rotate the names of candidates as directed by the secretary of state. (History: S.L. 1970, Ch. 140)

**34-2420. Examinations of face of machine during election.** The election board shall occasionally examine the face of the voting machine and the ballot labels to determine that the machine and the ballot labels have not been damaged or tampered with. (History: S.L. 1970, Ch. 140)

**34-2421. Procedure if a voting machine becomes inoperative.** (1) If any voting machine used in any election precinct, during or before the time the polls are opened, becomes damaged so as to render it inoperative in whole or in part, an election board clerk immediately shall notify the election officer charged with the care of the machine.

(2) If possible, the election officer so notified shall repair the machine at once or substitute another machine for the damaged machine.

(3) If no other machine can be procured for use at the election and the damaged machine cannot be repaired in time for further use at the election, or where in the discretion of a majority of the members of the election board it is impracticable to use the machine, the election board shall permit the voters to use paper ballots prepared as in cases where paper ballots are used. The paper ballots shall be furnished to the election board by the county clerk. The paper ballots shall be issued, voted and deposited in ballot boxes in as nearly the same manner as provided by law, except that the paper ballots shall not be tallied and returned by the election board. Instead, these paper ballots shall be delivered to the county clerk for his tally and canvass. (History: S.L. 1970, Ch. 140; S.L. 1971, Ch. 5)

**34-2422. Closing of polls — Delivery of ballots to clerk before polls closed.** (1) At the hour for closing the polls, the election board shall declare the polls of the election closed and shall not permit any further voting. However, electors who are, at the hour of closing, within the polling room or awaiting their turn to vote shall be considered as having begun the act of voting and shall be permitted to cast their votes.

(2) At any time prior to the closing of the polls provision may be made for the delivery of voted ballots to the county clerk or the clerk of a city, district or other political subdivision for counting. If such procedure is adopted, the result of this early count shall not be released to the public until after 8:00 p.m. of election day. (History: S.L. 1971, Ch. 5)

**34-2423. Absent voting by voting machine or paper ballot.** The county clerk may provide that absent voting shall be either by voting machine or by marking a paper ballot or a combination of both. In any of the foregoing cases he may establish one (1) absent elector unit to handle and process absent elector ballots for each legislative district within his county and shall cause sufficient ballots of the proper kind or kinds to be provided.

Voted ballots shall be retained by the county clerk until election day when they shall be transferred to the ballot processing center and thereafter made a part of the election returns. (History: S.L. 1970, Ch. 140; S.L. 1976, Ch. 73)

**34-2424. Paper ballots used in conjunction with voting machines.** In any election where voting machines or vote tally systems are used:

- (1) Paper ballots may be used to record the electors' votes for party offices.
- (2) Paper ballots may be used to record the electors' votes for or against municipal candidates or measures.
- (3) Paper ballots which are used in conjunction with voting machines may be returned to the office of the county clerk for counting by special counting boards. Ballots so counted shall be tallied and returned by precinct.
- (4) Ballots or ballot cards may be returned to the office of the county clerk for counting.
- (5) In the event that paper ballots are used in conjunction with voting machines or vote tally systems to record write-in votes, these paper ballots may be returned to the office of the county clerk for counting by special counting boards. Ballots so counted shall be tallied and returned by precinct. (History: S.L. 1970, Ch. 140)

**34-2425. Preparation and distribution of sample ballots.** (1) At each primary, general and special election there shall be provided as many sample ballots as the county clerk considers necessary. The sample ballots shall be prepared and distributed as provided by law.

- (2) For each primary, general and special election the county clerk shall cause to be published a facsimile, except as to size, of the sample ballot required in subsection (1) of this section. (History: S.L. 1970, Ch. 140)

**34-2426. Exhibition of voting machines for instruction of voters.** (1) Before each election at which voting machines are to be used the county clerk shall place on public exhibition a suitable number of voting machines for the proper instruction of voters. The machines shall be arranged and equipped with ballot labels so as to best illustrate the method of voting at that election and so far as practicable, shall contain:

- (a) The names of the offices to be filled.
  - (b) The names of the candidates to be voted for, together with their proper party designations in case of party elections.
  - (c) Statements of the measures to be voted on.
- (2) In addition to supplying sample ballots, the county clerk shall, before the election, take reasonable additional steps to familiarize the voters with a diagram showing the face of the voting machine after the official ballot labels are arranged thereon with illustrated instructions how to vote, and with the locations of the voting machines that are on public exhibition.

