

TITLE 34
ELECTIONS

CHAPTER 2
DUTIES OF OFFICERS

34-201. SECRETARY OF STATE CHIEF ELECTION OFFICER. The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws.

The secretary of state is responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed service voters and overseas voters with respect to elections for federal office as required by section 102 of the uniformed and overseas citizens absentee voting act (42 U.S.C. section 1973 et seq.).

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the uniformed and overseas citizens absentee voting act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States armed forces, mobilization of those forces, including state national guard and reserve components of this state, the secretary of state may prescribe, by directive, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in this state.

[34-201, added 1970, ch. 140, sec. 17, p. 351; am. 2003, ch. 48, sec. 1, p. 181.]

34-202. SECRETARY OF STATE TO DISTRIBUTE COMPREHENSIVE DIRECTIVES AND INSTRUCTIONS RELATING TO ELECTION LAWS TO ALL COUNTY CLERKS. In carrying out his responsibility under section [34-201](#), Idaho Code, the secretary of state shall cause to be prepared and distributed to each county clerk detailed and comprehensive written directives and instructions relating to and based upon the election laws as they apply to elections, registration of electors and voting procedures which by law are under the direction and control of the county clerk. Such directives and instructions shall include sample forms of ballots, papers, documents, records and other materials and supplies required by such election laws. The secretary of state shall develop and provide to each county clerk instructions and standards for the verification, acceptance, and rejection of elector signatures for any process requiring signature verification. The secretary of state shall prescribe a form for voter registration cards based on the voter registration laws and, from time to time, shall cause to be prepared and distributed to each county clerk such written corrections of such directives and instructions and of the form for registration cards as are necessary to maintain uniformity in the application, operation and interpretation of and to reflect changes in the election laws. Each county clerk affected thereby shall comply with such directives and instruction, and corrections thereof, and shall provide voter registration cards prepared in accordance with the prescribed form.

[34-202, added 1970, ch. 140, sec. 18, p. 351; am. 2021, ch. 262, sec. 1, p. 807.]

34-203. ASSISTANCE AND ADVICE TO COUNTY CLERKS. In carrying out his responsibility under section 17 [34-201], the secretary of state shall assist and advise each county clerk with regard to the application, operation and interpretation of the election laws as they apply to elections, registration of electors and voting procedures which by laws are under the direction and control of the county clerk.

[34-203, added 1970, ch. 140, sec. 19, p. 351.]

34-204. CONFERENCES WITH COUNTY CLERKS ON ADMINISTRATION OF ELECTION LAWS. In carrying out his responsibility under section [34-201](#), Idaho Code, the secretary of state shall cause to be organized and conducted at convenient places and times in this state at least three (3) conferences on the administration of the election laws. The secretary of state shall cause written notice of the place and time of each conference to be given to each county clerk. Each county clerk or his designated deputy shall attend at least one (1) of the conferences and shall comply with the instructions given under the authority of the secretary of state at each conference such county clerk attends.

[34-204, added 1970, ch. 140, sec. 20, p. 351; am. 2015, ch. 292, sec. 3, p. 1168.]

34-205. DUTIES OF SECRETARY OF STATE RELATING TO ELECTION LAWS. The secretary of state shall:

(1) Prepare and cause to be printed, in appropriate and convenient form, periodic compilations and digests of the election laws.

(2) Distribute in appropriate quantities to the county clerks for use by such county clerks and by election boards, copies of such compilations and digests and the sample form of such supplies and materials necessary to conduct elections as the secretary of state considers appropriate, including poll books, tally sheets, return sheets and abstract of vote sheets.

(3) Make such compilations and digests available for distribution, free or at cost, to interested persons.

[34-205, added 1970, ch. 140, sec. 21, p. 351.]

34-206. GENERAL SUPERVISION OF ADMINISTRATION OF ELECTION LAWS BY COUNTY CLERKS. Subject to and in accordance with the directives and instructions prepared and distributed or given under the authority of the secretary of state, each county clerk shall exercise general supervision of the administration of the election laws by each local election official in his county for the purpose of achieving and maintaining a maximum degree of correctness, impartiality, efficiency and uniformity in such administration by local election officials. Such directives and instructions shall be directed to and shall be complied with by each local election official affected thereby.

