

IN THE SENATE

SENATE BILL NO. 1363

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO VOTING MACHINES; AMENDING SECTION 18-2306, IDAHO CODE, TO PRO-  
2 VIDE THAT TAMPERING WITH A VOTING MACHINE IS A FELONY OFFENSE AND TO MAKE  
3 A TECHNICAL CORRECTION; AMENDING SECTION 34-2401, IDAHO CODE, TO REMOVE  
4 AND REVISE DEFINITIONS; AMENDING SECTION 34-2404, IDAHO CODE, TO REVISE  
5 PROVISIONS REGARDING THE PROHIBITED TAMPERING OF MACHINES; AMENDING  
6 SECTION 34-2409, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE EX-  
7 AMINATION OF VOTING MACHINES; AMENDING SECTION 34-2410, IDAHO CODE,  
8 TO REVISE PROVISIONS REGARDING SPECIFICATIONS FOR VOTING MACHINES OR  
9 VOTE TALLY SYSTEMS; AMENDING SECTION 34-2411, IDAHO CODE, TO REMOVE A  
10 REFERENCE TO BALLOT LABELS AND TO MAKE A TECHNICAL CORRECTION; AMENDING  
11 SECTION 34-2415, IDAHO CODE, TO REMOVE PROVISIONS REGARDING THE PREPA-  
12 RATION OF A POLLING PLACE FOR AN ELECTION; AMENDING SECTION 34-2416,  
13 IDAHO CODE, TO REMOVE PROVISIONS REGARDING THE PROCEDURE FOR PREPAR-  
14 ING VOTING MACHINES FOR AN ELECTION; AMENDING SECTION 34-2418, IDAHO  
15 CODE, TO REMOVE REFERENCES TO BALLOT LABELS AND TO MAKE A TECHNICAL  
16 CORRECTION; AMENDING SECTION 34-2420, IDAHO CODE, TO REVISE PROVISIONS  
17 REGARDING EXAMINATION OF A VOTING MACHINE DURING ELECTIONS; REPEALING  
18 SECTION 34-2426, IDAHO CODE, RELATING TO THE EXHIBITION OF VOTING MA-  
19 CHINES FOR THE INSTRUCTION OF VOTERS; AMENDING CHAPTER 24, TITLE 34,  
20 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-2426, IDAHO CODE, TO  
21 PROVIDE FOR PUBLIC LOGIC AND ACCURACY TESTS; AMENDING SECTION 34-1411,  
22 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND DECLARING AN EMER-  
23 GENCY AND PROVIDING AN EFFECTIVE DATE.  
24

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

26 SECTION 1. That Section 18-2306, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 18-2306. ILLEGAL VOTING OR -- INTERFERENCE WITH ELECTION -- TAMPER-  
29 ING WITH VOTING MACHINES OR VOTE TALLY SYSTEMS. Every person not entitled to  
30 vote, who fraudulently votes, and every person who votes more than once at  
31 any one election, or knowingly hands in two (2) or more tickets folded to-  
32 gether, or changes any ballot after the same has been deposited in the bal-  
33 lot box, or adds, or attempts to add, any ballot to those legally polled at  
34 any election, either by fraudulently introducing the same into the ballot  
35 box before or after the ballots therein have been counted, or adds to or mixes  
36 with, or attempts to add to or mix with, the ballots lawfully polled, other  
37 ballots, while the same are being counted or canvassed, or at any other time,  
38 with intent to change the result of such election; or carries away or de-  
39 stroy, or attempts to carry away or destroy, any poll list, or ballots, or  
40 ballot box, for the purpose of breaking up or invalidating such election, or  
41 ~~wilfully~~ willfully detains, mutilates, or destroys any election returns, or  
42 in any manner so interferes with the officers holding such election or con-

1 ducting such canvass, or with the voters lawfully exercising their rights  
 2 of voting at such election, as to prevent such election or canvass from be-  
 3 ing fairly held and lawfully conducted, or who violates the provisions of  
 4 section 34-2404(1) or (2), Idaho Code, by tampering with a voting machine or  
 5 vote tally system, is guilty of a felony.

