

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 638

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ELECTIONS; AMENDING SECTION 34-102, IDAHO CODE, TO REVISE A DEF-
2 INITIATION, TO DEFINE A TERM, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
3 SECTION 34-106, IDAHO CODE, TO PROVIDE A PRESIDENTIAL PRIMARY DATE;
4 AMENDING SECTION 34-411A, IDAHO CODE, TO REVISE PROVISIONS REGARDING
5 CHANGING PARTY AFFILIATION FOR PRIMARY ELECTIONS; AMENDING SECTION
6 34-601, IDAHO CODE, TO PROVIDE A PRESIDENTIAL PRIMARY DATE; AMENDING
7 SECTION 34-713, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE PREPA-
8 RATION OF PRESIDENTIAL PRIMARY BALLOTS; AMENDING CHAPTER 7, TITLE 34,
9 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-731, IDAHO CODE, TO ES-
10 TABLISH PROVISIONS REGARDING PRESIDENTIAL PRIMARIES; AMENDING CHAPTER
11 7, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-732, IDAHO
12 CODE, TO PROVIDE REQUIREMENTS FOR PRESIDENTIAL PRIMARY CANDIDATES;
13 AMENDING CHAPTER 7, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
14 TION 34-733, IDAHO CODE, TO PROVIDE FOR THE REMOVAL OF CANDIDATES FROM
15 PRESIDENTIAL PRIMARY BALLOTS; AMENDING CHAPTER 7, TITLE 34, IDAHO CODE,
16 BY THE ADDITION OF A NEW SECTION 34-734, IDAHO CODE, TO PROVIDE FOR
17 VOTING IN A PRESIDENTIAL PRIMARY; AMENDING CHAPTER 7, TITLE 34, IDAHO
18 CODE, BY THE ADDITION OF A NEW SECTION 34-735, IDAHO CODE, TO PROVIDE
19 FOR PRESIDENTIAL PRIMARY RESULTS; AMENDING CHAPTER 7, TITLE 34, IDAHO
20 CODE, BY THE ADDITION OF A NEW SECTION 34-736, IDAHO CODE, TO PROVIDE FOR
21 DELEGATES TO A NATIONAL CONVENTION; AMENDING CHAPTER 7, TITLE 34, IDAHO
22 CODE, BY THE ADDITION OF A NEW SECTION 34-737, IDAHO CODE, TO PROVIDE
23 FOR THE CONDUCT OF A PRESIDENTIAL PRIMARY ELECTION; AMENDING CHAPTER
24 7, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-738, IDAHO
25 CODE, TO PROVIDE FOR THE COSTS OF A PRESIDENTIAL PRIMARY; AMENDING SEC-
26 TION 34-904A, IDAHO CODE, TO REVISE PROVISIONS REGARDING ELIGIBILITY
27 TO VOTE IN PRIMARY ELECTIONS; AMENDING SECTION 34-1203A, IDAHO CODE, TO
28 REVISE PROVISIONS REGARDING POSTELECTION AUDITS OF SELECTED BALLOTS;
29 AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
30

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

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

34 34-102. "PRIMARY ELECTION" DEFINED -- PURPOSES. (1) "Primary elec-
35 tion" means an election held for the purpose of nominating persons as
36 candidates of political parties for election to offices, and for the purpose
37 of electing persons as members of the controlling committees of political
38 parties. Primary elections, with the exception of presidential primaries,
39 shall be held on the third Tuesday of May in each even-numbered year.

40 (2) For the purpose of this title, "presidential primary" means an
41 election held for the purpose of allowing voters to express their choice of
42 candidate for nomination by a political party for president of the United

1 States. A presidential primary shall be held on the first Tuesday in March in
 2 each presidential election year.

3 SECTION 2. That Section 34-106, Idaho Code, be, and the same is hereby
 4 amended to read as follows:

5 34-106. LIMITATION ON ELECTIONS. On and after January 1, 2011,
 6 notwithstanding any other provisions of the law to the contrary, there shall
 7 be no more than two (2) elections conducted in any county in any calendar
 8 year, except as provided in this section or section 34-220, Idaho Code, and
 9 except that elections to fill vacancies in the United States house of repre-
 10 sentatives shall be held as provided in the governor's proclamation.

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

12 (a) The third Tuesday in May of each year; and

13 (b) The Tuesday following the first Monday in November of each year.

14 (c) In addition to the elections specified in paragraphs (a) and (b) of
 15 this subsection and subsection (7) of this section, an emergency elec-
 16 tion may be called upon motion of the governing board of a political sub-
 17 division. An emergency exists when there is a great public calamity,
 18 such as an extraordinary fire, flood, storm, epidemic, or other disas-
 19 ter, or when it is necessary to do emergency work to prepare for national
 20 or local defense or to safeguard life, health or property.