[34-206, added 1970, ch. 140, sec. 22, p. 351; am. 1971, ch. 69, sec. 1, p. 155.]

34-208. DUTIES OF COUNTY CLERKS RELATING TO SUPERVISION OF ELECTION LAWS. In carrying out his exercise of general supervision under section [34-206](#), each county clerk shall:

(1) Require that each local election official shall use such ballots, papers, documents, records and other materials and supplies as directed by the secretary of state.

(2) Require each local election official in his county to submit reports pertaining to the administration of the election laws by such local election official. Each local election official shall comply with any such requirement.

(3) Inspect and observe the administration of the election laws by any local election official in his county at any time he deems necessary.

(4) Carry on a program of in-service training for local election officials in his county by periodically distributing to them such bulletins, manuals and other informational instructional materials and by establishing and conducting such classes of instruction pertaining to the administration of the election laws by local election officials as the county clerk considers desirable.

[34-208, added 1970, ch. 140, sec. 24, p. 351; am. 1971, ch. 69, sec. 3, p. 155.]

34-209. POWERS OF COUNTY CLERKS. (1) The county clerk may employ such personnel and procure such equipment, supplies, materials, books, papers, records and facilities of every kind as he considers necessary to facilitate and assist in carrying out his functions in connection with administering the election laws; except that procurement of voting machines or vote tally systems shall be conducted in accordance with the provisions of section [34-2405](#), Idaho Code.

(2) The necessary expenses incurred by the county clerk in administering the election laws, including reasonable rental for polling places, shall be allowed by the board of commissioners and paid out of the county treasury.

(3) The county clerk and his deputies may administer oaths and affirmations in connection with the performance of their functions in administering the election laws.

[34-209, added 1970, ch. 140, sec. 25, p. 351; am. 1972, ch. 131, sec. 1, p. 260.]

34-210. PREPARATION OF BALLOTS, PAPERS, DOCUMENTS, RECORDS, AND OTHER MATERIALS AND SUPPLIES REQUIRED. Subject to any applicable election law, the county clerk may devise, prepare and use in his administration of the election laws the ballots, papers, documents, records and other materials and supplies required or permitted by the election laws or otherwise necessary in such administration by such county clerk.

[34-210, added 1970, ch. 140, sec. 26, p. 351.]

34-211. OFFICE OF COUNTY CLERK OPEN AS LONG AS POLLS ARE OPEN. On the day of any general, special or primary election held throughout the county, the county clerk shall keep his office open for the transaction of business pertaining to the election from the time the polls are opened in the morning continuously until the polls are closed.

[34-211, added 1970, ch. 140, sec. 27, p. 351.]

34-212. REPORTS TO PROSECUTING ATTORNEY OF NONCOMPLIANCE WITH ELECTION LAWS BY COUNTY CLERK. (1) Any person having knowledge of any failure of a county clerk to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state may notify the prosecuting attorney of the county. Upon receipt of such notification the prosecuting attorney shall proceed immediately to investigate the alleged failure of the county clerk to comply. Upon the conclusion of the investigation the prosecuting attorney shall advise and direct the county clerk with regard to how he must proceed in connection with the matter. The county clerk shall proceed immediately to comply with the directive of the prosecuting attorney.

(2) If the prosecuting attorney, upon the conclusion of an investigation under subsection (1) of this section, determines that the county clerk has failed to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, and that such failure to comply involves a violation by the county clerk of any statute, the violation of which is punishable by a criminal penalty or forfeiture of office, the prosecuting attorney shall promptly proceed to prosecute such violation by the county clerk.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against a county clerk who fails to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, or who violates any statute.

[34-212, added 1970, ch. 140, sec. 28, p. 351.]

