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## STATE OF IDAHO

### STATE PLAN

As required by Public Law 107-252,  
Help America Vote Act 2002, Section 253 (b)

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Amended 2008



**Idaho Votes**  
**Every Vote Counts**

## State of Idaho – State Plan Amended 2008

As required by Public Law 107-252;  
Help America Vote Act 2002, Section 253 (b)

### **Introduction**

The Help America Vote Act (HAVA) was enacted into law on October 29, 2002. Congress passed HAVA to make sweeping reforms in the federal voting process. The Act addresses improvements to voting systems and voter access that were identified following the 2000 Presidential election. HAVA includes requirements for a centralized voter registration database, privacy and independence in the voting process, access for people with disabilities, and voter outreach and education. As a condition of receiving federal funding, each state is required to submit a plan that meets the requirements of the Act and update the plan as activities are accomplished and new requirements are identified.

### **Background**

Before the Help American Vote Act became the law of the land for election reform, several of the mandates were already addressed by Idaho Statutes. In 1994 an Election Day Registration bill proposed by the Secretary of State in conjunction with the Governor's office was passed by Idaho's legislature with only one dissenting vote. Election Day Registration was in effect for the 1994 general election and exempted Idaho from the National Voter Registration Act. Exemption from the NVRA allowed Idaho to continue to remove electors who had not voted in an election over a four-year period from registration rolls. Idaho has been able to maintain cleaner registration lists and at the same time provide an individual with the ability to register at the polls on election day or at their absentee polling place. Although exempt from the NVRA, Idaho also adopted mail registration procedures and accepts the NVRA registration application. Idaho's accessible registration through Election Day Registration has eliminated the need for provisional ballots under HAVA. Every properly cast ballot on election day will be counted on election day.

Idaho formed an Election Task Force after the 2000 November election. Some of the initiatives were as follows:

- H.B. 206 authorized the use of direct electronic voting devices and provided that voting machine or vote tally system to be certified in Idaho must meet the federal election commission standards and be approved for use by an independent testing authority sanctioned by the national association of state election directors. (Ch. 272, 2001 S.L.)
- H.B. 212 was passed changing absentee voting deadline for mail requests (Ch. 236, 2002 S.L.)
- Anticipating federal election reform legislation, H.B. 213 was passed in 2002 to establish a Democracy Fund to receive federal moneys that may become available for improving Idaho's election system. (Ch. 237, 2002 S.L.) In 2003 H.B. 162 was passed specifically designating the Democracy Fund for funding and carrying out the activities mandated under the federal Help America Vote Act.

The Secretary of State requested and was given carry-over money in the 2001 Legislative Session for the purpose of voter education and election official training. To date the Secretary of State has used the money to fund the following:

- In cooperation with the county clerks, implemented a statewide integrity check of the voter registration files. (Less than 1% duplications were found statewide.)
- Produced election worker training videos for the various types of voting systems used in Idaho.
- Updated election worker procedure manuals and introduced new instructional flip charts for each pollworker position. Manuals and flip charts reflect the procedures to be followed for each type of voting system.
- Held a two-day election workshop for county clerks, election deputies and voting equipment vendors.
- Revised absentee voting instructions with diagrams to accompany absentee ballots.
- Revised voting instructions with diagrams to be placed in each voting booth at the polls. (12x18 on card stock)

- Certified four types of direct electronic voting equipment systems.
- Printed general election Voters' Guide with registration, voting and elections information for the Idaho citizen. This Guide was also available in Spanish.

The "Manual for Judges and Clerks" instructs sample ballots be posted at the polling place. Instructions on how to vote, including how to obtain a replacement ballot, and a "Card of Instructions – Crimes Against Elective Franchise" are statutorily required to be posted at the polling place. New placards with instructions for mail-in registrants and first-time voters, information regarding the date of the election and the hours during which polling places will be open, voter's rights, and an expanded "Card of Instructions – Crimes Against Elective Franchise" have been sent to the printers.

Statutory audit trails of absentee ballots are required for both F.P.C.A. applicants and the general population. The issuing officer shall keep as part of the records of his office a list of names and precinct numbers of electors making applications, the manner and time of delivery or mailing to and receipt of returned ballot, if the ballot was delivered in person, the name and address of the person delivering the same. If an absent elector's ballot is not returned or if it be rejected and not counted, such fact shall be noted on the record. These requirements already statutorily required will merely require the County Clerk to submit a report to Secretary of State on absentee voters as required by HAVA.

Idaho utilizes four types of voting systems; paper, punch card, oval ballot optical scan and arrow ballot optical scan. (See Appendix A) These voting systems meet the private and independent provision for verifying votes, enables voters to change their ballot or correct any errors, providing a paper audit trail and, through voter education, meeting HAVA requirements. Statutory requirements of assistance to voters includes curbside voting, assistance from the person of the elector's choice, no fault absentee voting, absentee ballots mailed within the county, polling place accessibility standards and physical arrangements of the polling place shall be sufficient to guarantee all voters the right to cast a secret ballot. Except for the visually impaired, the privacy of the voter and confidentiality of the ballot is preserved. Each polling place will be equipped with one voting system that shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired by 2006.

In 2003 H.B. 162 (See Appendix B) was enacted requiring a driver's license number or last four digits of social security number and providing for a statewide voter registration list. Voter registration forms with identification and warning requirements of HAVA have been in use since March of 2003. Mail-registrants are notified of identification documentation requirements.

Idaho's biggest challenge will be converting Idaho's 44 separate voter registration files into a uniform statewide registration file. -Covansys Corporation has been awarded a contract to install the statewide voter registration system. The system is scheduled to be implemented prior to January 1, 2006.

The State of Idaho, with limited funding, statutory authorization, state and local cooperation, has been aggressive in providing voters access to registration and voting. The Help America Vote Act affords Idaho the opportunity to improve all facets of the election process.

### **The Planning Process**

HAVA and companion federal funding provides the opportunity to make enhancements to Idaho's election system that will support improved voter access and strengthen the overall integrity of the elections process.

Under the direction of Secretary of State Ben Ysursa the HAVA State Planning Committee was organized and held its first meeting on February 13, 2003. After several subsequent meetings and subcommittee meetings, the Committee has completed its initial state planning process recommendations.

Secretary Ysursa stated that it was his office's goal, in a partnership with the counties, to provide long term funding to improve the election process. Although the money is for federal elections the changes would obviously improve the election process for all elections. Secretary Ysursa emphasized that HAVA did not require an immediate change of any voting system currently being used. Any purchase of a new system must meet the standards specified in the act but the

option to purchase new systems is still the subject of ongoing discussion between the Secretary of State's Office and the Idaho Association of County Recorders and Clerks (IACRC).