6 SECTION 2. That Section 34-2401, Idaho Code, be, and the same is hereby  
 7 amended to read as follows:

8 34-2401. DEFINITIONS. As used in this chapter:

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

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

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

16 ~~(4)~~ (3) "Election" means all state, county, city, district and other  
 17 political subdivision elections including bond issue elections.

18 ~~(5)~~ (4) "Governing body" means the board of county commissioners of any  
 19 county or the governing body of any city, district or other political subdivi-  
 20 sion elections including bond issue elections.

21 ~~(6)~~ (5) "Measure" means a proposed law, act or part of an act of the leg-  
 22 islative assembly or amendment to the constitution of the state of Idaho to  
 23 be submitted to the people for their approval or rejection at an election.  
 24 "Measure" also means other propositions which can be submitted to the voters  
 25 at any election by counties, cities, districts or other political subdivi-  
 26 sions.

27 ~~(7) "Model" means a mechanically operated model of a portion of the face~~  
 28 ~~of the machine illustrating the means of voting.~~

29 ~~(8)~~ (6) "Precinct" includes all election districts.

30 (7) "Vote tally system" means the total combination of equipment, in-  
 31 cluding hardware, firmware, and software, materials, and documentation used  
 32 to perform the following functions of an election:

33 (a) To define ballots;

34 (b) To mark, cast, and count ballots;

35 (c) To report or display election results; and

36 (d) To maintain and produce any audit trail information.

37 ~~(9)~~ (8) "Voting machine" means:

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

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

44 ~~(10) "Vote tally system" means one (1) or more pieces of machinery or~~  
 45 ~~equipment necessary to examine and tally automatically paper ballots having~~  
 46 ~~marks placed thereon by a written mark or by a marking stamp. The examination~~  
 47 ~~shall be accomplished by either mark sensing or optical scanning.~~

1 SECTION 3. That Section 34-2404, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 34-2404. TAMPERING WITH MACHINES PROHIBITED. (1) No unauthorized per-  
4 son shall:

5 (a) Tamper with or injure or attempt to injure any voting machine or  
6 vote tally system to be used or being used in an election-;i

7 (b) Tamper with any voting machine or vote tally system that has been  
8 used in an election-;i

9 (c) Prevent or attempt to prevent the correct operation of any voting  
10 machine or vote tally system-;i or

11 ~~(2) An unauthorized person shall not make (d) Make or have in his pos-~~  
12 ~~session a key to a voting machine to be used or being used in an election.~~

13 (2) The secretary of state may authorize a person to access voting  
14 machines or vote tally systems for the purposes of testing, inspection,  
15 maintenance, or any other reason deemed necessary by the secretary of state.  
16 Such authorization shall be in writing.

17 (3) Neither the secretary of state nor any officer or employee of any  
18 county, city, district or other political subdivision using voting machines  
19 or vote tally systems, shall solicit or accept any compensation, other than  
20 amounts paid by the governmental unit, in connection with the sale, lease or  
21 use of voting machines or vote tally systems.

22 SECTION 4. That Section 34-2409, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 34-2409. EXAMINATION OF MACHINES BY SECRETARY OF STATE PRIOR TO  
25 ADOPTION CERTIFICATION. (1) The secretary of state shall publicly examine  
26 all makes of voting machines or vote tally systems submitted to him and de-  
27 termine whether the machines or vote tally systems comply with the require-  
28 ments of this chapter, and can safely be used by voters at elections under  
29 the provisions of this chapter. ~~Any voting machine or vote tally system~~ All  
30 voting machines or vote tally systems shall be certified by the secretary of  
31 state for use in Idaho. Except for functions or capabilities unique to this  
32 state, voting machines and vote tally systems shall be tested and the results  
33 certified by an independent testing authority designated by the secretary of  
34 state prior to certification by a voting system testing laboratory prior to  
35 the examination of voting machines and vote tally systems by the secretary  
36 of state.

37 (2) Any person owning or interested in a voting machine or vote tally  
38 system may submit it to the secretary of state for examination. No examina-  
39 tion shall be conducted unless documentation is provided indicating that the  
40 voting machine or vote tally system meets the ~~federal election commission~~  
41 ~~standards~~ United States election assistance commission guidelines. For the  
42 purpose of assistance in examining the machine or vote tally system, the sec-  
43 retary of state may employ not more than three (3) individuals who are expert  
44 in one (1) or more of the fields of data processing, mechanical engineering,  
45 and public administration. The compensation of these assistants shall be  
46 paid by the person submitting the machine or vote tally system.