34-213. MANDAMUS TO ENFORCE COMPLIANCE BY COUNTY CLERK. (1) Whenever it appears to the secretary of state that a county clerk has failed to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state, the secretary of state may apply to the appropriate district court or a judge thereof for a writ of mandamus to compel the county clerk to comply with such directive or instruction. In any such mandamus proceeding it is a defense that the directive or instruction in question is unlawful.

(2) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against a county clerk who fails to comply with a lawful directive or instruction prepared and distributed or given under the authority of the secretary of state.

[34-213, added 1970, ch. 140, sec. 29, p. 351.]

34-214. NONCOMPLIANCE BY LOCAL COUNTY ELECTION OFFICIALS -- ENFORCEMENT BY COUNTY CLERK. (1) Whenever it appears to a county clerk that any local election official in his county has failed to comply with any election law or any directive or instruction prepared and issued by the county clerk, the county clerk may issue an order to such local election official. The order shall specify in what manner the local election official has failed to comply, indicate the proper manner of compliance and direct the local election official to so comply with such law or directive or instruction within a designated reasonable time.

(2) If the local election official fails to comply as directed by the order of the county clerk, the county clerk may apply to a judge of the district court for the county in which the county clerk holds office for an or-

der, returnable within five (5) days from the date thereof, to compel the local election official to comply with the order of the county clerk or to show cause why he should not be so compelled. Upon receipt of the application of the county clerk the judge shall issue the appropriate order, which shall be final. The judge shall dispose of the matter as soon as possible and not more than ten (10) days after his order is returned by the local election official.

(3) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against the non-complying local election official.

[34-214, added 1970, ch. 140, sec. 30, p. 351.]

34-215. APPEALS BY AGGRIEVED PERSONS. (1) Any person adversely affected by any act or failure to act by the secretary of state or a county clerk under any election law, or by any order, rule, regulation, directive or instruction made under the authority of the secretary of state or of a county clerk under any election law, may appeal therefrom to the district court for the county in which the act or failure to act occurred or in which the order, rule, regulation, directive or instruction was made or in which such person resides.

(2) Any party to the appeal proceedings in the district court under subsection (1) of this section may appeal from the decision of the district court to the supreme court.

(3) The district courts and supreme court, in their discretion, may give such precedence on their dockets to appeals under this section as the circumstances may require.

(4) The remedy provided in this section is cumulative and does not exclude any other remedy provided by law against any act or failure to act by the secretary of state or a county clerk under any election law or against any order, rule, regulation, directive or instruction made under the authority of the secretary of state or a county clerk under any election law.

[34-215, added 1970, ch. 140, sec. 31, p. 351.]

34-216. GRIEVANCE PROCEDURES. The secretary of state shall promulgate rules in compliance with [chapter 52, title 67](#), Idaho Code, establishing a state-based administrative complaint procedure as required by the help America vote act (P.L. 107-252).

[34-216, added 2003, ch. 48, sec. 2, p. 182.]

34-217. RETENTION OF COUNTY ELECTION RECORDS. County election records shall be maintained by the county clerk for the time periods outlined in this section. Records shall be maintained for the period specified beginning with the date the record is created or has become no longer valid, whichever is greater.

(1) The following records shall be retained for not less than five (5) years:

- (a) Voter registration cards for electors whose registration has been terminated;
- (b) Correspondence relating to an elector's voter registration;
- (c) Combination election record and poll book, including the ballot accounting page;

(d) Declaration of candidacy and petition of candidacy forms filed with the county clerk;

(e) Maps of precinct boundaries with legal descriptions;

(f) List of absentee voters; and

(g) County initiatives and petitions that qualify for placement on the ballot.

(2) The following shall be retained for two (2) years:

(a) Completed absentee ballot request forms;

(b) Tally books;

(c) Voted ballots;

(d) Any ballots that were required to be duplicated before being counted;

(e) Certified lists of candidates or declaration of candidacy forms from special districts used for ballot preparation;

(f) Certified ballot language from special districts for any question placed on the ballot; and

(g) Absentee ballot affidavit envelopes, including the indication of the signature's acceptance or rejection.