Idaho is in a good position to implement the HAVA requirements. Many of the election reforms required by the Act are already addressed in Idaho state laws. Idaho has a positive track record of election reform and moved quickly to prepare for the much anticipated changes in the federal election laws. It established the Democracy Fund with legislation passed by the 2002 legislature to accept HAVA funds and passed legislation in 2003 to implement HAVA in the form of House Bill 162. The bill, which was signed into law on March 13, 2003, more clearly defined the role of the Secretary of State in administering federal elections, provided for a statewide registered voter list or database, directed the Secretary of State to adopt rules or directives outlining an election grievance procedure and the definition of what constitutes a valid vote for each type of voting system being used in the state, and more clearly defined the operations of the Democracy Fund to handle funds authorized by the Help America Vote Act of 2002.

This state plan produced by the HAVA State Planning Committee identifies the priorities and specific steps that the state and counties will take to meet the mandates of HAVA. It also discusses what additional improvements may be undertaken if there is remaining or additional federal funding after all requirements have been met. It is the Committee's goal to have greater uniformity in our state and to ensure that all individuals have access to the election process. Idaho is working to ensure that our statewide voter registration database is a single, centralized, real-time database. Voter outreach and education have been top priorities and will continue to be. The Secretary of State's office conducts workshops for county clerks and voter education programs that include election worker training videos, revised voting instructions, new instructional flip-charts and updated manuals for each poll worker position. Idaho recognizes that voter participation is disproportionately low in some demographic groups, including young people and citizens with limited English language proficiency. Idaho is committed to ensure that these and all other qualified voters are afforded the opportunity to participate in the election process.

It is anticipated that this document will be revised several times to reflect the state's progress in implementing HAVA. Effective implementation of many of the items included in the plan is based on the assumption that the Help America Vote Act will be fully funded by Congress over the next 3 years. If this does not happen, parts of the state plan may not be implemented.

As Idaho moves forward in carrying out this plan, the Secretary of State will continue to encourage coordination, cooperation, and collaboration between local and state officials on the innovations and technology that will be developed in response to HAVA. The Secretary of State will also involve the political parties and civic groups working on voter participation issues.

## **STATE PLAN REQUIRED ELEMENTS (HAVA Section 254)**

### **1. Title III Requirements and Other Activities**

*How the State will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251 (a) (2), to carry out other activities to improve the administration of elections.*

The first five million dollars of "early out" or Title I money will be used to: (1) develop and administer a statewide voter registration system; (2) assist the counties in making polling places accessible to those individuals with disabilities and (3) for education and training of voters, election officials and poll workers.

If fully funded, the fifteen million dollar requirement payments would be deposited into the Democracy Fund and made available for: (1) providing every polling place with a voting device accessible to those individuals with disabilities, including the blind and sight impaired (2) counties who want to upgrade their voting systems through a grant program and (3) on going maintenance of the statewide voter registration system.

The funding is over a three-year period of time. There is no fiscal limitation on spending any of these funds as long as the State Plan is in place, reviewed regularly, and updated as needed.

Idaho will not mandate a punch card buyout. HAVA does not require replacing any voting system that was used in the year 2000 but the system has to be able to be modified by 2006 to meet the requirements of HAVA. The Committee will give input on how current systems can be modified to meet those requirements. The Committee does, however, recommend that the Idaho Association of County Recorders and Clerks (IACRC) and the Idaho Association of Commissioners and Clerks discuss the feasibility of a single direct electronic recording (DRE) voting system from a single vendor by all of the counties in the State. If a single statewide

system is to be used, the state would determine the type of DRE to be purchased when a county makes the decision to change from their current system.

HAVA requires the Secretary of State to define what constitutes a vote and what will be counted for each of the voting systems currently in use in the state. The definitions along with instructions to local election officials have been put in the form of directives and will instruct officials on what should and should not be counted in the vote tabulation process.

All materials that are required by federal law to be displayed in the polling places have been reviewed by the Secretary of State and IACRC and will be used beginning with the primary election in 2004. These materials include: a notice of the date and time the polls will be open, instructions on how to cast a vote, instructions for mail-in registrants and first-time voters, general information on voting rights, instructions on how to contact the appropriate individual to report a violation and information about the prohibition on acts of fraud and misrepresentations. Preparation of the required sample ballot to be posted will be the responsibility of the local election officials.

Section 303 of HAVA requires states to implement a “single, uniform, official, centralized, interactive, computerized statewide voter registration list” that is defined, maintained and administered at the state level. Idaho’s registration system will be changed from its current county based voter registration system to a single, centralized state-wide database. Because of the time needed to implement the computer system and the data conversion from the various counties, the State has certified a waiver to January 1, 2006, for implementation of the state-wide system. A contract has been awarded for the statewide system and it will be in place by the 2006 deadline.

Idaho has redesigned and provided each county with forms that meet the federal requirements for the voter registration and identification. These changes were required by passage of HB 162 during the 2003 legislative session.

## **2. Idaho’s Distribution of Requirements Payment**

*How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of –*

- (A) the criteria to be used to determine the eligibility of such units or entities for receiving the payments; and*
- (B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8). – HAVA Section 254 (a) (2)*

The HAVA State Planning Committee will meet twice each calendar year to review the payments from the fund and the general administration of the Democracy Fund. A grant program will be established to allocate funds from in the Democracy Fund to assist the counties



in implementing the requirements of HAVA at the local level. The actual details and complexity of the administration of the grant program will depend upon whether or not the state purchases a statewide system or opts to allow each county to make that determination. As to the criteria for the distribution of these monies, the Committee is considering several formula elements including: (1) ballot style; (2) number of registered voters; and (3) demonstrated need.

There is concern about funding, should there be a requirement that all counties utilize a statewide uniform voting system when there is no guarantee of federal funding. Regardless of the level of funding provided by the federal government, there will not be sufficient money available to replace all machines. Counties will have to participate and a formula will need to be developed to determine the local matching amount.

The State Planning Committee will monitor payments to local governments. Subject to federal funding of the program and in consultation with IACRC, the State will adopt a matching grant program based upon a county by county determination to participate in a statewide voting system. The voting system priorities will be established through the Secretary of State's interpretation of HAVA.

Current law leaves the purchasing decision for voting equipment to the county commissioners of the individual counties. If, through discussions with counties, a single voting system is to be established, legislation will be required authorizing the purchase of a single statewide system.

