LEGISLATURE OF THE STATE OF IDAHO
Sixty-sixth Legislature Second Regular Session - 2022

IN THE SENATE

SENATE BILL NO. 1274

BY STATE AFFAIRS COMMITTEE

AN ACT
RELATING TO ELECTIONS; AMENDING SECTION 34-1201, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE SEALING AND STORING OF BALLOTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 12, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-1203A, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING POSTELECTION AUDITS OF SELECTED BALLOTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-1201, Idaho Code, be, and the same is hereby amended to read as follows:

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 may 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.

(3) The county clerk may designate paper ballots be returned to a central count location for counting by special counting boards. If the paper ballots are to be counted at a central count location, a procedure may be adopted to deliver the voted ballots to the county clerk prior to the closing of the polls. The results of this early count shall not be released to the public until after 8:00 p.m. of election day.

(4) After being counted, all ballots shall be sealed and stored until such time as the recount period has passed or a recount has been completed. Ballots may be unsealed and resealed as part of a postelection audit conducted pursuant to section 34-1203A, Idaho Code.

SECTION 2. That Chapter 12, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-1203A, Idaho Code, and to read as follows:

34-1203A. POSTELECTION AUDIT OF SELECTED BALLOTS.

(1)(a) After the completion of all county canvasses for any primary or general election, including any presidential primary election, the secretary of state shall identify and order a postelection audit of certain paper ballots cast in any election, shall immediately post to the
website of the office of the secretary of state a list of the elections, counties, and precincts selected for audit, and shall immediately notify each affected county clerk and county sheriff of the same. Upon receiving such notification, the county sheriff shall immediately impound and take into custody the affected ballots pursuant to the procedures in chapter 23, title 34, Idaho Code. Upon completion of the postelection audit, the ballots shall be resealed and returned to the custody of the county clerk, or the county sheriff in the event that the ballots are subject to a recount pursuant to chapter 23, title 34, Idaho Code.

(b) A postelection audit authorized pursuant to paragraph (a) of this subsection may be ordered for:

(i) Any or all federal elections held in Idaho;
(ii) The election for governor;
(iii) The statewide office election having the narrowest percentage margin of votes;
(iv) The statewide ballot question election having the narrowest percentage margin of votes; and
(v) One (1) legislative office election within the county.

(c) The precincts selected for audit pursuant to paragraph (a) of this subsection shall:

(i) Be selected by lot by the secretary of state without the use of a computer at an open public meeting governed by the provisions of chapter 2, title 74, Idaho Code; and
(ii) Not exceed five percent (5%) of the precincts in the county or one (1) precinct, whichever is greater. Provided, however, that multiple precincts may be selected in any county if the number of ballots from the precincts so selected is less than two thousand one hundred (2,100).

(d) The secretary of state, in lieu of auditing the early or absentee ballots from any precincts selected for postelection audit, may select days, batches, legislative districts, or tabulation machines of early or absentee ballots for audit until the number of ballots selected equals or exceeds the number of early or absentee ballots that were cast from the precincts selected for postelection audit. Such days, batches, legislative districts, or tabulation machines shall be selected under the same requirements by which precincts were selected. The provisions of this paragraph apply only to a county that:

(i) Does not organize the storage of its early or absentee ballots by precinct;
(ii) Organizes the storage of such ballots by day, batch, legislative district, or tabulation machine; and
(iii) Publicly reports the election results for early or absentee ballots by day, batch, legislative district, or tabulation machine on the county's website prior to the secretary of state's selection of precincts to be audited.

(2) The secretary of state shall conduct, and the county clerks shall facilitate, any postelection audit ordered pursuant to subsection (1) of this section. Such an audit shall be open to attendance by news media personnel. By directive issued at least sixty (60) days prior to the election, the
secretary of state shall determine the procedures by which the postelection audit is to be conducted. Such procedures shall be developed in consultation with county clerks and shall include provisions allowing each interested candidate and political party, and each political committee that publicly reported expending money on a ballot question for which the results will be audited, to appoint a designated observer. Within the time specified in the directive, the secretary of state shall report the results of any postelection audits on the website of the office of the secretary of state and to the county clerk of each county in which paper ballots were audited.

(3) The secretary of state may order additional postelection audits, without regard to the election or precinct limitations provided in subsection (1) of this section, if he determines that such action is warranted by the findings of the audits ordered pursuant to subsection (1) of this section. The secretary of state shall limit such orders for additional postelection audits to the types of problems identified by the audits performed pursuant to subsection (1) of this section.

(4) The office of the secretary of state shall pay for the cost of any postelection audits conducted pursuant to this section, including reimbursing county clerks for any costs associated with facilitating such audits.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.