- (3) Before each election at which a vote tally system is to be used, the county clerk shall make every reasonable effort to acquaint the electors within his county with the ballot format and the marking system. (History: S.L. 1970, Ch. 140)

**34-2427. Physically disabled voters.** (1) The election board clerks shall instruct electors on how to record their votes on the voting machine or vote tally system, and shall give assistance to any elector who declares that he is unable by reason of physical disability or other handicap to record his vote on the machine or vote tally system,

and on request by the elector after he has entered the voting booth, shall give him the necessary information to enable him to record his vote.

(2) Any elector who, because of blindness, physical disability or other handicap, is unable to mark his ballot shall, upon request, receive the assistance of the election board clerks or some other person chosen by the elector in the marking thereof. Such clerks or person shall ascertain the wishes of the elector and mark his ballot in accordance therewith, and shall thereafter give no information regarding such marking. The election board judge may require a declaration of disability to be made by the elector under oath. Whenever an elector receives assistance in this manner, a clerk shall make a notation thereof in the combination election record and poll book following the name of the elector.

(3) If any elector, after entering the voting booth, asks for information regarding the operation of the voting machine or marking device, the election board clerks shall give him the necessary information. (History: S.L. 1970, Ch. 140; S.L. 1972, Ch. 129)

**34-2428. [Repealed - S.L. 2001, Ch. 272].**

**34-2429. Validation of elections.** All elections, including but not limited to bond issue elections, heretofore conducted pursuant to this chapter and all proceedings had or to be had in the authorization and issuance of the bonds authorized thereat, together with all such bonds when issued, are hereby validated, ratified and confirmed, and all such bonds when issued are declared to constitute legally binding obligations in accordance with their terms. Nothing in this section shall be construed to affect or validate any bond election, or bonds issued pursuant thereto, the legality of which are being contested at the time this act takes effect. (History: S.L. 1974, Ch. 3)

**34-2430. [Repealed - S.L. 1972, Ch. 129]**

**34-2431 - 34-2446. [Repealed - S.L. 1970, Ch. 140]**

## CHAPTER 25 ELECTION CAMPAIGN FUND

**34-2501. Definitions.** As used in this act, the following terms have the following meanings:

(a) "Board" means the state board of examiners provided in section 67-2001, Idaho Code.

(b) "Committee" means the state central committee as provided in section 34-504, Idaho Code.

(c) "Election campaign fund" or "fund" means the fund created by section 34-2502, Idaho Code.

(d) "Political party" means an affiliation of electors representing a political group under a given name as authorized by section 34-501, Idaho Code:

(1) "major political party" means a political party which at the last general election polled for any one of its candidates for state or national elective office more than ten per cent (10%) of the vote cast for the office.

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(2) "minor political party" means a political party which at the last general election polled for any one of its candidates for state or national elective office more than three per cent (3%) but less than ten percent (10%) of the vote cast for the office.

(3) "new political party" means an affiliation of electors who shall file with the secretary of state a petition that they desire recognition as a political party, which [said] petition shall meet the requirements as otherwise prescribed by law in section 34-501, Idaho Code.

(e) "General election" means the national, state and county election held on the first Tuesday succeeding the first Monday of November of each even numbered year.

(f) "Qualified election expense" means an expense:

(1) incurred by the state central committee in furthering the election of a candidate for office or attempting to influence any election;

(2) incurred within the expenditure report period as defined in this act, or incurred before the beginning of such period to the extent such expense is for property, service, or facilities used during such period;

(3) neither the incurring nor payment of which constitutes a violation of any of the laws of the United States or of the state of Idaho.

(g) "Expenditure report period" means from the day following the primary election (the Tuesday succeeding the first Monday of August in each even numbered year) to the thirtieth day following the general election. (History: S.L. 1975, Ch. 132; S.L. 1978, Ch. 40)

**34-2502. Election campaign fund — Creation.** There is hereby created and established in the treasury of the state of Idaho a fund to be known and designated as the "election campaign fund." The state auditor shall maintain within the fund a separate account for each party for which a specific designation is made under the provisions of section 63-3088, Idaho Code, and shall keep a general account for moneys for which no specific designation is made and which are to be distributed as provided in section 34-2503, Idaho Code.