47 (3) Within thirty (30) days after completing the examination ~~and ap-~~  
48 ~~proval~~ of any voting machine or vote tally system, the secretary of state

1 shall make and file in his office his report and determination of certifica-  
 2 tion on the machine or vote tally system, together with a written or printed  
 3 description and drawings ~~and or~~ photographs clearly identifying the machine  
 4 or vote tally system and the operation thereof. As soon as practicable after  
 5 such filing, the secretary of state upon request shall send a copy of the re-  
 6 port to any governing body within the state.

7 (4) Any voting machine or vote tally system that receives the ~~approval~~  
 8 certification of the secretary of state may be used for conducting elections  
 9 in this state. Any machine or vote tally system that does not receive such  
 10 ~~approval certification~~ shall not be adopted for or used at any election. Af-  
 11 ter a voting machine or vote tally system has been ~~approved~~ certified by the  
 12 secretary of state, any change or improvement in the machine or vote tally  
 13 system that does not impair its accuracy, efficiency, or capacity shall not  
 14 render necessary a reexamination or ~~reapproval~~ recertification of the ma-  
 15 chine or vote tally system.

16 (5) Any voting system, including paper ballots, that was used in the  
 17 2004 general election shall be continued to be authorized for use as long  
 18 as the voting system meets the requirements of the "Help America Vote Act of  
 19 2002," Public Law 107-252.

20 (6) For all elections conducted after 2004, no direct recording elec-  
 21 tronic voting device shall be used unless the direct recording electronic  
 22 voting device has a voter verifiable paper audit trail. Any certifications  
 23 of a direct recording electronic voting device without a voter verifiable  
 24 paper audit trail are hereby declared null and void.

25 (7) The secretary of state may periodically review the various voting  
 26 systems that have been certified for use in the state to ensure such systems  
 27 meet the ~~standards~~ guidelines set forth by the ~~federal~~ United States elec-  
 28 tion assistance commission and the national institute of standards and tech-  
 29 nology. Any voting system that does not meet such ~~standards~~ guidelines may  
 30 be decertified after a public hearing.

31 SECTION 5. That Section 34-2410, Idaho Code, be, and the same is hereby  
 32 amended to read as follows:

33 34-2410. SPECIFICATIONS FOR VOTING MACHINES OR VOTE TALLY SYS-  
 34 TEMS. (1) No voting machine or vote tally system shall be approved by the  
 35 secretary of state unless it is constructed so that it:

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

37 (b) Provides ~~facilities for voting for the~~ opportunity for voters to  
 38 vote for candidates of as many political parties or organizations as may  
 39 make nominations and for or against as many measures as may be submit-  
 40 ted.

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

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

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

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

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

3 ~~(h) Can be adjusted so that the counting mechanism rejects any vote cast~~  
4 ~~on the tabulating card in excess of the number which the voter is enti-~~  
5 ~~tled to vote. Can reject any vote cast in excess of the number that the~~  
6 ~~voter is entitled to vote, which shall be considered an overvote.~~

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

9 (j) The vote tally system shall not be connected to the internet at any  
10 time, nor shall it receive or transmit data through wireless communica-  
11 tions. The provisions of this paragraph shall not apply to electronic  
12 poll books authorized pursuant to section 34-1106A, Idaho Code.

13 (2) A vote tally system shall be:

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

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

21 (c) Capable of accumulating a count of the specific number of ballots  
22 or ballot cards tallied for a precinct, accumulating total votes by a  
23 candidate for each office; and accumulating total votes for and against  
24 each question and issue of the ballots or ballot cards tallied for a  
25 precinct.

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

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

32 (f) Capable of automatically producing precinct totals in either  
33 printed, marked, or ~~punched~~ digital form, or combinations thereof.

34 SECTION 6. That Section 34-2411, Idaho Code, be, and the same is hereby  
35 amended to read as follows:

36 34-2411. DUTIES OF CLERKS OF ELECTION BOARDS. (1) The secretary of  
37 state shall issue an administrative order outlining the duties of each of the  
38 clerks on the election board. He shall devise and prescribe for use by each  
39 local election officer the contents, form, character and kinds of ballots,  
40 ~~ballot labels,~~ ballot cards, formats, records, papers and documents and  
41 other materials and supplies and procedures necessary in the use of voting  
42 machines or vote tally systems and in the process of counting and tabulating  
43 the ballots by mechanical or electrical counting devices or equipment or  
44 computers.