(3) The following shall be maintained for one (1) year:

(a) Notice of election;

(b) Personal identification affidavit;

(c) Ballot tracking logs;

(d) Automated tabulation election logs;

(e) Copy of the election definition and program used in tabulating ballots electronically and in the ballot marking device; and

(f) Record of the number of ballots printed and furnished to each polling place.

(4) Other election supplies, including but not limited to unused ballots, official election ballot identification or official ballot stamps, receipts for supplies, and spoiled ballots, may be disposed of sixty (60) days following the deadline for requesting a recount or filing an election contest pursuant to chapters 20 and 21, [title 34](#), Idaho Code.

[34-217, added 2011, ch. 285, sec. 2, p. 779; am. 2012, ch. 211, sec. 2, p. 573; am. 2013, ch. 285, sec. 1, p. 735; am. 2018, ch. 78, sec. 1, p. 177; am. 2021, ch. 262, sec. 2, p. 807.]

34-218. ELECTION ADMINISTRATION -- PRIVATE MONEYS PROHIBITED. Elections held in this state must be funded only by lawful appropriations from the government of the United States, the state of Idaho, or other local governments, including counties, cities, and special taxing districts. No official or employee of the state of Idaho, county clerk, local elections office, or other local governing body administering or conducting an election may accept or expend moneys in any amount or accept any items or goods with a total value in excess of one hundred dollars (\$100) from any private persons, corporations, organizations, business entities, political parties, or any other private entity. This section does not apply to the collection of fees authorized by law or to the donation of a facility or space for the use of election officials in holding an election.

[34-218, added 2021, ch. 275, sec. 1, p. 827; am. 2023, ch. 20, sec. 1, p. 130.]

34-219. INVESTIGATION OF CANDIDATE QUALIFICATIONS. (1) Upon the request of a registered voter, the secretary of state or a county clerk shall investigate the legal qualifications of a candidate for office and shall exclude from the ballot a candidate who fails to satisfy the legal qualifications for the office being sought. A person excluded from the ballot pursuant to this subsection may challenge such exclusion in the district court in which the person's residence for voting purposes is located.

(2) The secretary of state or a county clerk may establish a deadline by which a request made pursuant to subsection (1) of this section must be filed, which deadline shall not be earlier than fourteen (14) days following the deadline to file a declaration of candidacy pursuant to section [34-704](#), Idaho Code.

(3) Upon the request of the secretary of state or a county clerk, the state or a political subdivision shall provide information within the state's or the political subdivision's possession that is needed to ascertain the legal qualifications of a candidate for office.

[34-219, added 2022, ch. 81, sec. 2, p. 230.]

34-220. JUDICIAL REVIEW -- ELECTION RESULTS. (1) If the vote count in an election has been completed and it appears to the secretary of state or a county clerk that an error has occurred in the administration of such election that may be sufficient to change the result of the election, then the secretary of state or clerk of the county in which such error appears to have occurred may petition the district court of the county in which the error appears to have occurred for judicial review of the election. The petition shall be filed within twenty-eight (28) days of the date of the election.

(2) The secretary of state or the county clerk initiating a petition under this section shall serve notice of the petition on:

- (a) Any candidate appearing on the ballot in such election; and
- (b) Any taxing district or other party responsible for placing an initiative, a referendum, or another question on the ballot in such election.

(3) The district court may:

- (a) Give such precedence on its docket to a petition under this section as the circumstances may require; and
- (b) Consider any evidence related to the error alleged in the petition.

(4) The scope of the district court's review shall be limited to whether the error alleged in the petition occurred and, if so, whether the error was sufficient to change the result of the election. If the court determines that the error was sufficient to change the result of the election, then the court shall declare the election void and order a new election to be held at the expense of the agency where the error occurred. The new election shall be held as soon as practicable and need not occur on a date provided in section [34-106](#), Idaho Code.

(5) Court proceedings held pursuant to this section shall be conducted according to the Idaho rules of civil procedure, as applicable, and any other rules deemed pertinent by the district court.

[(34-220) 34-219, added 2022, ch. 73, sec. 1, p. 212; am. and redesign. 2023, ch. 218, sec. 8, p. 612.]