All moneys placed in the election campaign fund are hereby perpetually appropriated to the board of examiners for administration and allocation as provided by this act. All expenditures from the fund shall be paid out in warrants drawn by the state auditor upon presentation of proper vouchers from the secretary of state. The provisions of section 67-3516(3) and (4), Idaho Code, are hereby specifically declared not to apply to the administration of the election campaign fund. (History: S.L. 1975, Ch. 132; S.L. 1976, Ch. 260)

**34-2503. Election campaign fund — Distribution.** Each political party, through its central committee, shall be eligible for payments from the fund in the following manner:

(a) Each party shall receive the amount of the fund which has been designated by the contributing individuals and credited to the separate account in the fund maintained for the party.

(b) Ninety percent (90%) of the fund which has not been designated, but is credited to the general election campaign fund, shall be distributed to the central committees in

proportion to the share of the votes cast for the candidate of the party for the office of governor in the last election for governor, provided that no party shall receive more than fifty percent (50%) of the fund so distributed. Any portion of the fund not distributed shall revert to the fund and, together with the ten percent (10%) reserved, be distributed in equal portions to all major, minor and new political parties which have qualified candidates for elective state office for the ballot in the next general election.

(c) The distribution provided by this section shall take place on the Tuesday succeeding the first Monday of August in each year. (History: S.L. 1975, Ch. 132; S.L. 2008, Ch. 62)

**34-2504. Statement of expenditures filed before election day.** All funds distributed to the political parties in section 34-2503, Idaho Code, shall be deposited into the political party's account established under chapter 66, title 67, Idaho Code, and all such funds shall be reported on the disclosure reports required in that chapter. (History: S.L. 1994, Ch. 54)

**34-2505. Statement of expenditures — Rules and regulations — Unqualified expenditures — Unexpended balance.** The board is authorized to prescribe such rules and regulations, to conduct such examinations and audits, to conduct such investigations, and to require the keeping and submission of such books, records and information as it deems necessary to carry out the functions and duties imposed by this act.

If the board finds that any of the expenditures reported by the committee are not qualified election expenses, it shall so notify the committee of the amount deemed to have been not qualified. The committee shall be entitled to hearing by the board; if after the hearing by the board, the expenditures are determined not to be qualified, such committee shall pay to the state auditor an amount equal to such amount to be credited to the public school fund. (History: S.L. 1994, Ch. 54; S.L. 1975, Ch. 132)



**TITLE 1**

**COURTS and COURT OFFICIALS**



**CHAPTER 22**  
**MAGISTRATE DIVISION OF THE DISTRICT COURT**

**1-2205. District magistrates commission—Powers and duties.** The district magistrates commission shall have the following powers and duties:

(a) To determine the number and location of magistrate judges to be appointed within the judicial district, subject to appropriations by the legislature, pursuant to section 1-2215, Idaho Code; provided, that there shall be at least one (1) resident magistrate judge appointed in each county, except for those counties in which the board of county commissioners; at any time has adopted by majority vote, without subsequent rescission, a resolution waiving the right to a resident magistrate judge, pursuant to section 31-879, Idaho Code;

(b) To appoint the magistrate judges within the district on a nonpartisan merit basis, except as provided in section 1-2220, Idaho Code;

(c) To conduct studies for the improvement of the administration of justice within the district and to make recommendations for improvements therein to the legislature, the supreme court, the district court and such other governmental agencies as may be interested in or affected by such recommendations.

The actions of the commission pursuant to subsections (a) and (b) of this section shall be subject to disapproval by a majority of the district judges in the district within thirty (30) days after written notice to the district judges of the commission's actions, unless such time be extended for good cause by order of the supreme court. (History: S.L. 1969, Ch. 104; S.L. 1973, Ch. 78; S.L. 1977, Ch. 233; S.L. 1980, Ch. 393; S.L. 1981, Ch. 111)

**1-2206. Magistrates — Qualifications — Institute — Exceptions — Office appointive.** (1) A magistrate shall be a qualified elector of the state of Idaho. He shall reside in the county for which he is appointed so long as he serves as magistrate.