45 (2) The secretary of state shall prescribe rules ~~and regulations~~ to  
46 achieve and maintain the maximum degree of correctness, impartiality, and  
47 efficiency on the procedures of voting, and of counting, tabulating, and  
48 recording votes, by the devices, machines or vote tally systems and methods  
49 provided by this ~~act~~ chapter.

1 SECTION 7. That Section 34-2415, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 34-2415. PREPARATION OF POLLING PLACE FOR ELECTION. (1) The election  
4 board of each election precinct in which a voting machine is to be used shall  
5 meet at the polling place for the election precinct at least thirty (30) min-  
6 utes before the time set for opening the polls. Before preparing the machine  
7 for voting, the election board shall ~~proceed as prescribed in subsection (2)~~  
8 ~~of this section.~~

9 ~~(2) The election board shall:~~

10 ~~(a) Cause~~ cause the voting machine to be placed where it can be conve-  
11 niently attended by the election board and conveniently operated by the  
12 voters and where the ~~ballot labels on the~~ machines can be plainly seen by  
13 the election board and the public when not being voted on.

14 ~~(b) Cause the model to be placed where each voter can conveniently op-~~  
15 ~~erate it and receive instructions on the model as to the manner of voting~~  
16 ~~before entering the voting machine booth.~~

17 ~~(c) Determine that the ballot labels are in the proper place on the ma-~~  
18 ~~chine.~~

19 ~~(3)~~ (2) After performing their duties as provided in this section, the  
20 election board shall certify to the fact in the appropriate places in the  
21 poll book.

22 SECTION 8. That Section 34-2416, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 34-2416. PROCEDURE FOR PREPARING MACHINES FOR AN ELECTION. (1) In  
25 preparing a voting machine for an election, the county clerk or the clerk of  
26 the city, district or other political subdivision, as the case may be, shall:

27 (a) Arrange the machine ~~and the ballot labels~~ so that it shall in ev-  
28 ery particular case meet the requirements of voting and counting at such  
29 elections.

30 (b) Thoroughly inspect and test the machine, ~~and file a certificate in~~  
31 ~~his office that the ballot labels have been properly arranged.~~

32 ~~(2) The arrangement of offices and names of candidates upon the ballot~~  
33 ~~labels shall conform as nearly as practicable to the provisions of law for~~  
34 ~~the arrangement of names on paper ballots, and in the event that there are~~  
35 ~~more candidates for any office than can be placed upon one (1) page, the la-~~  
36 ~~bels shall be clearly marked to indicate that the names of candidates for the~~  
37 ~~office are continued on the following page.~~

38 ~~(3)~~ (2) Representatives of political parties and candidates shall be  
39 permitted to examine the voting machines or vote tally systems.

40 SECTION 9. That Section 34-2418, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42 34-2418. ~~BALLOTS AND BALLOT LABELS.~~ (1) The ballots ~~and ballot labels~~  
43 required to be furnished for general or special elections shall be printed  
44 in black ink on clear white material of such size and arrangements as to suit  
45 the construction of the machine. The ballot ~~labels~~ for measures may contain  
46 a condensed statement of purpose for each measure to be voted on, accompanied

1 by the words "Yes" and "No." The title of the offices on the ballot ~~labels~~  
 2 shall be printed in type as large as the space for the office will reasonably  
 3 permit. Where more than one (1) candidate can be voted for an office, there  
 4 shall be printed below the office title words indicating the number the voter  
 5 is lawfully entitled to vote for out of the whole number of candidates, such  
 6 as "Vote for Two."

7 (2) The ballots ~~and ballot labels~~ required to be furnished for primary  
 8 elections may be of different colors for the political parties who are nomi-  
 9 nating or electing candidates.

10 (3) The "judiciary ballot" may be added to the ballot ~~labels~~ for the po-  
 11 litical parties. Candidates for the above offices will be shown under the  
 12 general title of nonpartisan judicial candidates.