21 (d) In addition to the elections specified elsewhere in this section, a
 22 presidential primary shall be held on the first Tuesday in March in each
 23 presidential election year.

24 (2) Candidates for office elected in May shall take office on the date
 25 specified in the certificate of election but not more than sixty (60) days
 26 following the election.

27 (3) Candidates for office elected in November shall take office as pro-
 28 vided in the constitution or on January 1 next succeeding the November elec-
 29 tion.

30 (4) The governing board of each political subdivision subject to the
 31 provisions of this section that, prior to January 1, 2011, conducted an elec-
 32 tion for members of that governing board on a date other than a date permit-
 33 ted in subsection (1) of this section shall establish as the election date
 34 for that political subdivision the date authorized in subsection (1) of this
 35 section that falls nearest the date on which elections were previously con-
 36 ducted, unless another date is established by law.

37 (5) The secretary of state is authorized to provide such assistance as
 38 necessary and to prescribe any needed rules or interpretations for the con-
 39 duct of an election authorized under the provisions of this section.

40 (6) Water districts governed by chapter 6, title 42, Idaho Code, are ex-
 41 empt from the provisions of this section.

42 (7) Community colleges governed by chapter 21, title 33, Idaho Code,
 43 and school districts are subject to the limitations specified in subsection
 44 (1) of this section.

45 (8) A city initiative or referendum election shall be held on the Tues-
 46 day following the first Monday in November of odd-numbered years. A county
 47 initiative or referendum election or a bond, levy or other ballot question
 48 election conducted by any political subdivision shall be held on the nearest
 49 date authorized in subsection (1) of this section as long as the ballot lan-

1 guage for any question to be placed on the ballot is submitted to the county
2 clerk no later than 5:00 p.m. on the tenth Friday before the election.

3 (9) Recall elections may be held on any of the dates authorized in sub-
4 section (1) of this section as long as the recall petition is certified no
5 later than the tenth Friday before the next scheduled election.

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

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

13 34-411A. PRIMARY ELECTIONS -- CHANGING PARTY AFFILIATION -- UNAFFILI-
14 ATED ELECTORS. (1) For a primary election, including a presidential primary
15 election, an elector may change such elector's political party affiliation
16 or become unaffiliated by filing a signed form with the county clerk no later
17 than the last day a candidate may file for partisan political office prior
18 to such primary election, as provided for in section 34-704, Idaho Code, and
19 no later than the last day a candidate may file for the presidential pri-
20 mary prior to such presidential primary election, as provided for in section
21 34-732, Idaho Code. An unaffiliated elector may affiliate with the party
22 of the elector's choice by filing a signed form up to and including election
23 day. The application form described in section 34-1002, Idaho Code, shall
24 also be used for this purpose.

25 (2) For a primary election, an unaffiliated elector may select a po-
26 litical party affiliation only prior to voting in the primary election. An
27 elector may make such selection on or before election day by declaring such
28 political party affiliation to the poll worker or other appropriate election
29 personnel. The poll worker or other appropriate election personnel shall
30 then record in the poll book the elector's choice. After the primary elec-
31 tion, the county clerk shall record the party affiliation so recorded in the
32 poll book as part of such elector's record within the voter registration sys-
33 tem as provided for in section 34-437A, Idaho Code.

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

36 34-601. DATES ON WHICH ELECTIONS SHALL BE HELD. Elections shall be
37 held in this state on the following dates or times:

38 (1) A primary election shall be held on the third Tuesday in May, 2012,
39 and every two (2) years thereafter on the above-mentioned Tuesday.

40 (2) A general election shall be held on the first Tuesday after the
41 first Monday of November, 2012, and every two (2) years thereafter on the
42 above-mentioned Tuesday.

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

45 (4) A presidential primary shall be held on the first Tuesday in March
46 in each presidential election year.

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

3 34-713. PREPARATION OF PRIMARY BALLOTS. (1) Upon receipt of the sample
4 ballot and instructions from the secretary of state, each county clerk shall
5 print and prepare the official primary ballots for the forthcoming election.
6 The printing of the ballots shall be a county expense and paid out of the
7 county treasury, except presidential primary ballots, which shall be paid
8 for as provided in section 34-738, Idaho Code.

9 (2) Each county clerk shall cause to be published on the earliest date
10 possible ~~in May~~ the names of all the political party candidates who shall
11 appear on the primary or presidential primary ballot. The names shall be
12 listed alphabetically under each particular office title.

13 SECTION 6. That Chapter 7, Title 34, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 34-731, Idaho Code, and to read as follows:

16 34-731. PRESIDENTIAL PRIMARY. (1) In years in which a president of the
17 United States is to be nominated and elected, a presidential primary shall be
18 held at which voters may express their choice of candidate for nomination by
19 a political party for president. The presidential primary shall be held on
20 the first Tuesday in March in each presidential election year.

