

IN THE SENATE

SENATE RESOLUTION NO. 101

BY STATE AFFAIRS COMMITTEE

A SENATE RESOLUTION

STATING FINDINGS OF THE SENATE AND PROVIDING FOR THE ADDITION OF A NEW  
RULE 54 TO THE RULES OF THE SENATE.

Be It Resolved by the Senate of the State of Idaho:

WHEREAS, the Senate deems it necessary and desirable to add a new Rule 54 to the Rules of the Senate.

NOW, THEREFORE, BE IT RESOLVED by the members of the Senate, assembled in the First Regular Session of the Sixty-fourth Idaho Legislature, that the Rules of the Senate shall be amended by the addition thereto of a new Rule 54 to read as follows:

RULE 54

Contest of Election -- Procedures. This Rule governs procedures leading up to and including a hearing on the contest of election. It should be read in conjunction with Chapter 21, Title 34, Idaho Code. For purposes of this Rule, the term "Party" means either the CONTESTEE or the CONTESTOR; the term "Parties" means both.

(A) Any proof of the CONTESTEE's or CONTESTOR's legal arguments, including depositions, affidavits, production of papers, and examination of poll books and ballots (herein "Record") that either CONTESTEE or CONTESTOR desires the Senate to consider in adjudication of a Contest must be completed on or before December 29. CONTESTEE and CONTESTOR's Record must be delivered to the Office of the Secretary of State no later than the close of business on the next business day. Any Record or evidence from the CONTESTEE or CONTESTOR not delivered to the Office of the Secretary of State by that day and time will not be considered by the Senate.

(B) The Parties must file a Memorandum that outlines their claims, defenses, legal authority, legislative precedent, proposed form of relief, and a description of witness fees and discovery costs that are incurred. The Memorandum must be filed with the Office of the Secretary of State no later than the close of business four (4) business days following delivery of the Record to the Office of the Secretary of State as provided in paragraph (A). However, CONTESTEE is not required to file a responsive pleading to the Contest.

(C) Any Party may file a Responsive Memorandum. If a Party chooses to file a Responsive Memorandum, it must be filed with the Office of the Secretary of State no later than the close of business on the first day of the next Regular Session.

(D) If an unresolved discovery or Record dispute exists and continues between the CONTESTEE and the CONTESTOR, and on motion duly made, the presiding officer or his designee may rule on the dispute. Neither the

1 CONTESTEE nor the CONTESTOR will be granted any additional time beyond  
2 December 29 to develop or deliver his Record.

3 (E) Committee hearing procedures. If the Senate refers the Contest  
4 of Election to a Standing or Special Committee, the Committee Chairman  
5 will notify the Parties of the Committee hearing procedures. The fol-  
6 lowing procedures, subject to the discretion of the Committee Chairman,  
7 will govern the hearing:

8 (1) No additional testimony or Record may be presented, taken, or  
9 allowed by the Parties beyond the Record delivered to the Office of  
10 the Secretary of State as provided in paragraph (A) of this Rule.

11 (2) Neither CONTESTEE nor CONTESTOR may examine or cross-examine  
12 any witness that testifies before the Committee. All examination  
13 will be performed by Committee members.

14 (3) Pursuant to Section 34-2104, Idaho Code, only the named points  
15 in the Notice of Contest of Elections may be argued.

16 (4) The Committee may send for and receive persons, papers, and  
17 records, whether written or oral, including from the Office of the  
18 Attorney General, other State Elected Officers, State officials,  
19 County Elected Officers, County officials, or other witnesses  
20 that the Committee determines will reasonably assist the Commit-  
21 tee in the performance of its constitutional duty as a "judge of  
22 the election, qualifications and returns of its own members," Sec-  
23 tion 9, Article III, Idaho Constitution.

24 (5) In all other respects, the Committee will be governed by the  
25 rules of the Senate.

26 (F) The Committee may adopt any of the following as part of the hearing  
27 procedures:

28 (1) Permit the Parties to have counsel present at Committee meet-  
29 ing(s); and

30 (2) Establish a time limit for the CONTESTEE and CONTESTOR to ar-  
31 gue their positions to the Committee.

32 (G) Neither CONTESTEE nor CONTESTOR, nor their counsel, may partici-  
33 pate in ex parte communication with any Idaho State Senator regarding  
34 the merits of the Contest of Election prior to final Senate determina-  
35 tion.

36 (H) Service of all Record, Memorandum, Responsive Memorandum, motions,  
37 or objections must be made on the other Party as provided in Idaho Rules  
38 of Civil Procedure 5(b), excepting subpart 5(b)(2)(D). The Parties must  
39 also provide a proof of service as provided by Idaho Rules of Civil Pro-  
40 cedure 5(e). The Parties must work in good faith to ensure reasonable  
41 and timely service, considering the limited time periods.

42 (I) Nothing in this Rule limits or restricts the Senate in the perfor-  
43 mance of its duties as the judge of the election, qualifications and re-  
44 turns of its members.