(2) No person shall be eligible for appointment to the office of magistrate unless he is a graduate of a high school or has attained the equivalent of a high school education as indicated by the possession of a certificate of equivalency issued by the state department of education based upon the record made on the general education development test and unless he shall have attained the age of thirty (30) years prior to taking office, provided that in addition no person shall be eligible for appointment as an attorney magistrate unless prior to taking office he shall have been admitted to the practice of law for at least five (5) years and is currently licensed to practice law in the state of Idaho.

(3) Magistrates shall not take office for the first time as magistrates until they have attended an institute on the duties and functioning of the magistrate's office to be held under the supervision of the Supreme Court, unless such attendance is waived by the Supreme Court. All magistrates shall be entitled to their actual and necessary expenses while attending institutes. The Supreme Court will establish the institute to which this subsection refers and will provide the institute to be held at such other times and for such other purposes as it deems necessary and may require the attendance of magistrates.

(4) Notwithstanding the provisions of subsection (2) of this section, all magistrates holding office on the effective date [July 1, 1982] of this act shall be eligible for

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appointment to the office of magistrate and for retention in office pursuant to section 1-2220, Idaho Code. (History: S.L. 1969, Ch. 104; S.L. 1979, Ch. 149; S.L. 1982, Ch. 217; S.L. 1982, Ch. 298)

**1-2207. Magistrates—Term—Removal—Vacancies** (1) The term of office of a magistrate shall be four (4) years. The term of office of a magistrate shall begin on the second Monday of January of the odd-numbered year next succeeding his election.

(2) Vacancies in the office of magistrate shall be filled by appointment pursuant to section 1-2205, Idaho Code.

(3) Any magistrate appointed pursuant to section 1-2205, Idaho Code, and subsection (2) of this section, shall exercise the authority of a magistrate from the date of taking office. A magistrate appointed after the effective date of this act may be removed from office within eighteen (18) months of his appointment by majority vote of all the voting members of the district magistrates commission without cause in accordance with procedures to be established by rules of the Supreme Court.

(4) A magistrate may be removed from office before the expiration of the term to which he was appointed or elected as provided by section 1-2103A, Idaho Code. (History: S.L. 1969, Ch. 104; S.L. 1973, Ch. 78; S.L. 1974, Ch. 116; S.L. 1977, Ch. 233; S.L. 1979, Ch. 149; S.L. 1990, Ch. 71)

**1-2220. Retention or Nonretention of Magistrate by Vote.** Any magistrate appointed pursuant to the provisions of section 1-2205, Idaho Code, and section 1-2207(2), Idaho Code, shall stand for office in the first general election next succeeding the expiration of the eighteen (18) month period established pursuant to section 1-2207, Idaho Code. Any magistrate may, not less than ninety (90) days prior to the holding of the general election next preceding the expiration of his term of office, file in the office of the county clerk of the county for which he is a resident magistrate, accompanied by a filing fee of forty dollars (\$40.00), a declaration of candidacy to succeed himself. If a declaration is not so filed by any magistrate, the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided, except that any magistrate who does not file shall be ineligible for appointment within the same judicial district until two (2) years following the expiration of his last term of office have expired. If such declaration is filed, his name shall be submitted at the next general election to the voters eligible to vote within the county for which he is appointed, on a nonpartisan judicial ballot, without party designation, which shall read:

“Shall Magistrate \_\_\_\_\_ (Here insert the name of the magistrate) of \_\_\_\_\_ (Here insert the name of the county) County of the \_\_\_\_\_ (Here insert the judicial district number) Judicial District be retained in office?” (Here provision is to be made for voting “Yes” or “No.”)

The votes shall be canvassed as provided in chapter 12, title 34, Idaho Code.

If a majority of those voting on the question vote against retaining him in office, upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in section 1-2205, Idaho Code, except that the magistrate not retained in office shall be ineligible for appointment within the same judicial district until two (2) years following the expiration of his last term of office have expired.

