

IN THE SENATE

SENATE BILL NO. 1110

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ELECTIONS; AMENDING SECTION 34-2401, IDAHO CODE, TO DEFINE A  
2 TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-2410, IDAHO  
3 CODE, TO PROVIDE FOR OPEN-SOURCE SOFTWARE, TO PROVIDE A REQUIREMENT FOR  
4 A VOTE TALLY SYSTEM, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-  
5 TION 34-2413, IDAHO CODE, TO PROVIDE THAT THE COUNTY CLERK POST A SAMPLE  
6 BALLOT AND THE OPEN-SOURCE SOFTWARE USED; AMENDING SECTION 34-1411,  
7 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; PROVIDING LEGISLATIVE  
8 INTENT; AND DECLARING AN EMERGENCY AND PROVIDING EFFECTIVE DATES.  
9

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

11 SECTION 1. That Section 34-2401, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 34-2401. DEFINITIONS. As used in this chapter:

14 (1) "Ballot" means any material used or the voting surface of a direct  
15 recording electronic system on which votes are cast for offices, candidates  
16 and measures.

17 (2) "Ballot card" means the tabulating card or cards of any size upon  
18 which the voter records his vote.

19 (3) "Ballot label" means the cards, papers, booklet or other material  
20 containing the names of offices and candidates and measures to be voted on.

21 (4) "Election" means all state, county, city, district and other polit-  
22 ical subdivision elections including bond issue elections.

23 (5) "Governing body" means the board of county commissioners of any  
24 county or the governing body of any city, district or other political subdi-  
25 vision elections including bond issue elections.

26 (6) "Measure" means a proposed law, act or part of an act of the leg-  
27 islative assembly or amendment to the constitution of the state of Idaho to  
28 be submitted to the people for their approval or rejection at an election.  
29 "Measure" also means other propositions ~~which~~ that can be submitted to the  
30 voters at any election by counties, cities, districts or other political  
31 subdivisions.

32 (7) "Model" means a mechanically operated model of a portion of the face  
33 of the machine illustrating the means of voting.

34 (8) "Open-source software" means software whose programming code is  
35 publicly published.

36 ~~(8)~~ (9) "Precinct" includes all election districts.

37 ~~(9)~~ (10) "Voting machine" means:

38 (a) Any mechanical or electronic device ~~which~~ that will record every  
39 vote cast by any voter on candidates and measures and ~~which~~ that will ei-  
40 ther internally or externally total all votes cast on that device;

1 (b) Any device into which a ballot card may be inserted and ~~which~~ that is  
 2 so designed and constructed that the vote for any candidate or measure  
 3 may be indicated by punching or marking the ballot card.

4 ~~(10)~~ (11) "Vote tally system" means one (1) or more pieces of machinery  
 5 or equipment necessary to examine and tally automatically paper ballots hav-  
 6 ing marks placed thereon by a written mark or by a marking stamp. The exami-  
 7 nation shall be accomplished by either mark sensing or optical scanning.

8 SECTION 2. That Section 34-2410, Idaho Code, be, and the same is hereby  
 9 amended to read as follows:

10 34-2410. SPECIFICATIONS FOR VOTING MACHINES OR VOTE TALLY SYS-  
 11 TEMS. (1) No voting machine or vote tally system shall be approved by the  
 12 secretary of state unless it is constructed so that it:

13 (a) Secures to the voter secrecy in the act of voting.

14 (b) Provides facilities for voting for the candidates of as many polit-  
 15 ical parties or organizations as may make nominations and for or against  
 16 as many measures as may be submitted.

17 (c) Permits the voter to vote for any person for any office and upon any  
 18 measure that he has the right to vote for.

19 (d) Permits the voter, except at primary elections, to vote for all  
 20 the candidates of one (1) party or in part for the candidates of one (1)  
 21 party and in part for the candidates of one (1) or more other parties.

22 (e) Permits the voter to vote for as many persons for an office as he is  
 23 lawfully entitled to vote for but no more.

24 (f) Prevents the voter from voting for the same person more than once  
 25 for the same office.

26 (g) Correctly registers or records all votes cast for any and all per-  
 27 sons and for or against any and all measures.

28 (h) Can be adjusted so that the counting mechanism rejects any vote cast  
 29 on the tabulating card in excess of the number which the voter is enti-  
 30 tled to vote.

31 (i) Provides that a vote for more than one (1) candidate cannot be cast  
 32 by one (1) single operation of the machine or vote tally system.

33 (j) Utilizes open-source software.

34 (2) A vote tally system shall be:

35 (a) Capable of correctly counting votes on ballots or ballot cards on  
 36 which the proper number of votes have been marked for any office or ques-  
 37 tion or issue that has been voted.

38 (b) Capable of ignoring the votes marked for any office or question or  
 39 issue where more than the allowable number of votes have been marked,  
 40 but shall correctly count the properly voted portions of the ballot  
 41 card.

42 (c) Capable of accumulating a count of the specific number of ballots  
 43 or ballot cards tallied for a precinct, accumulating total votes by a  
 44 candidate for each office, and accumulating total votes for and against  
 45 each question and issue of the ballots or ballot cards tallied for a  
 46 precinct.