### **3. 3. Voter Education, Election Official Education and Training and Poll Worker Training**

*How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III. – HAVA Section 254 (a) (3)*

Education and training programs are critical to a successful implementation of election reform in Idaho. The following proposed activities will help insure that all stakeholders are comfortable with the new processes and supporting technologies that HAVA requires. The proposed activities are:

- A. Design bilingual public service announcements on how to register and cast a vote and what to bring to the polls as a first time voter in Idaho.
- B. Work with public schools (Jr. High through High School) to improve election education with possible mock elections. Encourage high school students to serve as poll workers.
- C. IACRC to review and analyze current poll worker training tools.

- D. Conduct voter seminars including bilingual seminars and seminars at the Indian Reservations located in Idaho.
- E. Form outreach partnerships with public and private organizations including but not limited to Idaho Latino Vote, NAACP, League of Women Voters and the Native American Tribes.
- F. Develop uniform Voter information card.
- G. Design a bilingual Voter Guide – possibly web-based
- H. Provide bilingual voter information and recruit bilingual poll workers
- I. Explore the use of a single uniform voting system statewide.
- J. Develop a comprehensive schedule, planning the training and education through election day incorporating Latinos, Native Americans and other ethnic groups in Idaho.
- K. Provide bilingual voter information programs for those persons with disabilities.
- L. Develop a “best practices” training program for election officials including cultural and language sensitivity best practices.

#### **4. Voting System Guidelines and Processes**

*How the State will adopt voting system guidelines and processes, which are consistent with the requirement of section 301. – HAVA Section 254 (a) (4)*

Voting system standards and processes consistent with the Voting Systems Standards identified in Section 301 will be adopted. Many voting system guidelines are in place. Some of the recommended steps include the following:

- A. HAVA requires voting systems to be accessible to voters with disabilities who need special assistance in a manner that provides the same opportunity for access, participation, privacy, and independence as other voters. This requirement may be met by providing at least one DRE voting system at each polling place. A DRE voting system records votes by means of a ballot display with mechanical or electro-optional components that can be activated by the voter, such as a touch screen and audio prompts.
- B. Allow for the creation of all-absentee or mail-in ballot precincts. Legislation is currently being proposed to allow this. -To accommodate election day registration in

all-absentee ballot precincts, residents could register and vote the day of election at the office of the county clerk.

- C. The Secretary of State's office and the county clerks will work with groups representing people with disabilities to attain accessibility of polling places and to assist in informing voters with disabilities about the resources available.
- D. The Secretary of State will direct counties to continually review their facilities to ensure access to polling places for people with disabilities.
- E. The Secretary of State will again apply for a polling place accessibility grant from the U.S. Secretary of Health and Human Services (HHS) under section 261 of HAVA. These funds will be utilized to develop disability access training and education materials and to assist the counties in making their polling places more accessible.
- F. Seek a more detailed definition of what is accessible for the blind and the visually impaired.
- G. All voting systems currently used in Idaho have a verifiable audit trail and all newly certified voting systems must provide a verifiable audit trail as required by HAVA.

Provisional Voting (Section 302). The State is not required to implement a provisional voting system because Idaho, like 5 other states, enacted election day registration several years ago and is exempt from the National Voter Registration Act.

Voting Information Requirements.(Section 302) Idaho currently publishes and posts voting information in many places throughout the state – county election offices, in the statewide voters' pamphlet, on state and county elections websites. Detailed voting instructions for each separate type of voting system, including absentee, were updated in 2002. Regarding future voting information activities: (1) The Secretary of State will continue to work with Caxton Printers to see that required posted information is included in materials supplied to the precinct i.e., date of the election and the hours during which polling places will be open, voters' rights, instructions for mail-in registrants and first-time voters, general information on Federal and state laws and how to contact the appropriate officials if these rights are alleged to have been violated. (2) The Counties would be responsible for their respective sample ballot(s). Sample ballots posted in the polling place should reflect only the candidates appearing on the ballot(s) for that particular polling place.

#### Computerized Statewide Voter Registration List

Section 303 of HAVA requires states to implement "a single, uniform, official, centralized, interactive, computerized statewide voter registration list" that is defined, maintained and administered at the state level. -The Secretary of State has entered into a contract with Covansys Corporation to implement a statewide voter registration system for Idaho, with scheduled implementation prior to January 1, 2006.

### Requirements for Voters Who Register By Mail.

HAVA Section 303 includes new identification requirements for voters who register by mail and who have not previously voted in an election for federal office. These requirements took effect January 1, 2003.

The Planning Committee and the office of the Secretary of State have developed and will continue to develop mechanisms (press releases, county election officials' communications, etc.) to inform the mail-in registrants and first-time voters of this new requirement prior to their going to the polls or voting absentee.

County election officials will be encouraged to obtain the necessary verification of identification of those voters prior to election day in order to reduce the amount of confusion for these people at the polls.

## **5. Idaho's HAVA Fund Management**

*How the State will establish a fund described in subsection(B) for purposes of administering the State's activities under this part, including information on fund management. – HAVA Section 254 (a) (5)*

The State of Idaho created the "Democracy Fund" in 2002 separate and distinct from the State General Fund. The Committee recommends continued use of this fund to comply with HAVA. The Fund will contain federal, state and local money. State and local funds will be used to meet the requirements of the 5 percent match under HAVA.

The Secretary of State will work with the Controllers Office to follow and enforce all mandated fiscal controls and policies.

## **6. Idaho's HAVA Budget**

*The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on -*

- (A) the costs of the activities required to be carried out to meet the requirements of title III;*
- (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and*
- (C) the portion of the requirements payment, which will be used to carry out other activities. – HAVA Section 254 (a) (6)*

Section 101 money deposited into the Democracy Fund should be used in the following order of priority:

1. Statewide voter registration list
2. Voting System Replacement
3. Election Worker Training
4. State Plan Development and Compliance Monitoring

Grants available from U.S. Health and Human Services for polling place accessibility will continue to be applied for by the Secretary of State to develop training materials and to assist counties in meeting their accessibility needs.

Title II money received will be used to purchase equipment that meets the requirements of Title III, including the accessible voting device for the blind and visually impaired in each polling place, and will be deposited in the Democracy Fund to be made available to the various counties to upgrade or replace their voting systems. Funds will also be used to develop a statewide voter registration system and will also be deposited and maintained in the Democracy Fund to provide ongoing operation and support for the system.

The chart below lists the activities and costs of HAVA activities to be implemented in Idaho using both Title I and Title II monies for each activity. The chart reflects the dollars to be used if HAVA is fully funded and the state received its full share of the funds.