21 (2) Participation in a presidential primary by a political party shall
22 be optional, and nothing in this chapter shall be construed as mandating a
23 party's participation in a presidential primary. Any party that intends to
24 participate in a presidential primary shall notify the secretary of state's
25 office no later than the last Tuesday in November prior to the presidential
26 primary.

27 SECTION 7. That Chapter 7, Title 34, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 34-732, Idaho Code, and to read as follows:

30 34-732. PRESIDENTIAL PRIMARY CANDIDATES. The name of any candidate
31 for a political party nomination for president of the United States shall
32 be printed on the ballots only if the candidate files with the secretary of
33 state a declaration of candidacy accompanied by a fifty-thousand-dollar
34 (\$50,000) filing fee no less than ninety (90) days prior to the presidential
35 primary.

36 SECTION 8. That Chapter 7, Title 34, Idaho Code, be, and the same is
37 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
38 ignated as Section 34-733, Idaho Code, and to read as follows:

39 34-733. PRESIDENTIAL PRIMARY -- REMOVAL FROM BALLOT. In the event the
40 secretary of state is informed of a candidate's death, incapacity, or with-
41 drawal from candidacy, the secretary of state may remove the name of such
42 candidate from the ballot; provided, however, that no candidate's name shall
43 be removed within the forty-five (45) days preceding the presidential pri-
44 mary.

1 SECTION 9. That Chapter 7, Title 34, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 34-734, Idaho Code, and to read as follows:

4 34-734. PRESIDENTIAL PRIMARY -- VOTING. At a presidential primary,
5 qualified electors may vote for one (1) candidate from among the candidates
6 of one (1) political party only in a manner consistent with the provisions of
7 section 34-904A, Idaho Code.

8 SECTION 10. That Chapter 7, Title 34, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 34-735, Idaho Code, and to read as follows:

11 34-735. PRESIDENTIAL PRIMARY -- RESULTS. Upon completion of the state
12 canvass for the presidential primary, the secretary of state shall certify
13 to the state chair of each political party participating in the presidential
14 primary the number of votes received by each candidate of that party. A win-
15 ner shall be declared as prescribed by national and state party rules.

16 SECTION 11. That Chapter 7, Title 34, Idaho Code, be, and the same is
17 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
18 ignated as Section 34-736, Idaho Code, and to read as follows:

19 34-736. DELEGATES TO THE NATIONAL CONVENTION. Upon receiving the re-
20 sults of the presidential primary pursuant to section 34-735, Idaho Code,
21 each party participating in the presidential primary shall select, accord-
22 ing to national and state party rules, as many delegates and alternates to
23 the national party convention as are allotted to it by the national committee
24 of that party.

25 SECTION 12. That Chapter 7, Title 34, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 34-737, Idaho Code, and to read as follows:

28 34-737. PRESIDENTIAL PRIMARY -- CONDUCT OF ELECTION. Insofar as prac-
29 ticable, and where the provisions of this chapter do not specifically indi-
30 cate otherwise, the presidential primary shall be conducted and canvassed in
31 the manner provided by law for the conduct and canvassing of state primary
32 elections.

33 SECTION 13. That Chapter 7, Title 34, Idaho Code, be, and the same is
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
35 ignated as Section 34-738, Idaho Code, and to read as follows:

36 34-738. PRESIDENTIAL PRIMARY COSTS. (1) Whenever a presidential pri-
37 mary is held as provided by this chapter, the state of Idaho shall assume all
38 costs related to the presidential primary, including publication of legal
39 notice and ballot preparation. The county clerk shall determine the costs
40 and file a certified claim, which shall be examined, allowed, and paid in the
41 same manner as other claims against the state.

1 (2) The costs of any other election held simultaneous to the presiden-
2 tial primary shall be covered in the manner elsewhere prescribed by law.

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

5 34-904A. ELIGIBILITY TO VOTE IN PRIMARY ELECTIONS. (1) Except as pro-
6 vided in subsection (2) of this section, an elector who has designated a
7 party affiliation shall be allowed to vote only in the primary or presiden-
8 tial primary election of the political party for which such an elector is so
9 registered.

