

IN THE SENATE

SENATE BILL NO. 1190

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ELECTIONS AND ELECTION CONTESTS; REPEALING CHAPTER 21, TITLE  
2 34, IDAHO CODE, RELATING TO ELECTION CONTESTS; AMENDING TITLE 34, IDAHO  
3 CODE, BY THE ADDITION OF A NEW CHAPTER 21, TITLE 34, IDAHO CODE, TO  
4 PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR JURIS-  
5 DICTION, TO PROVIDE FOR GROUNDS OF CONTEST, TO PROVIDE FOR LEGISLATIVE  
6 RULES, TO PROVIDE FOR CONTEST FOR LEGISLATIVE OFFICES AND AN EXCEPTION,  
7 TO PROVIDE FOR MISCONDUCT OF ELECTION JUDGES, TO PROVIDE FOR NOTICE,  
8 SERVICE AND ANTICIPATED DISCOVERY, TO PROVIDE FOR SUMMARY DISMISSAL,  
9 TO PROVIDE FOR EXAMINATION OF WITNESSES AND SUBPOENAS, TO PROVIDE FOR  
10 DEPOSITIONS, TO PROVIDE FOR PRODUCTION OF CERTAIN PAPERS AND TO PROVIDE  
11 FOR A MISDEMEANOR, TO PROVIDE FOR EXAMINATION OF POLL BOOKS AND BALLOTS,  
12 TO PROVIDE FOR DELIVERY OF CONTEST PAPERS, TO PROVIDE FOR NOTICE, TO  
13 PROVIDE FOR OPENING OF CERTAIN PAPERS, CUSTODY OF SUCH PAPERS AND AP-  
14 POINTMENT OF A COMMITTEE, TO PROVIDE FOR PRESERVATION OF EVIDENCE, TO  
15 PROVIDE FOR SECURITY COSTS AND ASSESSMENT OF CERTAIN COSTS AND FEES,  
16 TO PROVIDE FOR FORMS OF RELIEF, TO PROVIDE FOR CONTEST OF NOMINATION AT  
17 PRIMARIES, TO PROVIDE FOR JURISDICTION OVER PRIMARY CONTESTS, TO PRO-  
18 VIDE FOR FILING OF AN AFFIDAVIT, TO PROVIDE FOR SECURITY FOR COSTS, TO  
19 ESTABLISH PROVISIONS REGARDING FRAUD OR ERROR BY CERTAIN OFFICIALS, TO  
20 PROVIDE FOR DISCOVERY, TO PROVIDE REMEDIES, TO PROVIDE FOR APPEALS AND  
21 TO ESTABLISH PROVISIONS REGARDING COST ON APPEAL; AND AMENDING SECTION  
22 18-2315, IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTAIN ELECTION  
23 OFFENSES.  
24

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

26 SECTION 1. That Chapter 21, Title 34, Idaho Code, be, and the same is  
27 hereby repealed.

28 SECTION 2. That Title 34, Idaho Code, be, and the same is hereby amended  
29 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
30 ter 21, Title 34, Idaho Code, and to read as follows:

31 CHAPTER 21  
32 ELECTION CONTESTS ACT

33 34-2101. SHORT TITLE -- INTENT. (1) This chapter shall be known and  
34 may be cited as the "Election Contests Act."

35 (2) The purpose of this act is to simplify and clarify the laws govern-  
36 ing election contests of legislative seats and election contests for all of-  
37 ficers of the executive department.

38 34-2102. DEFINITIONS. For the purposes of this chapter, the following  
39 terms have the following meanings:

- 1 (1) "Body" means the Idaho senate or the Idaho house of representatives  
2 or both.
- 3 (2) "Contestee" means the individual against whom the contest of elec-  
4 tion is filed.
- 5 (3) "Contestor" means the individual who files the contest of election.
- 6 (4) "Elector" has the same meaning as "qualified elector" provided in  
7 section 34-104, Idaho Code.
- 8 (5) "Eligible for the office" means the qualifications of members pro-  
9 vided in section 34-614, Idaho Code.
- 10 (6) "Individual" means a natural person and not an artificial person  
11 such as a corporation, partnership, or other entity created by law.
- 12 (7) "Legislature" means the Idaho senate or the Idaho house of repre-  
13 sentatives or both.
- 14 (8) "Office" means any senate member, house of representatives member,  
15 executive office holder, or all.
- 16 (9) "Parties" means the contestor and the contestee.
- 17 (10) "Party" means the contestor or the contestee.
- 18 (11) "Presiding officer" means the Idaho senate president pro tempore  
19 or the speaker of the Idaho house of representatives. In the event the con-  
20 testee or the contestor is the presiding officer, then the next ranking mem-  
21 ber of majority leadership who is able and willing serves as presiding offi-  
22 cer. In the event the contestee or the contestor is an office holder in the  
23 executive department, then both the Idaho senate president pro tempore and  
24 the speaker of the Idaho house of representatives will serve as presiding of-  
25 ficers.

26 34-2103. JURISDICTION -- CONTESTS OVER LEGISLATIVE OFFICES -- CON-  
27 TESTS OVER EXECUTIVE OFFICES. (1) Contests over legislative offices.

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

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

32 (2) Contests over executive offices. The legislature, in joint meet-  
33 ing, will hear and determine cases of contested election for all officers of  
34 the executive department. The meeting of the two (2) bodies to decide upon  
35 those elections will be held in the house of representatives, and the speaker  
36 of the house of representatives will preside.

37 34-2104. GROUNDS OF CONTEST. The election of any person to any leg-  
38 islative or state executive office may be contested:

39 (1) For misconduct, fraud or corruption as provided in section 34-2107,  
40 Idaho Code, on the part of one (1) or more judges of election in any precinct  
41 or township, or on the part of one (1) or more members of any board of can-  
42 vassers sufficient to change the result;

43 (2) When, in an election contest regarding a legislative seat, the con-  
44 testee was not eligible for the office at the time of the election as provided  
45 in section 34-614, Idaho Code;

46 (3) When, in an election contest regarding an executive office, the  
47 contestee was not eligible for the office at the time of the election as pro-  
48 vided in chapter 6 of this title;

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

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

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

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

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

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

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

20 34-2105. LEGISLATIVE RULES. In addition to the provisions of this  
21 chapter, the legislature may provide:

22 (1) Senate rules regarding senate election contests.

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

25 (3) Joint rules regarding executive department election contests.

26 In the event the provisions of this chapter are inconsistent with leg-  
27 islative rules, the legislative rules control.

28 34-2106. CONTEST FOR LEGISLATIVE OFFICES -- EXCEPTION REGARDING PRE-  
29 SIDING OFFICERS. Notwithstanding the provisions of sections 34-2101 through  
30 34-2119, Idaho Code, in the event a presiding officer occupies the legisla-  
31 tive seat that is the subject of an election contest, the majority leader or  
32 the next available and willing member of majority leadership of the appro-  
33 priate body must serve as the presiding officer for purposes of this chapter.

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

38 34-2108. NOTICE OF CONTEST -- LEGISLATIVE -- EXECUTIVE DEPARTMENT  
39 -- GROUNDS -- SERVICE -- ANTICIPATED DISCOVERY. (1) Legislative contest.  
40 Within twenty (20) days after the election, whenever any elector of a leg-  
41 islative district chooses to contest the election of any member of the  
42 legislature from that district, the elector must give written notice of the  
43 contest and leave a copy of the notice of contest with the office of the sec-  
44 retary of state. The elector must make reasonable efforts to provide written  
45 notice of the contest to:

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

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

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

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

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

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

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

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

26 (c) The secretary of the senate and the chief clerk of the house of rep-  
27 resentatives, if the election contest concerns an officer of the execu-  
28 tive department.

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

33 (5) Anticipated discovery. In the notice of contest, the parties must  
34 identify anticipated initial discovery, including witnesses to be deposed  
35 and the anticipated date and location of depositions. Relevant additional  
36 discovery will be allowed by the parties.

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

40 34-2109. SUMMARY DISMISSAL. (1) If the notice of contest fails to re-  
41 cite any grounds required by section 34-2104, Idaho Code, or fails to iden-  
42 tify anticipated discovery as provided in section 34-2108, Idaho Code, or  
43 the contestor fails to timely post bond as provided in section 34-2118, Idaho  
44 Code, or the contestor otherwise fails to comply with the provisions of this  
45 chapter in a material way, the notice of contest may be stayed or dismissed as  
46 provided in subsections (3) and (4) of this section.

