LEGISLATURE OF THE STATE OF IDAHO
Sixty-seventh Legislature  First Regular Session - 2023

IN THE HOUSE OF REPRESENTATIVES
HOUSE BILL NO. 138

BY STATE AFFAIRS COMMITTEE

AN ACT
RELATING TO PRESIDENTIAL PRIMARY ELECTIONS; AMENDING SECTION 34-102, IDAHO
CODE, TO REMOVE PROVISIONS REGARDING PRESIDENTIAL PRIMARIES; AMENDING
SECTION 34-106, IDAHO CODE, TO REMOVE A PROVISION REGARDING PRESI-
DENTIAL PRIMARIES, TO PROVIDE A CORRECT CODE REFERENCE, AND TO MAKE
TECHNICAL CORRECTIONS; AMENDING SECTION 34-411A, IDAHO CODE, TO RE-
MOVE PROVISIONS REGARDING PRESIDENTIAL PRIMARIES AND TO MAKE TECHNICAL
CORRECTIONS; AMENDING SECTION 34-601, IDAHO CODE, TO REMOVE A PROVI-
SION REGARDING PRESIDENTIAL PRIMARIES; AMENDING SECTION 34-713, IDAHO
CODE, TO REMOVE PROVISIONS REGARDING PRESIDENTIAL PRIMARIES AND TO MAKE
TECHNICAL CORRECTIONS; REPEALING SECTION 34-731, IDAHO CODE, RELATING
TO THE PRESIDENTIAL PRIMARY; REPEALING SECTION 34-732, IDAHO CODE, RE-
LATING TO CANDIDATES; REPEALING SECTION 34-733, IDAHO CODE, RELATING
TO REMOVAL FROM BALLOT; REPEALING SECTION 34-734, IDAHO CODE, RELATING
TO VOTING; REPEALING SECTION 34-735, IDAHO CODE, RELATING TO PRESIDENT-
IAL PRIMARY RESULTS; REPEALING SECTION 34-736, IDAHO CODE, RELATING TO
DELEGATES TO THE NATIONAL CONVENTION; REPEALING SECTION 34-737, IDAHO
CODE, RELATING TO CONDUCT OF ELECTION; REPEALING SECTION 34-738, IDAHO
CODE, RELATING TO COSTS OF A PRESIDENTIAL PRIMARY; AMENDING SECTION
34-904A, IDAHO CODE, TO REMOVE PROVISIONS REGARDING PRESIDENTIAL PRI-
MARY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-1203A,
IDAHO CODE, TO REMOVE A PROVISION REGARDING PRESIDENTIAL PRIMARIES;
AMENDING SECTION 34-1205, IDAHO CODE, TO REMOVE A PROVISION REGARDING
A PRESIDENTIAL PRIMARY; AND DECLARING AN EMERGENCY AND PROVIDING AN
EFFECTIVE DATE.

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

SECTION 1. That Section 34-102, Idaho Code, be, and the same is hereby
amended to read as follows:

34-102. "PRIMARY ELECTION" DEFINED -- PURPOSES. (1) "Primary elec-
tion" 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, with the exception of presidential primaries,
shall be held on the third Tuesday of May in each even-numbered year.

(2) "Presidential primary" means an election held for the purpose of
allowing voters to express their choice of candidate for nomination by a po-
litical party for president of the United States. A presidential primary
shall be held on the second Tuesday in March in each presidential election
year.

SECTION 2. That Section 34-106, Idaho Code, be, and the same is hereby
amended to read as follows:
34-106. LIMITATION UPON ELECTIONS. On and after January 1, 2011, notwithstanding any other provisions of the law to the contrary, there shall be no more than two (2) elections conducted in any county in any calendar year, except as provided in this section or section 34-219, Idaho Code, and except that elections to fill vacancies in the United States house of representatives shall be held as provided in the governor's proclamation. 

(a) The dates on which elections may be conducted are:
(b) The Tuesday following the first Monday in November of each year.
(c) In addition to the elections specified in paragraphs (a) and (b) of this subsection and subsection (7) of this section, 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 when 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.
(d) In addition to the elections specified elsewhere in this section, a presidential primary shall be held on the second Tuesday in March in each presidential election year. Presidential primaries shall be held separately from other primary elections, which shall be held on the third Tuesday in May even in presidential election years.
(2) Candidates for office elected in May 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, 2011, 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 the election date for that political subdivision the date authorized in subsection (1) of this section which that 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 or interpretations for the conduct of election authorized under the provisions of this section.
(6) Water districts governed by chapter 6, title 42, Idaho Code, are exempt from the provisions of this section.
(7) Community colleges governed by chapter 21, title 33, Idaho Code, and school districts are subject to the limitations specified in subsection (1) of this section, except that school districts may also hold an election on the second Tuesday in March of each year and on the last Tuesday in August of each year on bonded indebtedness and property tax levy questions.
(8) A city initiative or referendum election shall be held on the Tuesday following the first Monday in November of odd-numbered years. A county initiative or referendum election or a bond, levy and any other ballot question elections conducted by any political subdivision shall be held on the nearest date authorized in subsection (1) of this section which that falls
more than sixty (60) days after the clerk of the political subdivision orders that such election shall be held in May or November of even-numbered years or more than fifty (50) days after the order for all other elections, unless otherwise provided by law. Ballot language for any question to be placed on the ballot shall be submitted to the county clerk at least sixty (60) days be- fore an election held in May or November of even-numbered years and at least fifty (50) days before all other elections.

(9) Recall elections may be held on any of the four (4) dates authorized in subsections (1) and (7) of this section that fall more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held.