Overall HAVA Compliance Budget

HAVA Requirement	Estimated Cost	Title II Funds	Title I Funds
Statewide voter registration system development	\$5,000,000	\$4,500,000	\$500,000
Statewide voter registration system operations and support	\$1,800,000	\$1,000,000	\$800,000
Accessible voting device for each polling place	\$6,300,000	\$6,300,000	
Voting system upgrade grant program for counties	\$6,300,000	\$3,000,000	\$3,300,000
Voter education and outreach	\$200,000	\$100,000	\$100,000
Election worker training	\$200,000	\$100,000	\$100,000
State plan development and HAVA compliance monitoring	\$200,000		\$200,000

**7. Maintenance of Effort**

*How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. – HAVA Section 254 (a) (7)*

The intent of funding provided under HAVA is to pay for new and enhanced efforts, not to supplant existing funding at the state and county level. In compliance with HAVA, Idaho will maintain expenditures of the State for election administration activities at or above \$144,000, which is the amount expended in the fiscal year ended June 30, 2000.

## **8. How the State will adopt performance goals and measures.**

*How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met. – HAVA Section 254 (a) (8)*

The Committee along with the Secretary of State's Office will develop measurable outcomes in its performance goals and monitor the success in meeting each of these goals. Each county will also have a substantial responsibility in meeting performance goals. The counties will monitor performance measures and will report to the state on a biennial basis. The Committee's goal is to achieve election reform and compliance with HAVA requirements through the successful implementation of the programs outlined in this Plan. The following is a partial listing of areas that will be examined and for which measurable outcomes will be developed to determine the level of success the State is experiencing in the implementation of the Plan.

- A. Conduct and maintain over a period of years, an exit survey of voters on the ease of use and confidence in the voting process.
- B. Conduct surveys on non-voter participation
- C. Measure the efficiency of polling places and new voting systems, i.e., wait time.
- D. Utilize suggestion boxes at each precinct.
- E. Gather and analyze comments from the public and political parties on use of statewide voter registration lists.
- F. In the statewide grievance system – number of complaints received, resolved and unresolved.
- G. Conduct a comparative analysis of voter turnout data.
- H. Track the number of voter education and outreach initiatives, including: description, estimated costs, and participation.
- I. The number of poll workers and election officials who are trained.

## **9. State-Based Administrative Complaint Procedures**

*A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402. – HAVA Section 254 (a) (9) – Deadline for Compliance: Prior to certification of State Plan, but no later than January 1, 2004; no waiver permitted.*

Section 402 of HAVA requires the State to create a state-based administrative complaint procedure to assure compliance with Title III of HAVA. The offices of the Secretary of State has developed and adopted administrative rules that will allow any person who believes there is, has been, or is about to be a violation of HAVA Title III to file a complaint. The complaint must

be in writing, sworn and notarized. At the complainant’s request, there will be a hearing on the record. If the State finds a violation, it will provide an appropriate remedy. If there is no violation, the complaint will be dismissed and the results will be published. The State will make a final determination on a complaint within 90 days, or if the State cannot meet this 90-day deadline, will provide under an alternative dispute resolution procedure. All procedures will be administered in a uniform and nondiscriminatory manner.

## **10. Effect of Title I Payments**

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities. – HAVA Section 254 (a) (10)

Section 101. Payments to States for activities to improve administration of elections.

Idaho is eligible for approximately \$5 million under Section 101. These funds will be used for activities to meet the following requirements:

1. Statewide voter registration system	\$ 500,000
2. On-going support of voter registration system	\$ 800,000
3. Voter Education	\$ 100,000
4. Election Worker Training	\$ 100,000
5. Plan development and administration	\$ 200,000
6. Voting System Upgrades	\$3,300,000
 TOTAL	 \$5,000,000

Idaho is a “minimum state” for receiving HAVA funds. All of the funds received under Title I will be required to be used in meeting the requirements of Title III and to purchase replacement voting systems that meet the requirements of Title II.

## **11. Idaho HAVA State Plan Management**

*How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change –*

- (A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;*
- (B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and*
- (C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A). – HAVA Section 254 (a) (11)*



Continuous responsible management of the plan is essential to successful implementation and accomplishment of its purposes. Due to the complexity of HAVA and the statutory charge given to the Secretary of State to be the “chief election officer” with the “responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws,” the Office of the Secretary of State will be responsible for the ongoing management and implementation of the plan. The involvement of the counties in accomplishing various projects is essential and the Secretary of State will coordinate many activities outlined in the plan with them.

The State Planning Committee is charged with monitoring HAVA activities and making recommendations on needed changes to the state plan. Initially, the Secretary of State will call the committee together at least semi-annually to report on the various activities undertaken and receive input on any change in direction the plan should take.

The state understands and agrees to comply with HAVA requirements relating to ongoing management of the State Plan. More specifically, the state agrees that it may not make any material changes in the administration of the State Plan unless the change:

- is developed and published in the Federal Register in accordance with HAVA section 255 in the same manner as the original state plan,
- is subject to public notice and comment in accordance with HAVA section 256 ; and
- takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register.

## **12. Changes to State Plan from Previous Fiscal Year**

*In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.*  
– HAVA Section 254 (a) (12).

The 2004 Plan has been updated with this 2008 Amended Plan. Changes in the Plan consist of the following:

- Addition of \$575,000 in Title II funds to provide full funding of the amount authorized by Congress under HAVA.
- Details the use of Title I and Title II funds to meet the requirements of HAVA.
- Changes the budget of the Title I funds

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### APPENDIX A – Voting Systems In Idaho

County	*Precincts	----- Registered Voters (09/2008)-----		
		Paper Ballot	Optical Scan	Punch Card
Ada	141		187,811	
Adams	6	2,605		
Bannock	58		38,836	
Bear Lake	14	3,416		
Benewah	11	4,800		
Bingham	25			19,575
Blaine	14		11,841	
Boise	6	4,670		
Bonner	33		22,429	
Bonneville	52			44,258
Boundary	7	5,843		
Butte	4	1,692		
Camas	2	749		
Canyon	53		70,032	
Caribou	9	4,092		
Cassia	25		8,789	
Clark	3	410		
Clearwater	14			4,604
Custer	9	2,746		
Elmore	18		9,858	
Franklin	17			6,005
Fremont	14		6,701	
Gem	13		8,834	
Gooding	7		6,374	
Idaho	26	9,937		
Jefferson	17			11,044
Jerome	10		8,302	
Kootenai	71		67,961	
Latah	32		21,453	
Lemhi	9		5,062	
Lewis	8	2,032		
Lincoln	6	2,131		
Madison	19		14,109	
Minidoka	11			8,357
Nez Perce	37			21,044
Oneida	6		2,582	
Owyhee	12	4,495		
Payette	10		9,864	
Power	6		3,270	
Shoshone	18			6,189
Teton	4		5,226	
Twin Falls	45		33,163	
Valley	8		6,109	
Washington	11	4,988		
<b>Total</b>	<b>921</b>	<b>54,606</b>	<b>548,606</b>	<b>121,076</b>
<b>Per Cent</b>		<b>7%</b>	<b>76%</b>	<b>17%</b>
<b>Total Jurisdictions by Voting System</b>		<b>15</b>	<b>21</b>	<b>8</b>
*Does not include absentee precincts				