If a majority of those voting on the question vote for retaining him in office, the county clerk shall issue him a certificate of election as provided in section 34-1209, Idaho Code, and said magistrate shall, unless removed for cause, remain in office for an additional term of four (4) years, and at the expiration of each such four (4) year term shall be eligible for retention in office by election in the manner herein prescribed. (History: S.L. 1973, Ch. 78; S.L. 1974, Ch. 116; S.L. 1977, Ch. 233; S.L. 1979, Ch. 149; S.L. 2003, Ch. 55)

## CHAPTER 24 COURT OF APPEALS

**1-2404. Number of Judges—Qualifications—Conduct and discipline—Term—Selection—Election—Compensation.** (1) The court of appeals shall consist of four (4) judges, and shall sit in panels of not less than three (3) judges each.

(2) No person shall be appointed or elected to the office of judge of the court of appeals unless he has attained the age of thirty (30) years at the time of his appointment or election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and has resided within this state two (2) years next preceding his appointment or election.

(3) A judge of the court of appeals shall be governed by the code of judicial conduct as promulgated by the Idaho supreme court, and shall be subject to removal, discipline, or retirement pursuant to section 1-2103, Idaho Code.

(4)(a) Judges of the court of appeals shall be appointed by the governor effective the first Monday of January, 1982, for the following initial terms: one (1) judge shall be appointed for a term to expire on the first Monday of January, 1985, one (1) judge shall be appointed for a term expiring two (2) years later, and one (1) judge shall be appointed for a term expiring two (2) further years later. Thereafter, the term of office of a judge of the court of appeals shall be six (6) years.

(b) Vacancies in the office of judge of the court of appeals shall be filled in the same manner as vacancies in the office of supreme court justice or district judge.

(c) The positions of judges of the Idaho court of appeals shall first be filled as vacancies. The judicial council shall submit to the governor its recommendations for the offices at the earliest practicable time after the effective date of this act. The governor may make the appointment at any time thereafter, to be effective the first Monday of January, 1982, for the terms set forth in section 1-2404(4)(a), Idaho Code.

(d) In making its nominations for the initial vacancies to be created by this act, the Idaho judicial council shall submit the names of not less than six (6) nor more than nine (9) qualified persons for the initial three (3) vacancies to be created by this act. Otherwise, the judicial council shall submit the names of not less than two (2) nor more than four (4) persons for each vacancy. The governor shall appoint the judges, identifying each appointment by the length of the term of appointment.

(e) Nominations and appointments to fill initial or subsequent vacancies shall be made with due regard for balanced geographical membership of the court of appeals.

(f) Subsequent terms of office of a judge who has been appointed to the court of

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appeals shall be subject to a statewide nonpartisan election to be held in the primary election next preceding the expiration of an appointed term in the same method and manner as a justice of the supreme court.

(g) A fourth judge of the court of appeals shall be appointed by the governor effective the first Monday of January, 2009, for an initial term to expire on the first Monday of January, 2013. Thereafter, the term of office for this position shall be six (6) years. The judicial council shall submit the names of not less than two (2) nor more than four (4) persons for the initial vacancy in this position under the procedure set forth in section 1-2102, Idaho Code. This position shall be subject to all of the provisions relating to qualifications, removal, discipline, retirement, filling of vacancies, election and compensation set forth in this chapter.

(5) Judges of the court of appeals shall receive an annual salary in an amount (of) one thousand dollars (\$1,000) less than the annual salary of a supreme court justice and shall receive compensation upon retirement as provided in chapter 20, title 1, Idaho Code. (History S.L. 1980, Ch. 245; S.L. 1981, Ch. 271; S.L. 1985, Ch. 29; S.L. 2008, Ch. 24)