(10) Irrigation districts governed by title 43, Idaho Code, are subject to the limitations specified in subsection (1) of this section, except that irrigation districts may also hold an election on the first Tuesday in February of each year and on the first Tuesday in August of each year on questions required to be voted upon by title 43, Idaho Code.

SECTION 3. That Section 34-411A, Idaho Code, be, and the same is hereby amended to read as follows:

34-411A. PRIMARY ELECTIONS -- CHANGING PARTY AFFILIATION -- UNAFFILIATED ELECTORS. (1) For a primary election, including a presidential pri-
mary election, an elector may change such elector's political party affili-
or become "unaffiliated" by filing a signed form with the county clerk no later than the last day a candidate may file for partisan political office prior to such primary election, as provided for in section 34-704 or 34-732, Idaho Code. An "unaffiliated" elector may affiliate with the party of the elector's choice by filing a signed form up to and including election day. The application form described in section 34-1002, Idaho Code, shall also be used for this purpose.

(2) For a primary election, an "unaffiliated" elector may select a polit-
ical party affiliation only prior to voting in the primary election. An elector may make such selection on or before election day, by declaring such political party affiliation to the poll worker or other appropriate election personnel. The poll worker or other appropriate election personnel shall then record in the poll book the elector's choice. After the primary election, the county clerk shall record the party affiliation so recorded in the poll book as part of such elector's record within the voter registration sys-

SECTION 4. That Section 34-601, Idaho Code, be, and the same is hereby amended to read as follows:

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 third Tuesday in May, 2012, 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, 2012, 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 on the second Tuesday in March
  in each presidential election year.

SECTION 5. That Section 34-713, Idaho Code, be, and the same is hereby
amended to read as follows:

34-713. PREPARATION OF PRIMARY BALLOTS. (1) 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 primary ballots, which shall be paid for
as provided in section 34-738, Idaho Code.
(2) 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 or presidential primary ballot. The names shall be
listed alphabetically under each particular office title.

SECTION 6. That Section 34-731, Idaho Code, be, and the same is hereby
repealed.

SECTION 7. That Section 34-732, Idaho Code, be, and the same is hereby
repealed.

SECTION 8. That Section 34-733, Idaho Code, be, and the same is hereby
repealed.

SECTION 9. That Section 34-734, Idaho Code, be, and the same is hereby
repealed.

SECTION 10. That Section 34-735, Idaho Code, be, and the same is hereby
repealed.

SECTION 11. That Section 34-736, Idaho Code, be, and the same is hereby
repealed.

SECTION 12. That Section 34-737, Idaho Code, be, and the same is hereby
repealed.

SECTION 13. That Section 34-738, Idaho Code, be, and the same is hereby
repealed.

SECTION 14. That Section 34-904A, Idaho Code, be, and the same is hereby
amended to read as follows:

34-904A. ELIGIBILITY TO VOTE IN PRIMARY ELECTIONS. (1) Except as pro-
vided in subsection (2) of this section, an elector who has designated a
party affiliation shall be allowed to vote only in the primary or presiden-
tial primary election of the political party for which such an elector is so
registered.
(2) A political party qualified to participate in elections pursuant to section 34-501, Idaho Code, may, no later than the last Tuesday in the November prior to a primary or presidential election, notify the secretary of state in writing that the political party elects to allow, in addition to those electors who have registered with that political party, any of the following to vote in such party's primary or presidential primary election:

(a) Electors designated as "unaffiliated";

(b) Electors registered with a different political party qualified to participate in elections pursuant to section 34-501, Idaho Code. In the event a state chairman of a political party elects to allow electors to vote in that party's primary or presidential primary election pursuant to this paragraph (b), the state chairman shall identify which political parties' registrants are allowed to vote in such primary or presidential primary election.

(3) In the event that more than one (1) political party allows "unaffiliated" electors to vote in their party's primary or presidential primary election, an "unaffiliated" elector shall designate which political party's primary or presidential primary election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(4) In the event no more than one (1) political party allows "unaffiliated" electors to vote in their party's primary or presidential primary election, an "unaffiliated" elector may designate that political party's primary or presidential primary election as the election the elector chooses to vote in by declaring such designation to the poll worker or other appropriate election personnel, who shall then record in the poll book the elector's choice. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.

(5) An "unaffiliated" elector having declared such designation as provided for in subsection (3) or (4) of this section shall not be permitted to vote in the primary or presidential primary election of any other party held on that primary or presidential primary election date.

(6) If an "unaffiliated" elector does not declare a choice of political party's primary or presidential primary election ballot, the elector shall not be permitted to vote in any political party's primary or presidential primary election but shall receive a nonpartisan ballot when such a ballot is available.

(7) In the event that one (1) or more political parties allow electors affiliated with a different political party to vote in their primary or presidential primary election pursuant to this section, an elector affiliated with a different political party shall declare to the poll worker or other appropriate election personnel in which primary or presidential primary election ballot such elector wishes to vote. The county clerk shall record such choice as part of the elector's voting history within the voter registration system as provided for in section 34-437A, Idaho Code.
(8) Provided that all other provisions of this act are complied with, nothing in this section shall be construed to prohibit an elector designated as "unaffiliated" from voting in the primary or presidential primary election of a different party held in subsequent years. Notwithstanding any other provision of this act, if a political party allows "unaffiliated" electors to vote in that political party's primary or presidential primary election pursuant to this section, a vote by an "unaffiliated" elector in such primary or presidential primary election shall not change or affect the elector's "unaffiliated" designation.

SECTION 15. That Section 34-1203A, Idaho Code, be, and the same is hereby amended 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 se-
lected 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 16. That Section 34-1205, Idaho Code, be, and the same is hereby amended to read as follows:

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 a primary or presidential primary election and within ten (10) days after a general election for the purpose of canvassing the election returns of all precincts within the county.

SECTION 17. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2023.