**APPENDIX B – House Bill 162**

IN THE HOUSE OF REPRESENTATIVES HOUSE BILL NO. 162  
BY STATE AFFAIRS COMMITTEE  
AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 34-201, IDAHO CODE, TO PROVIDE FURTHER DUTIES OF THE SECRETARY OF STATE REGARDING ELECTIONS; AMENDING CHAPTER 2, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-216, IDAHO CODE, TO PROVIDE FOR GRIEVANCE PROCEDURES; AMENDING SECTION 34-303, IDAHO CODE, TO DELETE LANGUAGE STATING THAT NO ELECTION BOARD FOR A PRECINCT SHALL EXCEED TEN MEMBERS; AMENDING SECTION 34-410, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIREMENTS FOR MAIL REGISTRATION; AMENDING SECTION 34-411, IDAHO CODE, TO REVISE THE CONTENTS OF AN APPLICATION FOR REGISTRATION; AMENDING SECTION 34-416, IDAHO CODE, TO DELETE LANGUAGE REQUIRING THE OFFICIAL WHO PERSONALLY REGISTERS THE ELECTOR TO SIGN HIS NAME AND TITLE IN ATTESTATION ON THE COMPLETED CARD; AMENDING SECTION 34-437, IDAHO CODE, TO REVISE REQUIREMENTS AND RESTRICTIONS FOR FURNISHING LISTS OF REGISTERED ELECTORS; AMENDING SECTION 34-437A, IDAHO CODE, TO REQUIRE THE SECRETARY OF STATE IN CONJUNCTION WITH COUNTY CLERKS TO DEVELOP AND IMPLEMENT A SINGLE, UNIFORM OFFICIAL LIST OF REGISTERED ELECTORS AND TO PROVIDE REQUIREMENTS; REPEALING SECTION 34-438, IDAHO CODE; AMENDING SECTION 34-704, IDAHO CODE, TO REVISE DECLARATION OF CANDIDACY REQUIREMENTS; AMENDING SECTION 34-1002, IDAHO CODE, TO REVISE APPLICATION FOR ABSENTEE BALLOT REQUIREMENTS; AMENDING SECTION 34-1203, IDAHO CODE, TO PROVIDE THAT THE SECRETARY OF STATE SHALL ISSUE DIRECTIVES OR PROMULGATE ADMINISTRATIVE RULES ADOPTING STANDARDS THAT DEFINE WHAT CONSTITUTES A VOTE AND WHAT WILL BE COUNTED AS A VOTE FOR EACH CATEGORY OF VOTING SYSTEM USED IN THIS STATE; AMENDING SECTION 34-1402, IDAHO CODE, TO REVISE REQUIREMENTS FOR REGISTRATION; AMENDING SECTION 34-2401, IDAHO CODE, TO REVISE THE DEFINITION OF "BALLOT"; AMENDING SECTION 67-916, IDAHO CODE, TO REVISE THE PROCEDURES, PURPOSES AND SPENDING AUTHORITY OF THE DEMOCRACY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-201, Idaho Code, be, and the same is hereby amended to read as follows:

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.**

SECTION 2. That Chapter 2, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW SECTION**, to be known and designated as Section 34-216, Idaho Code, and to read as follows

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).

SECTION 3. That Section 34-303, Idaho Code, be, and the same is hereby amended to read as follows:

34-303. APPOINTMENT OF ELECTION JUDGES BY COUNTY CLERK. The county clerk shall appoint two (2) or more election judges, one (1) of whom shall be designated chief judge, and the number of clerks deemed necessary by him for each polling place. In the event a single polling place is designated for two (2) or more precincts, an individual may serve simultaneously on the election board for two (2) or more precincts thus served by a single polling place. ~~No election board for a precinct shall exceed ten (10) members.~~ The precinct committeemen shall recommend persons for the position in their respective precincts to the county clerk in writing at least ten (10) days prior to the date on which any appointment shall be made and the county clerk shall appoint the judges from such lists if the persons recommended are qualified.

The chief election judge shall be responsible for the conduct of the proceedings in the polling place. Compensation for all election personnel shall be determined by the board of county commissioners, and not less than the minimum wage as prescribed by the laws of the state of Idaho.

Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts at least sixty (60) days prior to the primary election.

SECTION 4. That Section 34-410, Idaho Code, be, and the same is hereby amended to read as follows:

34-410. MAIL REGISTRATION. Any elector may register by mail for any election. Any mail registration application must be received by the county clerk prior to the close of registration as provided in section 34-408, Idaho Code, provided that any mail registration application postmarked not later than twenty-five (25) days prior to an election shall be deemed timely.

The secretary of state shall prescribe the form for the mail registration application. This mail application form shall be available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

Any federal mail registration form adopted pursuant to the provisions of the national voter registration act of 1993 (P.L. 103-31) shall also be accepted as a valid registration, if such form is postmarked not later than twenty-five (25) days prior to an election. The county clerk shall prepare and issue by first class nonforwardable mail to each elector registering by mail a verification of registration containing the name and residence of the elector and the name or number of the precinct in which the elector resides.

A verification returned undeliverable shall cause the county clerk to remove the elector's card from the register of electors.

**As required by the help America vote act of 2002 (P.L. 107-252), a copy of proper identification will be required prior to issuance of a ballot to anyone who has registered by mail and has not previously voted in an election for federal office in the state. Proper identification consists of:**

**(1) A current and valid photo identification; or**

**(2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.**

SECTION 5. That Section 34-411, Idaho Code, be, and the same is hereby amended to read as follows:

34-411. APPLICATION FOR REGISTRATION -- CONTENTS. (1) Each elector who requests registration shall supply the following information under oath or affirmation:

(a) His full name and sex.

(b) His mailing address, his residence address or any other necessary information definitely locating his residence.

(c) The period of time preceding the date of registration during which he has resided in the state.

(d) Whether or not he is a citizen.

(e) That he is under no legal disqualifications to vote

(f) The county and state where he was previously registered, if any.

(g) Date of birth.