**TITLE 18 - SECTION 310**

**TITLE 18 - CHAPTER 23**

**ELECTIONS**



**TITLE 18**  
**CRIMES AND PUNISHMENTS**  
**CHAPTER 3 NATURE AND EXTENT OF PUNISHMENT IN GENERAL**

**18-310. Imprisonment — Effect on civil rights and offices.** (1) A sentence of custody to the Idaho state board of correction suspends all the civil rights of the person so sentenced including the right to refuse treatment authorized by the sentencing court, and forfeits all public offices and all private trusts, authority or power during such imprisonment: provided that any such person may bring an action for damages or other relief in the courts of this state or have an action brought against such person; and provided further that any such person may lawfully exercise all civil rights that are not political during any period of parole or probation, except the right to ship, transport, possess or receive a firearm, and the right to refuse treatment authorized by the sentencing court. (2) Upon final discharge, a person convicted of any Idaho felony shall be restored the full rights of citizenship, except that for persons convicted of treason or those offenses enumerated in paragraphs (a) through (jj) of this subsection the right to ship, transport, possess or receive a firearm shall not be restored. As used in this subsection, “final discharge” means satisfactory completion of imprisonment, probation and parole as the case may be. (a) aggravated assault (18-905, 18-915, Idaho Code); (b) aggravated battery (18-907, 18-915, Idaho Code); (c) assault with intent to commit a serious felony (18-909, 18-915, Idaho Code); (d) battery with intent to commit a serious felony (18-911, 18-915, Idaho Code); (e) burglary (18-1401, Idaho Code); (f) crime against nature (18-6605, Idaho Code); (g) domestic battery, felony (18-918, Idaho Code); (h) enticing of children, felony (18-1509, Idaho Code); (i) forcible sexual penetration by use of a foreign object (18-6608, Idaho Code); (j) indecent exposure, felony (18-4116, Idaho Code); (k) injury to child, felony (18-1501, Idaho Code); (l) intimidating a witness, felony (18-2604, Idaho Code); (m) lewd conduct with a minor or child under sixteen (18-1508, Idaho Code); (n) sexual abuse of a child under sixteen (18-1506, Idaho Code); (o) sexual exploitation of a child (18-1507, Idaho Code); (p) felonious rescuing prisoners (18-2501, Idaho Code); (q) escape by one charged with, convicted of or on probation for a felony (18-2505, Idaho Code); (r) unlawful possession of a firearm (18-3316, Idaho Code); (s) degrees of murder (18-4003, Idaho Code); (t) voluntary manslaughter (18-4006(1), Idaho Code); (u) assault with intent to murder (18-4015, Idaho Code); (v) administering poison with intent to kill (18-4014, Idaho Code); (w) kidnapping (18-4501, Idaho Code); (x) mayhem (18-5001, Idaho Code); (y) rape (18-6101, Idaho Code); (z) male rape (18-6108, Idaho Code); (aa) robbery (18-6501, Idaho Code); (bb) ritualized abuse of a child (18-1506A, Idaho Code); (cc) cannibalism (18-5003, Idaho Code); (dd) felonious manufacture, delivery or possession with the intent to manufacture or deliver, or possession of a controlled or counterfeit substance (37-2732, Idaho Code); (ee) trafficking (37-2732B, Idaho Code); (ff) threats against state officials of the executive, legislative or judicial branch, felony (18-1353A, Idaho Code); (gg) unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home (18-3317, Idaho Code); (hh) unlawful possession of destructive devices (18-3319, Idaho Code); (ii) unlawful use of destructive device or bomb (18-3320, Idaho Code); (jj) attempt (18-306, Idaho Code), conspiracy (18-1701, Idaho

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Code), or solicitation (18-2001, Idaho Code), to commit any of the crimes described in paragraphs (a) through (ii) of this subsection. (kk) The provisions of this subsection shall apply only to those persons convicted of the enumerated felonies in paragraphs (a) through (jj) of this subsection on or after July 1, 1991, except that persons convicted of the felonies enumerated in paragraphs (s) and (t) of this subsection, for any degree of murder or voluntary manslaughter, shall not be restored the right to ship, transport, possess or receive a firearm regardless of the date of their conviction if the conviction was the result of an offense committed by use of a firearm. (3) A person not restored to the civil right to ship, transport, possess or receive a firearm may make application to the commission of pardons and parole to restore the civil right to ship, transport, possess or receive a firearm. The commission shall not accept any such application until five (5) years after the date of final discharge. The commission shall conduct the proceeding upon such application pursuant to rules adopted in accordance with the law. The commission shall not restore the right to ship, transport, possess or receive a firearm to any person convicted of murder in the first degree (18-4003, Idaho Code), murder in the second degree (18-4003, Idaho Code), or any felony enumerated in paragraphs (a) through (jj) of subsection (2) of this section, upon which the sentence was enhanced for the use of a firearm during the commission of said felony. (4) Persons convicted of felonies in other states or jurisdictions shall be allowed to register and vote in Idaho upon final discharge which means satisfactory completion of imprisonment, probation and parole as the case may be. These individuals shall not have the right restored to ship, transport, possess or receive a firearm, in the same manner as an Idaho felon as provided in subsection (2) of this section. (History: S.L. 1972, Ch. 336; S.L. 1981, Ch. 182; S.L. 1982, Ch. 368; S.L. 1991, Ch. 202; S.L. 1993, Ch. 120; S.L. 1993, Ch. 184, S.L. 1998, Ch. 171; S.L. 2003, Ch. 113; S.L. 2003, Ch. 253; S.L. 2004, Ch. 166)