47 (2) Failure to advance contest. If the contestor fails to advance the  
48 contest due to death, incapacity, failure to comply with orders of the pre-  
49 siding officer, relocation out of the contested legislative district, or

1 failure to advance the contest, then the presiding officer may enter a writ-  
2 ten order staying the proceedings. The provisions of subsections (3) and (4)  
3 of this section will then apply.

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

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

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

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

22 34-2110. EXAMINATION OF WITNESSES -- SUBPOENAS. Unless otherwise pro-  
23 vided for in legislative rule, the following provisions apply:

24 (1) Examination of witnesses. Unless otherwise ordered by the presid-  
25 ing officer or his designee, any party may take the testimony of any person  
26 by deposition upon oral examination pursuant to the provisions of the Idaho  
27 rules of civil procedure. Depositions must be transcribed in writing. Any  
28 other form of deposition must be approved by the presiding officer or his de-  
29 signee. All testimony and discovery must be completed on or before December  
30 29 following the election. The completed record must be delivered to the of-  
31 fice of the secretary of state no later than the close of business on the next  
32 business day following December 29.

33 (2) (a) Subpoenas and subpoenas duces tecum. An election contest held  
34 pursuant to the provisions of this chapter is not a judicial proceed-  
35 ing. The principles of rule 45 of the Idaho rules of civil procedure,  
36 however, must be used as a framework for the form, content, issuance and  
37 service of subpoenas. Every subpoena and subpoena duces tecum must rea-  
38 sonably approximate the form found in appendix B of the Idaho rules of  
39 civil procedure.

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

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

45 (ii) Is guilty of a misdemeanor.

46 (c) Every witness who provides testimony pursuant to a subpoena pro-  
47 vided for in this chapter is entitled to receive the witness fees as al-  
48 lowed under the Idaho rules of civil procedure.

1           34-2111. TESTIMONY -- HOW TAKEN, CERTIFIED AND PRESERVED. The testi-  
2 mony by deposition upon oral examination must be taken and preserved pur-  
3 suant to the provisions of the Idaho rules of civil procedure. The deposi-  
4 tion record must be entitled: "Deposition taken in the matter of the contest  
5 of the election of [INSERT NAME OF CONTESTEE HERE] to the office of . . . .,"  
6 and be directed to the secretary of state, who must preserve the same, until  
7 the meeting of the legislature. Any testimony taken pursuant to this sec-  
8 tion must be filed with the secretary of state. Upon request of a presiding  
9 officer, the secretary of state must provide copies of depositions to the re-  
10 questing presiding officer in a timely manner, prior to the time established  
11 in section 34-2114, Idaho Code.

12           34-2112. PRODUCTION OF PAPERS -- REFUSAL OR NEGLECT TO PRODUCE A MIS-  
13 DEMEANOR. The presiding officer has power to require the production of pa-  
14 pers. Any person who refuses or neglects to produce and deliver any paper or  
15 papers in his possession pertaining to the election or, in case they be of-  
16 ficial papers, refuses or neglects to produce and deliver certified or sworn  
17 copies of the same shall be guilty of a misdemeanor.

18           34-2113. EXAMINATION OF POLL BOOKS AND BALLOTS. (1) Except as pro-  
19 vided in subsection (2) of this section, if, at the time of taking deposi-  
20 tions to be used in a contested election, the notice of contest alleges that  
21 it is necessary for the determination of the contest that the ballots or the  
22 poll books of any election district or districts should be inspected, then,  
23 on the request of either party to the contest, the presiding officer may  
24 issue an order requiring the county auditor, or other person in whose cus-  
25 tody or possession the ballots or poll books may be, naming the district or  
26 districts mentioned in the notice, to deliver them to the person or persons  
27 issuing the order. The officer or officers must transmit the ballots or poll  
28 books to the secretary of state, who must preserve the same unopened until  
29 the meeting of the legislature.

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

32           (a) An election contest provided for in chapter 20 of this title; or

33           (b) A recount filed as provided for in chapter 23 of this title.