**(h) Current driver's license number or, in the absence of an Idaho driver's license, the last four (4) digits of the elector's social security number.**

(2) Any elector who shall supply any information under subsection (1) of this section, knowing it to be false, is guilty of perjury.

(3) Each elector who requests registration may, at the elector's option, supply the following information:

~~(a) Social security number; and~~

~~(b) Home~~ **the elector's** telephone number. If the ~~home~~ telephone number is supplied by the elector, the ~~home~~ telephone number shall be available to the public.

SECTION 6. That Section 34-416, Idaho Code, be, and the same is hereby amended to read as follows:

34-416. REGISTRATION CARDS. (1) The registration card shall contain the following warning:

WARNING: Any elector who supplies any information, knowing it to be false, is guilty of perjury.

(2) The elector shall read the warning set forth in subsection (1) of this section and shall sign his name in an appropriate place on the completed card. ~~The official who personally registers the elector shall sign his name and title in attestation in an appropriate place on the completed card.~~

(3) The registration card completed and signed as provided in this section constitutes the official registration card of the elector. The county clerk shall keep and file all such cards in a convenient manner in his office. Such cards constitute the register of electors.

SECTION 7. That Section 34-437, Idaho Code, be, and the same is hereby amended to read as follows:

34-437. FURNISHING LISTS OF REGISTERED ELECTORS -- RESTRICTIONS. (1) Each of the county clerks, upon receiving a request ~~therefor not later than the thirtieth day before a general, special or primary election,~~ shall supply to any individual, a current list of the registered electors of the county and their addresses, arranged in groups according to election precincts. The county clerks shall prepare an original of the above list **from the state voter registration system** at county expense. Any person desiring a copy of the original list shall be furnished the same, and the county clerk shall assess the individual an amount which will compensate the county for the cost of reproducing such copy.

~~(2) The county clerk may, in his sole discretion, waive the deadline provided in subsection (1) of this section; provided that the clerk shall not discriminate against any political party, candidate or individual in waiving said deadline.~~

~~(3) No person to whom a list of registered electors is made available or supplied under subsection (1) of this section and no person who acquires a list of registered electors prepared from such list shall use any information contained therein for commercial purposes~~ **the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose.**

SECTION 8. That Section 34-437A, Idaho Code, be, and the same is hereby amended to read as follows:

34-437A. SECRETARY OF STATE REQUIRING STATEWIDE LISTS OF REGISTERED ELECTORS. (1) The secretary of state, *may require each county clerk to submit to him, for use in compiling a statewide list of registered electors, the current list of registered electors as described in section 34-437, Idaho Code* **in conjunction with county clerks, shall develop and implement a single, uniform official, centralized, interactive, computerized statewide voter registration system as required by the help America vote act of 2002 (P.L. 107-252).**

**(2) The statewide system shall contain the name and registration information of every legally registered voter in the state and assign a unique identifier to each legally registered voter in the state, and include the following:**

**(a) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.**

**(b) The computerized list shall contain the name and registration information of every legally registered voter in the state.**

**(c) Under the computerized list, a unique identifier shall be assigned to each legally registered voter in the state.**

**(d) The computerized list shall be coordinated with other agency databases within the state.**

**(e) Any election official in the state, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.**

**(f) All voter registration information obtained by any local election official in the state shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.**

**(g) The secretary of state shall provide such support as may be required so that local election officials are able to enter information as described in subsection (2)(f) of this section.**

**(h) The computerized list shall serve as the official voter registration list for the conduct of all elections for federal office in the state.**

**(3) Any person desiring a copy of the statewide list of registered electors shall be furnished the same, and the secretary of state shall assess the individual an amount which will compensate the state for the cost of reproducing such copy.**

No person to whom a list of statewide electors is furnished and no person who acquires a list of statewide electors prepared from such list shall use any information contained therein for *commercial purposes* **the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose.**

SECTION 9. That Section 34-438, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 34-704, Idaho Code, be, and the same is hereby amended to read as follows:

34-704. DECLARATION OF CANDIDACY. Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party



candidate for precinct, state, district or county office shall file his declaration of candidacy in the proper office between 8 a.m., on the ~~tenth~~ **twelfth** Monday preceding the primary election and 5 p.m., on the ~~eighth~~ **tenth** Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of candidacy, except candidates for nonpartisan office

Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

Independent candidates shall file their declaration of candidacy in the manner provided in section 34-708, Idaho Code.

SECTION 11. That Section 34-1002, Idaho Code, be, and the same is hereby amended to read as follows:

34-1002. APPLICATION FOR ABSENTEE BALLOT. Any registered elector may make written application to the county clerk, or other proper officer charged by law with the duty of issuing official ballots for such election, for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address, county, and address to which such ballot shall be forwarded.

The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be received by the county clerk not later than 5:00 p.m. on the sixth day before the election. An application for in person absentee voting at the absent elector's polling place described in section 34-1006, Idaho Code, shall be received by the county clerk not later than 5:00 p.m. on the day before the election. Application for an absentee ballot may be made by using a facsimile machine. In the event a registered elector is unable to vote in person at his designated polling place on the day of election because of an emergency situation which rendered him physically unable, he may nevertheless apply for an absent elector's ballot on the day of election by notifying the county clerk. No person, may, however, be entitled to vote under an emergency situation unless the situation claimed rendered him physically unable to vote at his designated polling place within forty-eight (48) hours prior to the closing of the polls.

A person may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff, et seq.). A properly executed federal postcard application (F.P.C.A.), ~~if received prior to the primary election~~, shall be considered as a request for an absent elector's ballot ~~for both the primary and general election~~ **through the next two (2) regularly scheduled general elections for federal office following receipt of the application.** The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

**The county clerk shall, not later than seventy-five (75) days after the date of each general election, submit a report to the secretary of state containing information concerning absentee voters as required by federal law.**

SECTION 12. That Section 34-1203, Idaho Code, be, and the same is hereby amended to read as follows:

34-1203. COUNTING OF BALLOTS -- CERTIFICATES OF JUDGES. The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes cast. Under each office title the number of votes for each candidate and such other information required by the secretary of state shall be entered in the tally books together with the total of the above figures in the manner prescribed by the secretary of state. Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

Following the counting, the judges must post a correct copy of such results at the polling place and a copy transmitted to the county clerk.

In no event shall the results of any count be released to the public until all voting places in the state have closed on election day.

**The secretary of state shall issue directives or promulgate administrative rules adopting standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in this state.**

SECTION 13. That Section 34-1402, Idaho Code, be, and the same is hereby amended to read as follows:

34-1402. REGISTRATION. All electors must register with the county clerk before being able to vote in any primary, general, special or any other election conducted in this state. The county clerk shall determine, for each registered elector, the elections for which he is eligible to vote by a determination of the applicable code areas. ~~The register of electors shall be maintained by the clerk in a manner which will make this information readily available to the electors and to the election officials of the various political subdivisions.~~ The determination of tax code area shall be made for all political subdivisions including those otherwise exempt from the provisions of this chapter.