**CHAPTER 23  
ELECTIONS**

**18-2301. Official neglect or malfeasance.** Every person charged with the performance of any duty, under the provisions of any law of this state relating to elections, who wilfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the state prison not exceeding five (5) years, or by both and shall in addition thereto, and regardless of whether or not criminal prosecution is undertaken, be subject to removal from office as provided in title 19, chapter 41, Idaho Code. (History: S.L. 1972, Ch. 336)

**18-2302. False swearing as to qualifications as voter.** Every person who, upon his right to vote being challenged at any election held under the laws of this state, wilfully, corruptly and falsely swears touching his qualifications as a voter, is guilty of perjury. (History: S.L. 1972, Ch. 336)

**18-2303. Refusal to be sworn or to answer questions.** Every person who, after being required by the board of judges at any election, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question propounded by such board, touching his right, or the right of any other person, to vote, is guilty of a misdemeanor. (History: S.L. 1972, Ch. 336)

**18-2304. Procuring illegal votes.** Every person who procures, aids, assists, counsels or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, is guilty of a misdemeanor. (History: S.L. 1972, Ch. 336)

**18-2305. Intimidation, corruption and frauds.** Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever, to awe, restrain, hinder or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who can not read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person, for any office, than he intended or desired to vote for; or who, being officer, judge, or clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor. (History: S.L. 1972, Ch. 336)

**18-2306. Illegal voting or interference with election.** Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two (2) or more tickets folded together, or changes any ballot after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or wilfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony. (History: S.L. 1972, Ch. 336)

**18-2307. Attempting to vote when not qualified, or to repeat voting.** Every person not entitled to vote, who fraudulently attempts to vote, or who, after being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor. (History: S.L. 1972, Ch. 336)

**18-2308. Attempt of officer to ascertain vote.** Every officer, judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens, or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same into the ballot box, or who makes, or places any mark or device on any folded ballot, with a view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such officer, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine of not less than fifty dollars nor more than \$500. (History: S.L. 1972, Ch. 336)

**18-2309. Officers attempting to change result.** Every officer or clerk of election who aids in changing or destroying any poll list, or in placing any ballots in the ballot box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy, any poll list, ballot box or ballots lawfully polled, is guilty of a felony. (History: S.L. 1972, Ch. 336)

**18-2310. Forging or counterfeiting returns.** Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or wilfully substitutes forged or counterfeit returns of election in the place of the true returns for a precinct, town, or ward where an election was actually held, is guilty of a felony. (History: S.L. 1972, Ch. 336)

**18-2311. Adding to or subtracting from votes.** Every person who wilfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is guilty of a felony. (History: S.L. 1972, Ch. 336)

**18-2312. Aiding and abetting election offenses.** Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, is punishable by imprisonment in the county jail for the period of six (6) months, or in the state prison not exceeding two (2) years. (History: S.L. 1972, Ch. 336)

**18-2313. Riotous conduct and interference with election.** Any person who wilfully disturbs, or is guilty of any riotous conduct at or near, any election place or voting precinct, with intent to disturb the same, or interferes with the access of the electors to the polling place, or in any manner, with the free exercise of the election franchise of the voters, or any voter there assembled, or disturbs or interferes with the canvassing of the votes, or with the making of the returns, is guilty of a misdemeanor. (History: S.L. 1972, Ch. 336)

**18-2314. Betting on elections.** Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor. (S.L. 1972, Ch. 336)

**18-2315. Election offenses not otherwise provided for.** Every person who wilfully violates any of the provisions of the laws of this state relating to elections is, unless a different punishment for such violation is prescribed by law, punishable by fine not exceeding \$1,000, or by imprisonment in the state prison not exceeding five (5) years, or by both. (History: S.L. 1972, Ch. 336)

