

TITLE 34
ELECTIONS

CHAPTER 21
ELECTION CONTESTS ACT

34-2101. SHORT TITLE -- INTENT. (1) This chapter shall be known and may be cited as the "Election Contests Act."

(2) The purpose of this act is to simplify and clarify the laws governing election contests of legislative seats and election contests for all officers of the executive department.

[34-2101, added 2017, ch. 293, sec. 2, p. 767.]

34-2102. DEFINITIONS. For the purposes of this chapter, the following terms have the following meanings:

(1) "Body" means the Idaho senate or the Idaho house of representatives or both.

(2) "Contestee" means the individual against whom the contest of election is filed.

(3) "Contestor" means the individual who files the contest of election.

(4) "Elector" has the same meaning as "qualified elector" provided in section [34-104](#), Idaho Code.

(5) "Eligible for the office" means the qualifications of members provided in section [34-614](#), Idaho Code.

(6) "Individual" means a natural person and not an artificial person such as a corporation, partnership, or other entity created by law.

(7) "Legislature" means the Idaho senate or the Idaho house of representatives or both.

(8) "Office" means any senate member, house of representatives member, executive office holder, or all.

(9) "Parties" means the contestor and the contestee.

(10) "Party" means the contestor or the contestee.

(11) "Presiding officer" means the Idaho senate president pro tempore or the speaker of the Idaho house of representatives. In the event the contestee or the contestor is the presiding officer, then the next ranking member of majority leadership who is able and willing serves as presiding officer. In the event the contestee or the contestor is an office holder in the executive department, then both the Idaho senate president pro tempore and the speaker of the Idaho house of representatives will serve as presiding officers.

[34-2102, added 2017, ch. 293, sec. 2, p. 767.]

34-2103. JURISDICTION -- CONTESTS OVER LEGISLATIVE OFFICES -- CONTESTS OVER EXECUTIVE OFFICES. (1) Contests over legislative offices.

(a) The senate will hear and determine contests of the election of its members.

(b) The house of representatives will hear and determine contests of the election of its members.

(2) Contests over executive offices. The legislature, in joint meeting, will hear and determine cases of contested election for all officers of the executive department. The meeting of the two (2) bodies to decide upon

those elections will be held in the house of representatives, and the speaker of the house of representatives will preside.

[34-2103, added 2017, ch. 293, sec. 2, p. 768.]

34-2104. GROUNDS OF CONTEST. The election of any person to any legislative or state executive office may be contested:

(1) For misconduct, fraud or corruption as provided in section [34-2107](#), Idaho Code, on the part of one (1) or more judges of election in any precinct or township, or on the part of one (1) or more members of any board of canvassers sufficient to change the result;

(2) When, in an election contest regarding a legislative seat, the contestee was not eligible for the office at the time of the election as provided in section [34-614](#), Idaho Code;

(3) When, in an election contest regarding an executive office, the contestee was not eligible for the office at the time of the election as provided in chapter 6 of this title;

(4) When the contestee has been convicted of one (1) or more felonies, unless at the time of the election his civil rights have been restored;

(5) When the contestee has been charged with giving or offering to any elector, clerk, or canvasser of the election, or to any judge as provided in section [34-2107](#), Idaho Code, any bribe or reward in money or property, for the purpose of procuring his election;

(6) When the contestee has been charged with violating one (1) or more of the provisions found in sections [18-2301](#) through [18-2313](#), Idaho Code;

(7) When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;

(8) For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result;

(9) When the contestee holds the office of the state treasurer or the state controller as provided in section 1, article IV, of the constitution of the state of Idaho, and is in default as a collector and custodian of public money or property;

(10) For any other cause or allegation which, if sustained, would show that a person other than the contestee was the person duly elected to the office in question.

[34-2104, added 2017, ch. 293, sec. 2, p. 768.]

34-2105. LEGISLATIVE RULES. In addition to the provisions of this chapter, the legislature may provide:

(1) Senate rules regarding senate election contests.

(2) House of representatives rules regarding house of representatives election contests.

(3) Joint rules regarding executive department election contests.

In the event the provisions of this chapter are inconsistent with legislative rules, the legislative rules control.

[34-2105, added 2017, ch. 293, sec. 2, p. 769.]

34-2106. CONTEST FOR LEGISLATIVE OFFICES -- EXCEPTION REGARDING PRESIDING OFFICERS. Notwithstanding the provisions of sections [34-2101](#) through [34-2119](#), Idaho Code, in the event a presiding officer occupies the legislative seat that is the subject of an election contest, the majority leader or

the next available and willing member of majority leadership of the appropriate body must serve as the presiding officer for purposes of this chapter.