The county clerk shall conform to the provisions of chapter 4, title 34, Idaho Code, in the administration of registration for all political subdivisions within the county. The county clerk shall appoint each city clerk for any city within the county and each election official designated by a political subdivision, as an at-large registrar as provided in section 34-406, Idaho Code, except that no compensation shall be paid by the county clerk for electors registered by these special registrars.

SECTION 14. That Section 34-2401, Idaho Code, be, and the same is hereby amended to read as follows:

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

(1) "Ballot" means any material used **or the voting surface of a direct recording electronic system** on which votes are cast for offices, ~~and~~ candidates and measures, ~~which do not appear on ballot labels or a ballot which is used to record votes which are cast for offices and candidates and measures in a voting system which does not use ballot cards.~~

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

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

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

(5) "Governing body" means the board of county commissioners of any county or the governing body of any city, district or other political subdivision elections including bond issue elections.

(6) "Measure" means a proposed law, act or part of an act of the legislative assembly or amendment to the constitution of the state of Idaho to be submitted to the people for their approval or rejection at an election. "Measure" also means other propositions which can be submitted to the voters at any election by counties, cities, districts or other political subdivisions.

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

(8) "Precinct" includes all election districts.

(9) "Voting machine" means:

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

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

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

SECTION 15. That Section 67-916, Idaho Code, be, and the same is hereby amended to read as follows:

67-916. DEMOCRACY FUND. (1) There is hereby created in the state treasury in the office of the secretary of state the "Democracy Fund." The purpose of the democracy fund is to provide funding for ~~improving the election systems for the benefit of Idaho's voters~~ **carrying out the activities for which payments are made to the state under the federal Help America Vote Act of 2002 (P.L. 107-252)** including, but not limited to:

- (a) Establishing and maintaining accurate lists of eligible voters;
- (b) Encouraging eligible voters to vote;
- (c) Improving verification and identification of voters at the polling place;
- (d) Improving equipment and methods for casting and counting votes;
- (e) Recruiting and training election officials and poll workers;
- (f) Improving the quantity and quality of available polling places;
- (g) Educating voters about their rights and responsibilities;
- (h) Assuring access for voters with physical disabilities;
- (i) Carrying out other activities to improve the administration of elections in the state.

(2) The democracy fund shall consist of all moneys appropriated by the legislature, federal moneys that may be available for the purpose of improving Idaho's election system, **county matching funds** and funds from any other source.

(3) ~~Moneys in the democracy fund may be expended pursuant to appropriation and a~~All interest earned on the investment of idle moneys in the fund by the state treasurer shall be returned to the fund.

**(4) Moneys deposited in, or remitted to, the democracy fund are continuously appropriated to the secretary of state for the purpose of paying the expenses of carrying out the activities for which payments are made to this state under the federal help America vote act of 2002 (P.L. 107-252).**

SECTION 16. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

## APPENDIX C – Rules Governing Complaint Process

### IDAPA 34

### TITLE 02

### CHAPTER 02

#### 34.02.02- RULES GOVERNING COMPLAINT PROCESS UNDER THE HELP AMERICA VOTE ACT

**000. Legal Authority.** This chapter is promulgated pursuant to Idaho Code § 34-216 and 42 U.S.C. § 15512. Federal law requires the Secretary of State to establish an administrative complaint procedure to remedy grievances under the Help America Vote Act, 42 U.S.C. § 15481, et seq.

**001. Title and Scope.** The rules in this Chapter shall be known as the Complaint Process Under the Help America Vote Act, and may be cited as IDAPA 34.02.02. This chapter provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002, 42 United States Code §§ 15481, et seq., including a violation that has occurred, is occurring, or is about to occur. The procedure set out in this chapter does not apply to an election recount under Idaho Code §§ 34-2301 et seq., or to an election contest under Idaho Code §§ 34-2001 et seq., and 34-2101 et seq. A Complainant who wishes to challenge the validity of any primary, general or special election, or to determine the validity of any ballot or vote must seek relief as otherwise provided by law.

**002. Written Interpretations.**

Written Interpretations of this Chapter are available by mail from the Idaho Secretary of State.

**003. Contact Information.**

Office of Secretary of State, 8:00 a.m.–5:00 p.m. Monday through Friday, 700 W. Jefferson, Rm. 203, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, ID 83720-0080. The Election Division telephone number is (208) 334-2852 and the facsimile machine is (208) 334-2282.

**004. Public Records Act Compliance.**

This Chapter and its contents are subject to the Idaho Public Records Law.

**005. Administrative Appeals.**

Administrative appeals are not available within the Secretary of State's Office.

**006. Incorporation by Reference.**

No documents have been incorporated by reference into this Chapter.

**007.-009. RESERVED.**

**010. Definitions.**

In this chapter, the following terms have the meanings indicated.

(1) "Complainant" means the person who files a complaint with the Secretary of State under this subtitle;

(2) "Respondent" means any State or County election official whose actions are asserted, in a complaint under this subtitle, to be in violation of Title III;

(3) "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code §§ 15481-15485.

**011. Who May File.** Any person who believes that there is a violation of any provision of Title III may file a complaint.

**012. Form of Complaint.**

(a) Writing and Notarization. A complaint shall be in writing and notarized, signed and sworn under oath by the Complainant. The complaint must identify the Complainant by name and mailing address. The complaint must identify the section of Title III for which a violation is alleged. The complaint must set out a clear and concise description of the claimed violation that is sufficiently detailed to apprise both the Respondent and the hearing officer or arbitrator of the claimed violation. The complaint procedure is limited to allegations of violations of Title III in a federal election.

(b) Prescribed or Other Form. The Complainant may use:

(1) the form prescribed by the Idaho Secretary of State, which is available from the Idaho Secretary of State Election Division, or which may be downloaded from the Idaho Secretary of State Election Division's website found at [www.idsos.state.id.us/elect/eleindex.htm](http://www.idsos.state.id.us/elect/eleindex.htm); or

(2) any other form satisfying the requirements of subsection (a) of this regulation.

**013. Place and Time for Filing; Copy for Respondent.**

(a) Place for Filing. A complaint shall be filed with the Election Division, along with adequate proof of mailing or delivery of a copy of the complaint to each Respondent.

