

TITLE 34
ELECTIONS

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 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.

[34-1201, added 1970, ch. 140, sec. 185, p. 351; am. 2011, ch. 285, sec. 11, p. 783; am. 2020, ch. 78, sec. 1, p. 168; am. 2022, ch. 32, sec. 1, p. 89.]

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.

[34-1202, added 1970, ch. 140, sec. 186, p. 351; am. 1995, ch. 215, sec. 15, p. 753.]

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.

[34-1202A, added 1978, ch. 51, sec. 1, p. 96.]

34-1203. COUNTING OF BALLOTS -- CERTIFICATES OF JUDGES. (1) 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.

(2) Following the counting, the judges must transmit a copy of the results to the county clerk.

(3) (a) For any election in which at least one (1) office election or ballot question in the county occurs in both time zones in Idaho, the county clerk shall release no election results to the public until all voting places in the state have closed on election day.

(b) If no office election or ballot question in the county occurs in both time zones in Idaho, the county clerk may release the election results to the public at any time after all voting places in the county have closed on election day.

(4) 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 system used in this state.

[34-1203, added 1970, ch. 140, sec. 187, p. 351; am. 1981, ch. 109, sec. 1, p. 163; am. 2003, ch. 48, sec. 12, p. 186; am. 2016, ch. 272, sec. 1, p. 749; am. 2022, ch. 195, sec. 1, p. 642.]

34-1203A. POSTELECTION AUDIT OF SELECTED BALLOTS.

(1) (a) After the completion of all county canvasses for any primary or general 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, in the event that the ballots are subject to a recount pursuant to [chapter 23, title 34](#), Idaho Code, to the county sheriff. The postelection audit shall include, at a minimum, a hand recount of the ballots subject to the audit and a comparison to

the results reported by the county for any precincts, days, batches, legislative districts, and tabulation machines selected for audit.

(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, and 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, and 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 subsec-

tion (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 post-election 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.

[34-1203A, added 2022, ch. 32, sec. 2, p. 89; am. 2023, ch. 2, sec. 1, p. 3; am. 2023, ch. 208, sec. 15, p. 578.]

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.

[34-1204, added 1970, ch. 140, sec. 188, p. 351; am. 1972, ch. 193, sec. 1, p. 480.]

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

[34-1205, added 1970, ch. 140, sec. 189, p. 351; am. 1972, ch. 193, sec. 2, p. 480; am. 1975, ch. 174, sec. 15, p. 469; am. 2012, ch. 33, sec. 13, p. 104; am. 2015, ch. 292, sec. 9, p. 1171; am. 2023, ch. 208, sec. 16, p. 580.]

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 or polling location for elections conducted pursuant to [chapter 14, title 34](#), Idaho Code, and the total number of affirmative and negative votes cast for any special question by precinct or polling location for elections conducted pursuant to [chapter 14, title 34](#), Idaho Code. The board shall certify that such statement is true, subscribe their names thereto, and deliver it to the county clerk.

[34-1206, added 1970, ch. 140, sec. 190, p. 351; am. 2012, ch. 211, sec. 7, p. 576.]

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.

[34-1207, added 1970, ch. 140, sec. 191, p. 351.]

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 the primary election to the secretary of state. The form for such certificate shall be prescribed by the secretary of state and be uniform throughout the state.

[34-1208, added 1970, ch. 140, sec. 192, p. 351; am. 1975, ch. 174, sec. 18, p. 469; am. 1977, ch. 17, sec. 1, p. 35; am. 1979, ch. 309, sec. 11, p. 838; am. 1991, ch. 117, sec. 1, p. 246; am. 2012, ch. 33, sec. 14, p. 104.]

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.

[34-1209, added 1970, ch. 140, sec. 193, p. 351.]

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.

[34-1210, added 1970, ch. 140, sec. 194, p. 351.]

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.

[34-1211, added 1970, ch. 140, sec. 195, p. 351; am. 1972, ch. 193, sec. 3, p. 480; am. 1974, ch. 5, sec. 1, p. 23; am. 1994, ch. 181, sec. 2, p. 576.]

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.

[34-1212, added 1970, ch. 140, sec. 196, p. 351.]

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.

[34-1213, added 1970, ch. 140, sec. 197, p. 351.]

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.

[34-1214, added 1970, ch. 140, sec. 198, p. 351.]

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.

[34-1215, added 1970, ch. 140, sec. 200, p. 351.]

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.

[34-1216, added 1970, ch. 140, sec. 201, p. 351.]

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 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.

[34-1217, added 1970, ch. 231, sec. 12, p. 643; am. 1971, ch. 131, sec. 1, p. 513.]

CHAPTER 13

STATE BOARD OF CANVASSERS -- [REPEALED]