[34-2106, added 2017, ch. 293, sec. 2, p. 769.]

34-2107. MISCONDUCT OF ELECTION JUDGES -- WHEN SUFFICIENT TO SET ASIDE AN ELECTION. Misconduct on the part of the judges of election is sufficient to set aside the election if the misconduct would change the result regarding that office.

[34-2107, added 2017, ch. 293, sec. 2, p. 769.]

34-2108. NOTICE OF CONTEST -- LEGISLATIVE -- EXECUTIVE DEPARTMENT -- GROUNDS -- SERVICE -- ANTICIPATED DISCOVERY. (1) Legislative contest. Within twenty (20) days after the election, whenever any elector of a legislative district chooses to contest the election of any member of the legislature from that district, the elector must give written notice of the contest and leave a copy of the notice of contest with the office of the secretary of state. The elector must make reasonable efforts to provide written notice of the contest to:

(a) The person whose election the elector is contesting by serving the notice at the address of the person reflected on his declaration of candidacy filed with the office of the secretary of state; and

(b) The secretary of the senate, if the election contest concerns an Idaho senate seat, or the chief clerk of the house of representatives, if the election contest concerns an Idaho house of representatives seat, at the statehouse in Boise.

(2) Executive department contest. Within twenty (20) days after the election, whenever any elector of this state chooses to contest the validity of the election of any of the officers of the executive department of the state, the elector must give written notice of the contest and leave a copy of the notice of contest with the office of the secretary of state. The elector must make reasonable efforts to provide written notice of the contest to:

(a) The person whose election the elector is contesting by serving the notice at the address that appears on the person's declaration of candidacy filed with the office of the secretary of state;

(b) The chief clerk of the house of representatives and the secretary of the senate at the statehouse in Boise.

(3) Notification by secretary of state to legislature. On or before the first day of the legislature's organizational session, the secretary of state must provide a copy of the notice of election contest to:

(a) The secretary of the senate, if the election contest concerns an Idaho senate seat;

(b) The chief clerk of the house of representatives, if the election contest concerns an Idaho house of representatives seat;

(c) The secretary of the senate and the chief clerk of the house of representatives, if the election contest concerns an officer of the executive department.

(4) Grounds for contest. For any contest of election provided for in subsection (1) or (2) of this section, the notice of contest of election must include one (1) or more grounds upon which the election will be contested, as provided in section [34-2104](#), Idaho Code.

(5) Anticipated discovery. In the notice of contest, the parties must identify anticipated initial discovery, including witnesses to be deposed

and the anticipated date and location of depositions. Relevant additional discovery will be allowed by the parties.

(6) Notice of contest may not be amended. A notice of contest required by this section may not be amended subsequent to the expiration of the twenty (20) days' notice required in subsections (1) and (2) of this section.

[34-2108, added 2017, ch. 293, sec. 2, p. 769.]

34-2109. SUMMARY DISMISSAL. (1) If the notice of contest fails to recite any grounds required by section [34-2104](#), Idaho Code, or fails to identify anticipated discovery as provided in section [34-2108](#), Idaho Code, or the contestor fails to timely post bond as provided in section [34-2118](#), Idaho Code, or the contestor otherwise fails to comply with the provisions of this chapter in a material way, the notice of contest may be stayed or dismissed as provided in subsections (3) and (4) of this section.

(2) Failure to advance contest. If the contestor fails to advance the contest due to death, incapacity, failure to comply with orders of the presiding officer, relocation out of the contested legislative district, or failure to advance the contest, then the presiding officer may enter a written order staying the proceedings. The provisions of subsections (3) and (4) of this section will then apply.

(3) Stay of proceedings. The presiding officer may enter a written order staying the proceedings if any of the instances provided in subsection (1) or (2) of this section apply. Upon issuance of the order, discovery in the contest must cease. The order must state the basis for the stay.

(4) Ratification or rejection. On or after the second day of the next regular session of the legislature, the body must either accept or reject the presiding officer's stay.

(a) A vote by the body to accept the order constitutes a dismissal of the contest.

(b) A vote by the body to reject the order constitutes a reversal of the order. Following the rejection of the order, the presiding officer or his designee must issue an order to the parties providing a schedule for reasonable discovery and hearing. The order must provide reasonable time for the parties to develop their record, not to exceed twenty (20) days. The order must define how and when the record must be completed and delivered to the office of the secretary of state and when the secretary of state will deliver the contest papers to the appropriate body.

[34-2109, added 2017, ch. 293, sec. 2, p. 770.]