34           (c) (i) If more than one (1) election contest is filed pursuant  
35 to chapter 20 or 21 of this title that implicate the same ballots  
36 or poll books, or part of the same ballots or poll books, the of-  
37 fice of the secretary of state and the appropriate county audi-  
38 tor, or other person in whose custody or possession the ballots or  
39 poll books may be, must agree to a process for the examination of  
40 ballots or poll books that reasonably accommodates each contest  
41 filed.

42           (ii) If one (1) or more election contests are filed pursuant to  
43 chapter 20 or 21 of this title and one (1) or more recounts of bal-  
44 lots are filed pursuant to chapter 23 of this title, and if the  
45 election contests and the recounts of ballots implicate the same  
46 ballots or poll books, or part of the same ballots or poll books,  
47 the office of the secretary of state, the office of the attorney  
48 general and the appropriate county auditor or other person in

1           whose custody or possession the ballots or poll books may be must  
2           agree to a process for the examination of ballots or poll books  
3           that reasonably accommodates each contest filed and each recount  
4           of ballots filed.

5           34-2114. CONTEST PAPERS DELIVERED TO PRESIDING OFFICERS. (1) Senate  
6           election contests. On the second day of the next regular session of the leg-  
7           islature, the secretary of state must deliver to the presiding officer of the  
8           senate all papers regarding a contested election of any member of the senate.

9           (2) House of representatives election contests. On the second day of  
10          the next regular session of the legislature, the secretary of state must de-  
11          liver to the presiding officer of the house of representatives all papers re-  
12          garding a contested election of any member of the house of representatives.

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

19          34-2115. NOTICE OF RECEIVING PAPERS. (1) Senate election contest. On  
20          the day of the receipt by the presiding officer of the senate, or his de-  
21          signee, of papers relating to contested elections, the presiding officer, in  
22          the appropriate order of business, must give notice to the senate of receipt  
23          of the papers.

24          (2) House of representatives election contest. On the day of the re-  
25          ceipt by the presiding officer of the house of representatives, or his de-  
26          signee, of papers relating to contested elections, the presiding officer, in  
27          the appropriate order of business, must give notice to the house of represen-  
28          tatives of receipt of the papers.

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

37          34-2116. OPENING AND CUSTODY OF PAPERS -- APPOINTMENT OF COMMIT-  
38          TEE. (1) Unless otherwise provided by legislative rule, the papers relating  
39          to any contest of election must be opened only in the presence of the body  
40          as directed by the presiding officer. Except as provided in subsection (2)  
41          of this section or unless otherwise provided for by legislative rule, the  
42          papers must remain in the custody of the presiding officer or his designee  
43          until the election contest is decided. Upon a final decision by the body,  
44          the provisions of section 34-2117, Idaho Code, governing preservation of  
45          evidence will apply.

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

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

7 (b) Upon conclusion of hearing the contest, the committee will report  
8 to the body its recommendation on the contest. The body must vote on  
9 the committee report. Upon the body's vote on the report, the committee  
10 chairman must return the papers to the presiding officer, who will pre-  
11 serve the evidence as provided in section 34-2117, Idaho Code.

12 34-2117. PRESERVATION OF EVIDENCE. (1) Except as provided for in sub-  
13 section (2) of this section, all the evidence in any contest provided for in  
14 this chapter will be returned by the presiding officer, or his designee, to  
15 the secretary of state and will be preserved in the office of the secretary of  
16 state.

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

20 34-2118. SECURITY FOR COSTS -- ASSESSMENT OF COSTS AND FEES -- ASSESS-  
21 MENT OF ATTORNEY'S FEES. (1) The contestor must file with the secretary of  
22 state a bond in the amount of one thousand dollars (\$1,000) conditioned to  
23 pay the contestee's costs if the election be confirmed by the legislature.

24 (2) The parties are liable for witness fees and the costs of discovery  
25 made by them respectively. If the election is upheld by the legislature, the  
26 legislature may assess costs and fees, other than attorney's fees, against  
27 the contestor. If the election is annulled by the legislature, the legisla-  
28 ture may assess costs and fees, other than attorney's fees, against the con-  
29 testee.

30 (3) Attorney's fees.

31 (a) Attorney's fees may be awarded against the contestor if the legis-  
32 lature determines the contest of election is frivolous and has no founda-  
33 tion in law or fact.

