

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 124

BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND PROVIDING FOR THE ADDITION OF A NEW
JOINT RULE 22 OF THE JOINT RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF IDAHO.

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

WHEREAS, the Senate and the House of Representatives deem it necessary and desirable to add a new Joint Rule 22 to the Joint Rules of the Senate and the House of Representatives.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Sixty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Joint Rules of the Senate and the House of Representatives shall be amended by the addition thereto of a new Joint Rule 22 to read as follows:

RULE 22

Contest of Election for Executive Offices -- Procedures. This Rule governs procedures leading up to and including a hearing on the contest of election for executive offices. It should be read in conjunction with Chapter 21, Title 34, Idaho Code. For purposes of this Rule, the term "Party" means either the CONTESTEE or the CONTESTOR; the term "Parties" means both.

(1) Any proof of the CONTESTEE's or CONTESTOR's legal arguments, including depositions, affidavits, production of papers, and examination of poll books and ballots (herein "Record") that either CONTESTEE or CONTESTOR desires the Senate and the House of Representatives to consider in adjudication of a Contest must be completed on or before December 29. CONTESTEE and CONTESTOR's Record must be delivered to the Office of the Secretary of State no later than the close of business on the next business day. Any Record or evidence from the CONTESTEE or CONTESTOR not delivered to the Office of the Secretary of State by that day and time will not be considered by the Senate and the House of Representatives.

(2) The Parties must file a Memorandum that outlines their claims, defenses, legal authority, legislative precedent, proposed form of relief, and a description of witness fees and discovery costs that are incurred. The Memorandum must be filed with the Office of the Secretary of State no later than the close of business four (4) business days following delivery of the Record to the Office of the Secretary of State as provided in paragraph (1). However, CONTESTEE is not required to file a responsive pleading to the Contest.

(3) Any Party may file a Responsive Memorandum. If a Party chooses to file a Responsive Memorandum, it must be filed with the Office of the Secretary of State no later than the close of business on the first day of the next Regular Session.

1 (4) If an unresolved discovery or Record dispute exists and continues
2 between the CONTESTEE and the CONTESTOR, and on motion duly made, the
3 presiding officer or his designee may rule on the dispute. Neither the
4 CONTESTEE nor the CONTESTOR will be granted any additional time beyond
5 December 29 to develop or deliver his Record.

6 (5) Committee hearing procedures. If the Legislature refers the Con-
7 test of Election to a Committee, the Committee Chairmen will notify the
8 Parties of the Committee hearing procedures. The following procedures,
9 subject to the discretion of the Committee Chairmen, will govern the
10 hearing:

11 (a) No additional testimony or Record may be presented, taken, or
12 allowed by the Parties beyond the Record delivered to the Office of
13 the Secretary of State as provided in paragraph (1) of this Rule.

14 (b) Neither CONTESTEE nor CONTESTOR may examine or cross-examine
15 any witness that testifies before the Committee. All examination
16 will be performed by Committee members.

17 (c) Pursuant to Section 34-2104, Idaho Code, only the named points
18 in the Notice of Contest of Elections may be argued.

19 (d) The Committee may send for and receive persons, papers, and
20 records, whether written or oral, including from the Office of the
21 Attorney General, other State Elected Officers, State officials,
22 County Elected Officers, County officials, or other witnesses
23 that the Committee determines will reasonably assist the Commit-
24 tee in the performance of its constitutional duty as a "judge of
25 the election, qualifications and returns of its own members," Sec-
26 tion 9, Article III, Idaho Constitution.

27 (e) In all other respects, the Committee will be governed by the
28 rules of the legislature.

29 (6) The Committee may adopt any of the following as part of the hearing
30 procedures:

31 (a) Permit the Parties to have counsel present at Committee meet-
32 ing(s); and

33 (b) Establish a time limit for the CONTESTEE and CONTESTOR to ar-
34 gue their positions to the Committee.

35 (7) Neither CONTESTEE nor CONTESTOR, nor their counsel, may partici-
36 pate in ex parte communication with any member of the Idaho Legislature
37 regarding the merits of the Contest of Election prior to final determi-
38 nation.

39 (8) Service of all Record, Memorandum, Responsive Memorandum, motions,
40 or objections must be made on the other Party as provided in Idaho Rules
41 of Civil Procedure 5(b), excepting subpart 5(b)(2)(D). The Parties must
42 also provide a proof of service as provided by Idaho Rules of Civil Pro-
43 cedure 5(e). The Parties must work in good faith to ensure reasonable
44 and timely service, considering the limited time periods.

45 (9) Nothing in this rule limits or restricts the Legislature in the per-
46 formance of its duties as the judge of the election.