34-2110. EXAMINATION OF WITNESSES -- SUBPOENAS. Unless otherwise provided for in legislative rule, the following provisions apply:

(1) Examination of witnesses. Unless otherwise ordered by the presiding officer or his designee, any party may take the testimony of any person by deposition upon oral examination pursuant to the provisions of the Idaho rules of civil procedure. Depositions must be transcribed in writing. Any other form of deposition must be approved by the presiding officer or his designee. All testimony and discovery must be completed on or before December 29 following the election. The completed record must be delivered to the office of the secretary of state no later than the close of business on the next business day following December 29.

(2) (a) Subpoenas and subpoenas duces tecum. An election contest held pursuant to the provisions of this chapter is not a judicial proceeding. The principles of rule 45 of the Idaho rules of civil procedure, however, must be used as a framework for the form, content, issuance and service of subpoenas. Every subpoena and subpoena duces tecum must reasonably approximate the form found in appendix B of the Idaho rules of civil procedure.

(b) Unless prevented by sickness or unavoidable necessity, any person who has been summoned in the manner provided for in this section and refuses or neglects to attend and testify:

(i) Forfeits the sum of twenty dollars (\$20.00), to be recovered by the party at whose instance the subpoena was issued; and

(ii) Is guilty of a misdemeanor.

(c) Every witness who provides testimony pursuant to a subpoena provided for in this chapter is entitled to receive the witness fees as allowed under the Idaho rules of civil procedure.

[34-2110, added 2017, ch. 293, sec. 2, p. 770.]

34-2111. TESTIMONY -- HOW TAKEN, CERTIFIED AND PRESERVED. The testimony by deposition upon oral examination must be taken and preserved pursuant to the provisions of the Idaho rules of civil procedure. The deposition record must be entitled: "Deposition taken in the matter of the contest of the election of [INSERT NAME OF CONTESTEE HERE] to the office of....," and be directed to the secretary of state, who must preserve the same, until the meeting of the legislature. Any testimony taken pursuant to this section must be filed with the secretary of state. Upon request of a presiding officer, the secretary of state must provide copies of depositions to the requesting presiding officer in a timely manner, prior to the time established in section [34-2114](#), Idaho Code.

[34-2111, added 2017, ch. 293, sec. 2, p. 771.]

34-2112. PRODUCTION OF PAPERS -- REFUSAL OR NEGLECT TO PRODUCE A MISDEMEANOR. The presiding officer has power to require the production of papers. Any person who refuses or neglects to produce and deliver any paper or papers in his possession pertaining to the election or, in case they be official papers, refuses or neglects to produce and deliver certified or sworn copies of the same shall be guilty of a misdemeanor.

[34-2112, added 2017, ch. 293, sec. 2, p. 771.]

34-2113. EXAMINATION OF POLL BOOKS AND BALLOTS. (1) Except as provided in subsection (2) of this section, if, at the time of taking depositions to be used in a contested election, the notice of contest alleges that it is necessary for the determination of the contest that the ballots or the poll books of any election district or districts should be inspected, then, on the request of either party to the contest, the presiding officer may issue an order requiring the county auditor, or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons issuing the order. The officer or officers must transmit the ballots or poll books to the secretary of state, who must preserve the same unopened until the meeting of the legislature.

(2) Any order issued pursuant to subsection (1) of this section must not be executed until after the time has lapsed for the filing of:

- (a) An election contest provided for in chapter 20 of this title; or
- (b) A recount filed as provided for in chapter 23 of this title.

(c) (i) If more than one (1) election contest is filed pursuant to chapter 20 or 21 of this title that implicate the same ballots or poll books, or part of the same ballots or poll books, the office of the secretary of state and the appropriate county auditor, or other person in whose custody or possession the ballots or poll books may be, must agree to a process for the examination of ballots or poll books that reasonably accommodates each contest filed.

(ii) If one (1) or more election contests are filed pursuant to chapter 20 or 21 of this title and one (1) or more recounts of ballots are filed pursuant to chapter 23 of this title, and if the election contests and the recounts of ballots implicate the same ballots or poll books, or part of the same ballots or poll books, the office of the secretary of state, the office of the attorney general and the appropriate county auditor or other person in whose custody or possession the ballots or poll books may be must agree to a process for the examination of ballots or poll books that reasonably accommodates each contest filed and each recount of ballots filed.

[34-2113, added 2017, ch. 293, sec. 2, p. 771.]

34-2114. CONTEST PAPERS DELIVERED TO PRESIDING OFFICERS. (1) Senate election contests. On the second day of the next regular session of the legislature, the secretary of state must deliver to the presiding officer of the senate all papers regarding a contested election of any member of the senate.