10 (2) A political party qualified to participate in elections pursuant to
11 section 34-501, Idaho Code, may, no later than the last Tuesday in the Novem-
12 ber prior to a primary or presidential primary election, notify the secre-
13 tary of state in writing that the political party elects to allow, in addi-
14 tion to those electors who have registered with that political party, any of
15 the following to vote in such party's primary or presidential primary elec-
16 tion:

17 (a) Electors designated as unaffiliated;

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

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

34 (4) In the event no more than one (1) political party allows unaffili-
35 ated electors to vote in their party's primary or presidential primary elec-
36 tion, an "unaffiliated" elector may designate that political party's pri-
37 mary or presidential primary election as the election the elector chooses to
38 vote in by declaring such designation to the poll worker or other appropri-
39 ate election personnel, who shall then record in the poll book the elector's
40 choice. The county clerk shall record such choice as part of the elector's
41 voting history within the voter registration system as provided for in sec-
42 tion 34-437A, Idaho Code.

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

47 (6) If an unaffiliated elector does not declare a choice ~~of~~ for a polit-
48 ical party's primary or presidential primary election ballot, the elector
49 shall not be permitted to vote in any political party's primary or presiden-

1 tial primary election but shall receive a nonpartisan ballot when such a bal-
2 lot is available.

3 (7) In the event that one (1) or more political parties allow electors
4 affiliated with a different political party to vote in their primary or pres-
5 idential primary election pursuant to this section, an elector affiliated
6 with a different political party shall declare to the poll worker or other
7 appropriate election personnel ~~in~~ which primary or presidential primary
8 election ballot such elector wishes to vote. The county clerk shall record
9 such choice as part of the elector's voting history within the voter regis-
10 tration system as provided for in section 34-437A, Idaho Code.

11 (8) Provided that all other provisions of this act are complied with,
12 nothing in this section shall be construed to prohibit an elector designated
13 as unaffiliated from voting in the primary or presidential primary election
14 of a different party held in subsequent years. Notwithstanding any other
15 provision of this act, if a political party allows unaffiliated electors to
16 vote in that political party's primary or presidential primary election pur-
17 suant to this section, a vote by an unaffiliated elector in such primary or
18 presidential primary election shall not change or affect the elector's unaf-
19 filiated designation.

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

22 34-1203A. POSTELECTION AUDIT OF SELECTED BALLOTS.

23 (1) (a) After the completion of all county canvasses for any primary
24 or general election, including any presidential primary election, the
25 secretary of state shall identify and order a postelection audit of cer-
26 tain paper ballots cast in any election, shall immediately post to the
27 website of the office of the secretary of state a list of the elections,
28 counties, and precincts selected for audit, and shall immediately no-
29 tify each affected county clerk and county sheriff of the same. Upon
30 receiving such notification, the county sheriff shall immediately
31 impound and take into custody the affected ballots pursuant to the pro-
32 cedures in chapter 23, title 34, Idaho Code. Upon completion of the
33 postelection audit, the ballots shall be resealed and returned to the
34 custody of the county clerk or, in the event that the ballots are subject
35 to a recount pursuant to chapter 23, title 34, Idaho Code, to the county
36 sheriff. The postelection audit shall include, at a minimum, a hand re-
37 count of the ballots subject to the audit and a comparison to the results
38 reported by the county for any precincts, days, batches, legislative
39 districts, and tabulation machines selected for audit.

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

- 42 (i) Any or all federal elections held in Idaho;
- 43 (ii) The election for governor;
- 44 (iii) The statewide office election having the narrowest percent-
45 age margin of votes;
- 46 (iv) The statewide ballot question election having the narrowest
47 percentage margin of votes; and
- 48 (v) One (1) legislative office election within the county.

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

3 (i) Be selected by lot by the secretary of state without the use of
4 a computer at an open public meeting governed by the provisions of
5 chapter 2, title 74, Idaho Code; and

6 (ii) Not exceed five percent (5%) of the precincts in the county or
7 one (1) precinct, whichever is greater. Provided, however, that
8 multiple precincts may be selected in any county if the number of
9 ballots from the precincts so selected is less than two thousand
10 one hundred (2,100).

11 (d) The secretary of state, in lieu of auditing the early or absentee
12 ballots from any precincts selected for postelection audit, may se-
13 lect days, batches, legislative districts, and tabulation machines of
14 early or absentee ballots for audit until the number of ballots selected
15 equals or exceeds the number of early or absentee ballots that were
16 cast from the precincts selected for postelection audit. Such days,
17 batches, legislative districts, and tabulation machines shall be se-
18 lected under the same requirements by which precincts were selected.
19 The provisions of this paragraph apply only to a county that:

20 (i) Does not organize the storage of its early or absentee ballots
21 by precinct;

22 (ii) Organizes the storage of such ballots by day, batch, legisla-
23 tive district, or tabulation machine; and

24 (iii) Publicly reports the election results for early or absen-
25 tee ballots by day, batch, legislative district, or tabulation ma-
26 chine on the county's website prior to the secretary of state's se-
27 lection of precincts to be audited.

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

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

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

1 SECTION 16. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2026.