



OFFICE OF THE
IDAHO SECRETARY OF STATE
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To: Idaho Legislative Members
From: Idaho Secretary of State's Office
Date: April 20, 2023
Subject: Presidential Primary Legislation - Overview of H138 and S1186

During the 2023 legislative session, the Legislature passed [H138](#) with the [stated purpose](#) of consolidating “the March presidential primary election with the May primary election date, so that all primary elections in the State of Idaho will be held on the third Tuesday in May.” Additionally, the Fiscal Note identifies a minimum \$2,700,000 savings to the State General Fund as a result of consolidating the primary elections. The bill was presented by members of legislative leadership along with the Secretary of State with these purposes in mind. This election date move also aligned with the elimination of all other March elections as a result of the passage of [H292](#), the “property tax bill.”

After passing the House (61-6-3) in February, the sponsors became aware of a technical error in [H138](#). Although [H138](#) successfully repealed changes made in the [2015 legislative session](#) that created the March presidential primary, it unintentionally failed to restore key changes made in the [2012 legislative session](#) that allow political parties to opt into, and candidates to file for, the presidential primary in the May primary election. Thereby inadvertently eliminating the presidential primary altogether.

After this discovery, a trailer bill was introduced to correct the technical error. Specifically, [S1186](#) added language to Idaho Code § 34-606 “for the purpose of allowing voters to express their choice of candidate for nomination by a political party for president of the United States” on the third Tuesday in May in presidential election years. Language was also added to Idaho Code § 34-703 to provide for a declaration of candidacy process and to allow political parties the option to participate in the May primary.

Together, [H138](#) and [S1186](#) would have accomplished the original intent of [H138](#) to consolidate Idaho primary elections in May.

The Senate held [H138](#) to allow the trailer bill to catch up and then passed both [H138](#) (23-11-1) and [S1186](#) (24-10-1) on March 23, 2023. [H138](#) was subsequently signed into law by the Governor. However, in the final week of the session, [S1186](#) did not advance out of the [House State Affairs Committee](#). Consequently, there is currently no mechanism in Idaho Code allowing candidates for political party nominations for president to appear on the ballot in the May primary election in Idaho.

At this point, it is up to the political parties to determine whether to hold caucuses, or some other nomination process, for the purpose of choosing presidential nominees. There will not be a presidential primary election conducted by the State without some legislative action.