

IN THE SENATE

SENATE BILL NO. 1274

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ELECTIONS; AMENDING SECTION 34-1201, IDAHO CODE, TO REVISE PRO-
2 VISIONS REGARDING THE SEALING AND STORING OF BALLOTS AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING CHAPTER 12, TITLE 34, IDAHO CODE, BY THE ADDI-
4 TION OF A NEW SECTION 34-1203A, IDAHO CODE, TO ESTABLISH PROVISIONS RE-
5 GARDING POSTELECTION AUDITS OF SELECTED BALLOTS; AND DECLARING AN EMER-
6 GENCY.
7

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

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

11 34-1201. CANVASS OF VOTES. (1) When the polls are closed, the judges
12 must immediately proceed to count the ballots cast at such election. The
13 counting must be continued without adjournment until completed and the re-
14 sult declared.

15 (2) If the precinct has duplicate ballot boxes, the counting may begin
16 after five (5) ballots have been cast. At this time, the additional clerks
17 shall close the first ballot box and retire to the counting area and count the
18 ballots. Upon completion of this counting, the clerks shall return the bal-
19 lot box and then proceed to count all of the ballots cast in the second box
20 during this period. This counting shall continue until the polls are closed,
21 at which time all election personnel shall complete the counting of the bal-
22 lots.

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

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

33 SECTION 2. That Chapter 12, 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 34-1203A, Idaho Code, and to read as follows:

36 34-1203A. POSTELECTION AUDIT OF SELECTED BALLOTS.

37 (1) (a) After the completion of all county canvasses for any primary
38 or general election, including any presidential primary election, the
39 secretary of state shall identify and order a postelection audit of cer-
40 tain paper ballots cast in any election, shall immediately post to the

1 website of the office of the secretary of state a list of the elections,
2 counties, and precincts selected for audit, and shall immediately no-
3 tify each affected county clerk and county sheriff of the same. Upon
4 receiving such notification, the county sheriff shall immediately
5 impound and take into custody the affected ballots pursuant to the pro-
6 cedures in chapter 23, title 34, Idaho Code. Upon completion of the
7 postelection audit, the ballots shall be resealed and returned to the
8 custody of the county clerk, or the county sheriff in the event that the
9 ballots are subject to a recount pursuant to chapter 23, title 34, Idaho
10 Code.

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

- 13 (i) Any or all federal elections held in Idaho;
- 14 (ii) The election for governor;
- 15 (iii) The statewide office election having the narrowest percent-
16 age margin of votes;
- 17 (iv) The statewide ballot question election having the narrowest
18 percentage margin of votes; and
- 19 (v) One (1) legislative office election within the county.

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

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

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

- 39 (i) Does not organize the storage of its early or absentee ballots
40 by precinct;
- 41 (ii) Organizes the storage of such ballots by day, batch, legisla-
42 tive district, or tabulation machine; and
- 43 (iii) Publicly reports the election results for early or absent-
44 tee ballots by day, batch, legislative district, or tabulation ma-
45 chine on the county's website prior to the secretary of state's se-
46 lection of precincts to be audited.

47 (2) The secretary of state shall conduct, and the county clerks shall
48 facilitate, any postelection audit ordered pursuant to subsection (1) of
49 this section. Such an audit shall be open to attendance by news media person-
50 nel. By directive issued at least sixty (60) days prior to the election, the

1 secretary of state shall determine the procedures by which the postelection
2 audit is to be conducted. Such procedures shall be developed in consultation
3 with county clerks and shall include provisions allowing each interested
4 candidate and political party, and each political committee that publicly
5 reported expending money on a ballot question for which the results will be
6 audited, to appoint a designated observer. Within the time specified in the
7 directive, the secretary of state shall report the results of any postelec-
8 tion audits on the website of the office of the secretary of state and to the
9 county clerk of each county in which paper ballots were audited.

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

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

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