**18-2316. Tampering with certificates of nomination or ballots.** No person shall falsely make, or make oath to, or fraudulently deface, or fraudulently destroy, any certificate of nomination, or any part thereof, or file, or receive for filing, any certificate of nomination, or letter of withdrawal, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof, or wilfully delay the delivery of any ballots, or forge or falsely make the official endorsement on the ballot, or wilfully destroy any ballot. Every person violating any of the provisions of this section shall be deemed guilty of a felony, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment in

the penitentiary for a period of not less than one (1) year nor more than five (5) years. (History: S.L. 1972, Ch. 336)

**18-2317. Destroying or defacing supplies.** No person shall, during the election, remove or destroy any of the supplies or conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to, or on the day of election, wilfully deface or destroy any list of candidates posted in accordance with the provisions of title 34 concerning elections. No person shall, during an election, tear down or deface the cards printed for the instruction of voters. Every person wilfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding \$100.00. (History: S.L. 1972, Ch. 336)

**18-2318. Electioneering at Polls.** (1) On the day of any primary, general or special election, no person may, within a polling place, or any building in which an election is being held, or within one hundred (100) feet thereof:

- (a) Do any electioneering;
- (b) Circulate cards or handbills of any kind;
- (c) Solicit signatures to any kind of petition; or
- (d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

(2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place.

(3) Any election officer, sheriff, constable or other peace officer is hereby authorized, and it is hereby made the duty of such officer, to arrest any person violating the provisions of subsections (1) and (2) of this section, and such offender shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor exceeding one hundred dollars (\$100). (History: S.L. 1986, Ch. 97; S.L. 1997, Ch. 360; S.L. 2007, Ch. 202)

**18-2319. Attempt to influence votes.** No person shall attempt to influence the vote of any elector by means of a promise or a favor, or by means of violence or threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of a debt, or discharging from employment, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him, or by any other means. (History: S.L. 1972, Ch. 336)

**18-2320. Bribery of electors.** No person shall in any way offer a bribe to an elector to influence his vote. (History: S.L. 1972, Ch. 336)

**18-2321. Fraudulent permission of registration.** Any registry agent, or other person, who in any manner shall wilfully or corruptly permit any person not entitled to registration or to a certificate of registration, to be registered or have a certificate of registration, or who delays or fails to deliver the certified copies of the official register and the check list to the judges of election as required by law, or who permits any person

## ELECTION LAWS OF THE STATE OF IDAHO

to register after the date on which the registration books close, or who shall otherwise wilfully or corruptly violate any of the provisions of the law governing elections, the penalty for which is not herein specially prescribed, shall be punished for each and every offense by imprisonment in the penitentiary for a term of not less than one (1) year nor more than five (5) years, or by a fine of not less than \$100 nor more than \$2,000, or by both such fine and imprisonment in the discretion of the court. (History: S.L. 1972, Ch. 336)

**18-2322. Illegal registration by voter.** Any person who shall wilfully cause, or endeavor to cause, his name to be registered in any other election district than that in which he resides, or will reside prior to the day of the next ensuing election, except as herein otherwise provided, and any person who shall cause, or endeavor to cause, his name to be registered, knowing that he is not a qualified elector, and will not be a qualified elector on or before the day of the next ensuing election, in the election district in which he causes or endeavors to cause such registry to be made, and any person who shall induce, aid or abet any one in the commission of either of the acts in this section enumerated and described, shall be fined not less than fifty dollars (\$50.00) nor more than \$500.00, or be confined in the county jail for not less than one (1) month nor more than six (6) months, or both. (History: S.L. 1972, Ch. 336)

**18-2323. Placing placards in booths.** Any person or officer of election who shall put, or permit to be put, into a voting booth, any placard, notice or device, except the sample ballots and cards of instruction as by law provided, intended or likely to call the attention of the voter to any candidate, or to urge the voter to vote for any particular candidate, or shall put, or allow anything to be put, into such booths for the use or comfort of the voter whereby the claims of any candidate are urged upon the voter, either directly or indirectly, shall be imprisoned in the county jail not to exceed three (3) months, or fined not to exceed \$500.00, or both. (History: S.L. 1972, Ch. 336)



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