(b) Time for Filing. A complaint shall be filed within 30 days after the occurrence of the actions or events that form the basis for the complaint, including the actions or events that form the basis for the Complainant's belief that a violation is about to occur, or, if later, within 30 days after the Complainant knew, or with the exercise of reasonable diligence, should have known of those actions or events.

(c) Copy for Respondent. The Complainant shall mail or deliver a copy of the complaint to each Respondent.

(d) The Election Division shall examine each complaint, and may reject it for filing if:

- (1) it is not signed and notarized under oath;
- (2) it does not identify the Complainant or include an adequate mailing address;
- (3) does not, on its face, allege a violation of Title III with regard to a federal election; or
- (4) more than 90 days have elapsed since the final certification of the federal election at

issue.

**014. Processing of Complaint.**

(a) Consolidation. The Secretary of State may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

(b) The Secretary of State shall take all necessary steps to prepare the complaint for determination under these regulations. In the course of preparing the complaint for determination, the Secretary of State shall allow a party to proceed with the assistance of an English language interpreter if the Complainant is unable to proceed without assistance of an interpreter. It is the responsibility of the party who needs an interpreter to secure the services of the interpreter. The Secretary of State, in coordination with the parties, shall establish a schedule under which the Complainant and Respondent may file written submissions concerning the complaint, and under which the complaint shall be finally determined.

(c) Record.

(1) the Secretary of State shall compile and maintain an official record in connection with each complaint under this subtitle;

(2) the official record shall contain:

(A) a copy of the complaint including any amendments made with the permission of the Secretary of State;

- (B) a copy of any written submission by the Complainant;
- (C) a copy of any written response by any Respondent or other interested person;
- (D) a written report of any investigation conducted by employees of the Secretary of State or Office of Attorney General who may not be directly involved in the actions or events complained of, and may not directly supervise or be directly supervised by any Respondent;
- (E) copies of all notices and correspondence to or from the Secretary of State in connection with the complaint;
- (F) originals or copies of any tangible evidence produced at any hearing conducted under IDAPA 34.02.02.015;
- (G) the original tape recording produced at any hearing conducted under IDAPA 34.02.02.015(g) of this regulation, and a copy of any transcript obtained by any board or other party; and
- (H) a copy of any final determination made under IDAPA 34.02.02.016 or 34.02.02.017.

**015. Hearing.**

- (a) At the request of the Complainant, the Secretary of State shall conduct a hearing on the record.
- (b) The hearing shall be conducted no sooner than 10 days and no later than 30 days after the Secretary of State receives the complaint. The Secretary of State shall give at least 10 business days' advance notice of the date, time, and place of the hearing:
  - (1) by mail, to the Complainant, each named Respondent, and any other interested person who has asked in writing to be advised of the hearing;
  - (2) on the Election Division web site; and
  - (3) by posting in a prominent place, available to the general public, at the offices of the Election Division;
- (c) the Secretary of State or his designee shall act as hearing officer.
- (d) the Complainant, any Respondent, or any other interested member of the public may appear at the hearing and testify or present tangible evidence in connection with the complaint. Each witness shall be sworn. The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views. The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing.
- (e) A Complainant, Respondent, or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.



(f) If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence subsequently presented, that person is not entitled to be heard again, but may make a written presentation to the hearing officer.

(g) The proceedings shall be tape-recorded by and at the expense of the Election Division. The recording shall not be transcribed as a matter of course, but the Election Division, or any party may obtain a transcript at its own expense. If a board or party obtains a transcript, the board or party shall file a copy as part of the record, and any other interested person may examine the record copy.

(h) Any party to the proceedings may file a written brief or memorandum within 5 business days after the conclusion of the hearing. No responsive or reply memoranda will be accepted except with the specific authorization of the hearing officer.

#### **016. Final Determination.**

(a) If there has been no hearing under IDAPA 34.02.02.015, the Secretary of State or his designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established.

(b) At the conclusion of any hearing under IDAPA 34.02.02.015, the hearing officer shall determine, under a preponderance of the evidence standard, whether a violation of Title III has been established.

#### **(c) Form of Determination.**

(1) If the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the Secretary of State shall provide the appropriate remedy. The remedy shall be directed to the improvement of processes or procedures governed by Title III. The remedy so provided may include an order to any Respondent, commanding the Respondent to take specified action, or prohibiting the Respondent from taking specified action, with respect to a past or future election; however, the remedy may not include an award of money damages or attorney's fees. The remedy may not include the denial of certification or the invalidation of any primary, general or special election, or a determination of the validity of any ballot or vote. Remedies addressing the certification of an election, the validity of an election, or of any ballot or vote may be obtained only as otherwise provided by law;

(2) If the complaint is not timely or not in proper form, or if the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has not occurred, or that there is not sufficient evidence to establish a violation, the Secretary of State shall dismiss the complaint;

(d) The Secretary of State or his designee shall explain in a written decision the reasons for the determination and for any remedy selected.

(e) Except as specified in IDAPA 34.02.02.017, the final determination of the Secretary of State shall be issued within 90 days after the complaint was filed, unless the Complainant consents in writing to an extension. The final determination shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final determination. It shall also be published on the Division's website and made available on request to any interested person.

(f) If the Secretary of State cannot make a final determination within 90 days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be referred for final resolution under IDAPA 34.02.02.017. The record compiled under IDAPA 34.02.02.014 of this regulation shall be made available for use under IDAPA 34.02.02.017.

**017. Alternate Dispute Resolution.**

(a) If, for any reason, the Secretary of State or his designee does not render a final determination within 90 days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be resolved under this section.

(b) On or before the 5<sup>th</sup> business day after a final determination by the Secretary of State was due, the Secretary of State shall designate in writing to the Complainant a list of names of arbitrators who may resolve the complaint. Within 3 business days after the Complainant receives this designation, the Complainant and the Secretary of State shall arrange to choose an arbitrator from this list by striking names from the list until an arbitrator acceptable to both parties is chosen. Within 3 business days after the parties strike names, the Secretary of State shall contact the arbitrator chosen and arrange for the hearing by the arbitrator.

(c) The arbitrator may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence. In exceptional cases, the arbitrator may request that the parties present additional briefs or memoranda.

(d) The arbitrator shall determine the appropriate resolution of the complaint as set out in these regulations.

(e) The arbitrator must issue a written resolution within 60 days after the final determination of the Secretary of State was due under IDAPA 34.02.02.016. This 60-day period may not be extended. The final resolution of the arbitrator shall be transmitted to the Secretary of State and shall be the final resolution of the complaint. The final resolution shall be mailed to the Complainant, each Respondent,

and any other interested person who has asked in writing to be advised of the final resolution. It shall be published on the Election Division website and made available on request to any interested person.