(2) House of representatives election contests. On the second day of the next regular session of the legislature, the secretary of state must deliver to the presiding officer of the house of representatives all papers regarding a contested election of any member of the house of representatives.

(3) Executive department election contests. On the second day of the next regular session of the legislature, the secretary of state must deliver to the speaker of the house of representatives all papers regarding a contest of elections of executive officers. The senate president pro tempore, or his designee, must attend the house of representatives during its receipt of the contest papers.

[34-2114, added 2017, ch. 293, sec. 2, p. 772.]

34-2115. NOTICE OF RECEIVING PAPERS. (1) Senate election contest. On the day of the receipt by the presiding officer of the senate, or his designee, of papers relating to contested elections, the presiding officer, in the appropriate order of business, must give notice to the senate of receipt of the papers.

(2) House of representatives election contest. On the day of the receipt by the presiding officer of the house of representatives, or his designee, of papers relating to contested elections, the presiding officer, in the appropriate order of business, must give notice to the house of representatives of receipt of the papers.

(3) State Executive Department Election Contest. Where the papers relate to the contest of a state executive officer, the house of representatives must notify the senate, and the day must be fixed by both houses, by concurrent resolution, for uniting the two (2) bodies to decide upon the same, in which decision the yeas and nays must be taken and entered upon the journal. A joint committee may be appointed by the presiding officers, or designees, of the two (2) bodies to produce a committee report on the election contest.

[34-2115, added 2017, ch. 293, sec. 2, p. 772.]

34-2116. OPENING AND CUSTODY OF PAPERS -- APPOINTMENT OF COMMITTEE. (1) Unless otherwise provided by legislative rule, the papers relating to any contest of election must be opened only in the presence of the body as directed by the presiding officer. Except as provided in subsection (2) of this section or unless otherwise provided for by legislative rule, the papers must remain in the custody of the presiding officer or his designee until the election contest is decided. Upon a final decision by the body, the provisions of section [34-2117](#), Idaho Code, governing preservation of evidence will apply.

(2) Appointment of committee. The presiding officer may appoint a standing or special committee to hear the contest of election.

(a) The chairman of the committee will act as the temporary custodian of the papers. The presiding officer, or his designee, has discretion to deliver to the committee chairman all papers delivered to the presiding officer by the secretary of state or a portion of those papers. The committee chairman, or his designee, is authorized to efficiently manage or organize the papers.

(b) Upon conclusion of hearing the contest, the committee will report to the body its recommendation on the contest. The body must vote on the committee report. Upon the body's vote on the report, the committee chairman must return the papers to the presiding officer, who will preserve the evidence as provided in section [34-2117](#), Idaho Code.

[34-2116, added 2017, ch. 293, sec. 2, p. 772.]

34-2117. PRESERVATION OF EVIDENCE. (1) Except as provided for in subsection (2) of this section, all the evidence in any contest provided for in this chapter will be returned by the presiding officer, or his designee, to the secretary of state and will be preserved in the office of the secretary of state.

(2) Any ballots or poll books, other than copies, will be returned by the presiding officer to the secretary of state, who will return them to the office of the county auditor in which they were first required to be filed.

[34-2117, added 2017, ch. 293, sec. 2, p. 773.]

34-2118. SECURITY FOR COSTS -- ASSESSMENT OF COSTS AND FEES -- ASSESSMENT OF ATTORNEY'S FEES. (1) The contestor must file with the secretary of state a bond in the amount of one thousand dollars (\$1,000) conditioned to pay the contestee's costs if the election be confirmed by the legislature.

(2) The parties are liable for witness fees and the costs of discovery made by them respectively. If the election is upheld by the legislature, the legislature may assess costs and fees, other than attorney's fees, against

the contestor. If the election is annulled by the legislature, the legislature may assess costs and fees, other than attorney's fees, against the contestee.

(3) Attorney's fees.

(a) Attorney's fees may be awarded against the contestor if the legislature determines the contest of election is frivolous and has no foundation in law or fact.

(b) Attorney's fees may be awarded against the contestee if the election is annulled by the legislature due to misconduct, fraud or corruption on the part of the contestee.

(4) If the election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the returns, the contest costs will be a charge against the county in which the fraud or error occurred.

(5) If a special election is called by the legislature pursuant to section [34-2119](#), Idaho Code, the costs associated with the special election will be allocated in equal amounts to the state of Idaho and the county or counties where the special election is held.

[34-2118, added 2017, ch. 293, sec. 2, p. 773.]