13 (4) When a vote tally system is used, the county clerk shall prepare the  
 14 ballots as nearly as practicable as required by law.

15 SECTION 10. That Section 34-2420, Idaho Code, be, and the same is hereby  
 16 amended to read as follows:

17 34-2420. EXAMINATIONS OF ~~FACE-OF~~ MACHINE DURING ELECTION. The elec-  
 18 tion board shall occasionally examine the ~~face-of-the~~ voting machine and the  
 19 ~~ballot labels~~ ballots to determine that the machine and the ~~ballot labels~~  
 20 ballots have not been damaged or tampered with.

21 SECTION 11. That Section [34-2426](#), Idaho Code, be, and the same is hereby  
 22 repealed.

23 SECTION 12. That Chapter 24, Title 34, Idaho Code, be, and the same is  
 24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 25 ignated as Section 34-2426, Idaho Code, and to read as follows:

26 34-2426. PUBLIC LOGIC AND ACCURACY TEST. (1) Each county clerk shall  
 27 hold a public logic and accuracy test prior to election day to demonstrate to  
 28 the public that the vote tally system is accurately reading and tabulating  
 29 votes cast. Before distributing absentee ballots, starting early voting,  
 30 and conducting a public logic and accuracy test, each county clerk shall con-  
 31 duct internal election setup testing to ensure electronic vote tally system  
 32 functionality and accuracy.

33 (2) Public notice shall be published on the county's official website,  
 34 if the county maintains a website, or shall be posted within the office of the  
 35 county clerk at least ten (10) days prior to the commencement of the public  
 36 test.

37 (3) The county clerk shall adopt procedures for testing that:

38 (a) Verify that each contest position and ballot style on the ballot can  
 39 be voted and is accurately counted;

40 (b) Include overvotes and undervotes for each race, if applicable to  
 41 the system being tested;

42 (c) Include write-in votes, when applicable to the election;

43 (d) Determine expected test outcomes depending on marking pattern ap-  
 44 plied;

45 (e) Produce a zero report during the logic and accuracy test to show  
 46 that no ballots have been cast and no votes have been tabulated; and

1 (f) Require that the county clerk observe the tabulation of all ballots  
2 and compare the actual results to the expected results.

3 (4) A logic and accuracy test is successful if the actual results are  
4 identical to the expected results. In the event a test produces different  
5 results from the expected results, the county clerk shall investigate the  
6 cause of the variance and repeat the test until accurate results are pro-  
7 duced.

8 (5) Upon completion of a successful test, the county clerk shall de-  
9clare the public logic and accuracy test complete.

10 SECTION 13. That Section 34-1411, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 34-1411. PAYMENT OF ELECTION EXPENSES BY COUNTY. (1) On and after Jan-  
13 uary 1, 2011, no county shall charge any taxing district, as defined in sec-  
14 tion 63-201, Idaho Code, for expenses associated with conducting any elec-  
15 tion on behalf of any taxing district, with the exception of expenses associ-  
16 ated with conducting municipal runoff elections, which shall be paid by the  
17 city adopting runoff elections pursuant to the provisions of section 50-612  
18 or 50-707B, Idaho Code. Expenses associated with conducting taxing district  
19 elections shall include:

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

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

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

27 (d) Costs paid for renting polling facilities.

28 (e) Acquisition, repair, maintenance or any other costs associated  
29 with voting machines or vote tally systems as defined in ~~subsections (9)-~~  
30 ~~and (10) of section 34-2401, Idaho Code.~~

31 (f) Costs of publishing and printing election notices and ballots.

32 (2) Counties shall not be responsible for any election expenses prior  
33 to the time any taxing district orders an election, such as notice and costs  
34 for public hearings and notice and costs for public hearings on ballot mea-  
35 sures.

36 (3) Notwithstanding the provisions of subsection (1) of this section,  
37 all ballot questions shall be limited to two hundred fifty (250) words or  
38 less. If a ballot question is in excess of two hundred fifty (250) words, the  
39 entity proposing a ballot question that is not a state constitutional amend-  
40 ment shall be required to pay the ballot printing costs associated with the  
41 ballot question.

42 SECTION 14. An emergency existing therefor, which emergency is hereby  
43 declared to exist, this act shall be in full force and effect on and after  
44 July 1, 2024.