47 (d) Capable of tallying votes from ballots or ballot cards of differ-  
 48 ent political parties, from the same precinct, in the case of a primary  
 49 election.

1 (e) Capable of accommodating rotation of candidates' names on the bal-  
 2 lot or ballot card, provided that all ballots or ballot cards from one  
 3 (1) precinct shall be of the same rotation sequence.

4 (f) Capable of automatically producing precinct totals in either  
 5 printed, marked, or punched form, or combinations thereof.

6 (g) Capable of stamping each ballot counted by the machine with an iden-  
 7 tifying number and a time stamp, to the nearest one-hundredth of a sec-  
 8 ond, indicating when the ballot was counted by the machine.

9 SECTION 3. That Section 34-2413, Idaho Code, be, and the same is hereby  
 10 amended to read as follows:

11 34-2413. PREPARATION OF MACHINES FOR USE -- INSTRUCTIONS. (1) Before  
 12 each election at which voting machines or vote tally systems are to be used,  
 13 the county clerk of a county, in which voting machines or vote tally systems  
 14 are to be used, shall cause them to be properly prepared and shall cause the  
 15 election board to be properly instructed in their use.

16 (2) For the purpose of giving such instruction, the county clerk shall  
 17 call the meeting or meetings of the election board that are necessary. Each  
 18 election board shall attend the meetings and receive the instruction neces-  
 19 sary for the proper conduct of the election with the machine or vote tally  
 20 system.

21 (3) No election board judge or clerk shall serve in any election at  
 22 which a voting machine or vote tally system is used unless he has received  
 23 the required instruction and is fully qualified to perform the duties in  
 24 connection with the machine or vote tally system; but this requirement shall  
 25 not prevent the appointment of an election board clerk to fill a vacancy in  
 26 an emergency.

27 (4) The county clerk shall post on the county's website a sample ballot  
 28 and the open-source software used to tally the votes on the ballot. The post-  
 29 ing shall note what compiler was used to convert the software to machine lan-  
 30 guage and shall include the machine language.

31 SECTION 4. That Section 34-1411, Idaho Code, be, and the same is hereby  
 32 amended to read as follows:

33 34-1411. PAYMENT OF ELECTION EXPENSES BY COUNTY. (1) On and after Jan-  
 34 uary 1, 2011, no county shall charge any taxing district, as defined in sec-  
 35 tion 63-201, Idaho Code, for expenses associated with conducting any elec-  
 36 tion on behalf of any taxing district, with the exception of expenses associ-  
 37 ated with conducting municipal runoff elections, which shall be paid by the  
 38 city adopting runoff elections pursuant to the provisions of section 50-612  
 39 or 50-707B, Idaho Code. Expenses associated with conducting taxing district  
 40 elections shall include:

41 (a) Costs of ballot preparation, distribution, printing and counting,  
 42 including absentee ballots.

43 (b) Costs of printing poll books and costs of tally books, stamps, signs  
 44 and any other voting supplies, publications and equipment.

45 (c) Wages or other compensation for election judges and clerks or any  
 46 county employees or officials performing duties associated with con-  
 47 ducting taxing district elections.

- 1 (d) Costs paid for renting polling facilities.  
2 (e) Acquisition, repair, maintenance or any other costs associated  
3 with voting machines or vote tally systems as defined in ~~subsections (9)~~  
4 ~~and (10)~~ of section 34-2401 (10) and (11), Idaho Code.  
5 (f) Costs of publishing and printing election notices and ballots.  
6 (2) Counties shall not be responsible for any election expenses prior  
7 to the time any taxing district orders an election, such as notice and costs  
8 for public hearings and notice and costs for public hearings on ballot mea-  
9 sures.  
10 (3) Notwithstanding the provisions of subsection (1) of this section,  
11 all ballot questions shall be limited to two hundred fifty (250) words or  
12 less. If a ballot question is in excess of two hundred fifty (250) words, the  
13 entity proposing a ballot question that is not a state constitutional amend-  
14 ment shall be required to pay the ballot printing costs associated with the  
15 ballot question.

16 SECTION 5. LEGISLATIVE INTENT. It is the intent of the Legislature for  
17 the Secretary of State to prepare a request for proposals to manufacturers  
18 who can provide voting machines that utilize open-source software whose pro-  
19 gramming code is publicly published and are capable of stamping each ballot  
20 counted by the machine with an identifying number and a time stamp, to the  
21 nearest one-hundredth of a second, indicating when the ballot was counted by  
22 the machine, as provided in this act. It is also the intent of the Legisla-  
23 ture that the Secretary of State shall report to the Legislature not later  
24 than January 15, 2024, 2025, and 2026 as to: (1) the progress of such request  
25 for proposals and (2) the ability of county clerks to post on the county's  
26 website a sample ballot, the open-source software used to tally the votes on  
27 the ballot, what compiler was used to convert the software to machine lan-  
28 guage, and the machine language, as provided in this act.

29 SECTION 6. An emergency existing therefor, which emergency is hereby  
30 declared to exist, Section 5 of this act shall be in full force and effect  
31 on and after July 1, 2023. Sections 1 through 4 of this act shall be in full  
32 force and effect on and after January 1, 2027.