34 (b) Attorney's fees may be awarded against the contestee if the elec-  
35 tion is annulled by the legislature due to misconduct, fraud or corrup-  
36 tion on the part of the contestee.

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

41 (5) If a special election is called by the legislature pursuant to sec-  
42 tion 34-2119, Idaho Code, the costs associated with the special election  
43 will be allocated in equal amounts to the state of Idaho and the county or  
44 counties where the special election is held.

45 34-2119. FORMS OF RELIEF. (1) The legislature must confirm or annul  
46 the election and must declare as elected the person who appears duly elected.



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

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

12 (4) If a vacancy is created pursuant to this section, the legislature  
13 may declare the office vacant and order the office filled pursuant to chapter  
14 9, title 59, Idaho Code.

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

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

25 (b) Upon a final decision and award of costs, fees or attorney's fees  
26 against the contestor, and if the costs, fees and attorney's fees ex-  
27 ceed the amount of the bond filed pursuant to section 34-2118, Idaho  
28 Code, the contestee may petition the district court for execution of the  
29 award.

30 (c) Upon a final decision and award of costs and fees against the con-  
31 testee, the contestor may petition the district court for execution of  
32 the award.

33 34-2120. CONTEST OF NOMINATION AT PRIMARIES. Any candidate at a pri-  
34 mary election may contest the nomination of any candidate for the same office  
35 based on the grounds as set out in this chapter.

36 34-2121. JURISDICTION OVER PRIMARY CONTESTS. A district court in  
37 the respective legislative district has jurisdiction over the primary con-  
38 test involving a legislative election. For election contests involving  
39 statewide executive offices, the district court whose jurisdiction includes  
40 the state capitol has jurisdiction.

41 34-2122. FILING OF AFFIDAVIT. A candidate wishing to contest a primary  
42 election must file an affidavit with the appropriate court within five (5)  
43 days of the completion of the canvass of the election. The affidavit must  
44 set forth information as required in section 34-2108, Idaho Code, and must be  
45 served on all necessary parties in the same manner as a complaint and summons  
46 are served pursuant to the Idaho rules of civil procedure.

1           34-2123. SECURITY FOR COSTS. Upon filing of the affidavit, the con-  
2 testor must file with the court a bond in the amount of one thousand dollars  
3 (\$1,000) to be used to pay costs of the contestee in the event the primary  
4 election be confirmed or the prosecution fail.

5           34-2124. FRAUD OR ERROR BY THE ELECTION OFFICIAL. If the primary elec-  
6 tion is set aside or annulled on the grounds of fraud or error by the election  
7 officials in conducting the election or in canvassing the election returns,  
8 the court costs must be a charge against the state of Idaho.

9           34-2125. DISCOVERY. The court may order the production of such evi-  
10 dence as it deems necessary for the proper disposition of the primary contest  
11 pursuant to the Idaho rules of civil procedure. The election contest must be  
12 given priority on the court's calendar.

13           34-2126. REMEDIES. Not more than ten (10) days after the hearing, the  
14 court must render an opinion in a primary contest as soon as practicable and  
15 must prescribe such remedies provided in this chapter as it deems just. The  
16 court may award attorney's fees if the court finds the contest of nomination  
17 is frivolous and has no foundation in law or fact.

18           34-2127. APPEALS. (1) In primary election contests, the party against  
19 whom judgment is rendered on cases filed in the district court may appeal to  
20 the supreme court. The appeal must be taken within ten (10) days of the judg-  
21 ment of the district court.

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

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

27           34-2128. COST ON APPEAL. The appellant must file a bond sufficient to  
28 cover the cost of appeal of a primary contest. The amount of the bond on ap-  
29 peal must be set by the court.

30           SECTION 3. That Section 18-2315, Idaho Code, be, and the same is hereby  
31 amended to read as follows:

32           18-2315. ELECTION OFFENSES NOT OTHERWISE PROVIDED FOR. Unless a dif-  
33 ferent punishment is otherwise prescribed by law, e~~Every~~ person who wilfully  
34 willfully violates any of the provisions of the laws of this state relating  
35 to elections is, ~~unless a different punishment for such violation is pre-~~  
36 ~~scribed by law,~~ punishable by fine not exceeding \$1,000, or by imprisonment  
37 in the state prison not exceeding five (5) years, or by both.