

IN THE SENATE

SENATE BILL NO. 1048

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 34-1203A, IDAHO CODE, TO PROVIDE AN  
EXEMPTION FROM POSTELECTION AUDITS OF SELECTED BALLOTS; AND DECLARING  
AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 34-1203A, Idaho Code, be, and the same is hereby  
amended to read as follows:

34-1203A. POSTELECTION AUDIT OF SELECTED BALLOTS.

(1) (a) After the completion of all county canvasses for any primary  
or general election, including any presidential primary election, the  
secretary of state shall identify and order a postelection audit of cer-  
tain paper ballots cast in any election, shall immediately post to the  
website of the office of the secretary of state a list of the elections,  
counties, and precincts selected for audit, and shall immediately no-  
tify each affected county clerk and county sheriff of the same. Upon  
receiving such notification, the county sheriff shall immediately  
impound and take into custody the affected ballots pursuant to the pro-  
cedures in chapter 23, title 34, Idaho Code. Upon completion of the  
postelection audit, the ballots shall be resealed and returned to the  
custody of the county clerk, or the county sheriff in the event that the  
ballots are subject to a recount pursuant to chapter 23, title 34, Idaho  
Code.

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

(i) Any or all federal elections held in Idaho;

(ii) The election for governor;

(iii) The statewide office election having the narrowest percent-  
age margin of votes;

(iv) The statewide ballot question election having the narrowest  
percentage margin of votes; and

(v) One (1) legislative office election within the county.

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

(i) Be selected by lot by the secretary of state without the use of  
a computer at an open public meeting governed by the provisions of  
chapter 2, title 74, Idaho Code; and

(ii) Not exceed five percent (5%) of the precincts in the county or  
one (1) precinct, whichever is greater. Provided, however, that  
multiple precincts may be selected in any county if the number of  
ballots from the precincts so selected is less than two thousand  
one hundred (2,100).

1 (d) The secretary of state, in lieu of auditing the early or absent-  
2 tee ballots from any precincts selected for postelection audit, may  
3 select days, batches, legislative districts, or tabulation machines  
4 of early or absentee ballots for audit until the number of ballots se-  
5 lected equals or exceeds the number of early or absentee ballots that  
6 were cast from the precincts selected for postelection audit. Such  
7 days, batches, legislative districts, or tabulation machines shall be  
8 selected under the same requirements by which precincts were selected.  
9 The provisions of this paragraph apply only to a county that:

10 (i) Does not organize the storage of its early or absentee ballots  
11 by precinct;

12 (ii) Organizes the storage of such ballots by day, batch, legisla-  
13 tive district, or tabulation machine; and

14 (iii) Publicly reports the election results for early or absent-  
15 tee ballots by day, batch, legislative district, or tabulation ma-  
16 chine on the county's website prior to the secretary of state's se-  
17 lection of precincts to be audited.

18 (2) The secretary of state shall conduct, and the county clerks shall  
19 facilitate, any postelection audit ordered pursuant to subsection (1) of  
20 this section. Such an audit shall be open to attendance by news media person-  
21 nel. By directive issued at least sixty (60) days prior to the election, the  
22 secretary of state shall determine the procedures by which the postelection  
23 audit is to be conducted. Such procedures shall be developed in consultation  
24 with county clerks and shall include provisions allowing each interested  
25 candidate and political party, and each political committee that publicly  
26 reported expending money on a ballot question for which the results will be  
27 audited, to appoint a designated observer. Within the time specified in the  
28 directive, the secretary of state shall report the results of any postelec-  
29 tion audits on the website of the office of the secretary of state and to the  
30 county clerk of each county in which paper ballots were audited.

31 (3) The secretary of state may order additional postelection audits,  
32 without regard to the election or precinct limitations provided in subsec-  
33 tion (1) of this section, if he determines that such action is warranted by  
34 the findings of the audits ordered pursuant to subsection (1) of this sec-  
35 tion. The secretary of state shall limit such orders for additional post-  
36 election audits to the types of problems identified by the audits performed  
37 pursuant to subsection (1) of this section.

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

41 (5) Any precinct reporting election results meeting the free recount  
42 threshold requirement in section 34-2309, Idaho Code, is exempt from the  
43 provisions of this section for such election.

44 SECTION 2. An emergency existing therefor, which emergency is hereby  
45 declared to exist, this act shall be in full force and effect on and after  
46 July 1, 2023.