34-2119. FORMS OF RELIEF. (1) The legislature must confirm or annul the election and must declare as elected the person who appears duly elected.

(2) If two (2) or more persons have the highest and an equal number of votes for the same office, or if the legal ballots cast or intended to be cast for them had been counted and they would have had the highest and an equal number of votes for the same office, then the election will be decided by lot, in a manner directed by the legislature, which of the persons receiving such votes will be declared duly elected.

(3) When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes will not be declared elected and the legislature must declare the election void.

(4) If a vacancy is created pursuant to this section, the legislature may declare the office vacant and order the office filled pursuant to [chapter 9, title 59](#), Idaho Code.

(5) Notwithstanding the provisions of chapter 1 of this title, the legislature may call for a special election regarding a specific contested office in which an accurate vote count cannot be obtained or discovered by the legislature. The legislature has the authority to set the date of the special election and the office and candidates to be placed on the ballot. In setting a special election, the legislature may provide for a filing period and notice provisions for the election.

(6) (a) Upon a final decision and award of costs and fees against the contestor, the legislature may direct the secretary of state to pay the award from the bond provided in section [34-2118](#), Idaho Code.

(b) Upon a final decision and award of costs, fees or attorney's fees against the contestor, and if the costs, fees and attorney's fees exceed the amount of the bond filed pursuant to section [34-2118](#), Idaho Code, the contestee may petition the district court for execution of the award.

(c) Upon a final decision and award of costs and fees against the contestee, the contestor may petition the district court for execution of the award.

[34-2119, added 2017, ch. 293, sec. 2, p. 773.]

34-2120. CONTEST OF NOMINATION AT PRIMARIES. Any candidate at a primary election may contest the nomination of any candidate for the same office based on the grounds as set out in this chapter.

[34-2120, added 2017, ch. 293, sec. 2, p. 774.]

34-2121. JURISDICTION OVER PRIMARY CONTESTS. A district court in the respective legislative district has jurisdiction over the primary contest involving a legislative election. For election contests involving statewide executive offices, the district court whose jurisdiction includes the state capitol has jurisdiction.

[34-2121, added 2017, ch. 293, sec. 2, p. 774.]

34-2122. FILING OF AFFIDAVIT. A candidate wishing to contest a primary election must file an affidavit with the appropriate court within five (5) days of the completion of the canvass of the election. The affidavit must set forth information as required in section [34-2108](#), Idaho Code, and must be served on all necessary parties in the same manner as a complaint and summons are served pursuant to the Idaho rules of civil procedure.

[34-2122, added 2017, ch. 293, sec. 2, p. 774.]

34-2123. SECURITY FOR COSTS. Upon filing of the affidavit, the contestor must file with the court a bond in the amount of one thousand dollars (\$1,000) to be used to pay costs of the contestee in the event the primary election be confirmed or the prosecution fail.

[34-2123, added 2017, ch. 293, sec. 2, p. 774.]

34-2124. FRAUD OR ERROR BY THE ELECTION OFFICIAL. If the primary election is set aside or annulled on the grounds of fraud or error by the election officials in conducting the election or in canvassing the election returns, the court costs must be a charge against the state of Idaho.

[34-2124, added 2017, ch. 293, sec. 2, p. 774.]

34-2125. DISCOVERY. The court may order the production of such evidence as it deems necessary for the proper disposition of the primary contest pursuant to the Idaho rules of civil procedure. The election contest must be given priority on the court's calendar.

[34-2125, added 2017, ch. 293, sec. 2, p. 774.]

34-2126. REMEDIES. Not more than ten (10) days after the hearing, the court must render an opinion in a primary contest as soon as practicable and must prescribe such remedies provided in this chapter as it deems just. The court may award attorney's fees if the court finds the contest of nomination is frivolous and has no foundation in law or fact.

[34-2126, added 2017, ch. 293, sec. 2, p. 775.]

34-2127. APPEALS. (1) In primary election contests, the party against whom judgment is rendered on cases filed in the district court may appeal to the supreme court. The appeal must be taken within ten (10) days of the judgment of the district court.

(2) The supreme court must give the primary contest appeal priority and in no case may it render a decision more than ten (10) days after the receipt of an appeal.

(3) The supreme court may award attorney's fees if it finds the appeal is frivolous and has no foundation in law or fact.

[34-2127, added 2017, ch. 293, sec. 2, p. 775.]

34-2128. COST ON APPEAL. The appellant must file a bond sufficient to cover the cost of appeal of a primary contest. The amount of the bond on appeal must be set by the court.

[34-2128, added 2017, ch. 293, sec. 2, p. 775.]