

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1433
(Representative Boehning)
(Senator Krebsbach)

AN ACT to amend and reenact sections 15.1-09-09, 16.1-01-09.1, 16.1-06-15, 16.1-06-16, 16.1-06-19, 16.1-06-20, 16.1-06-23, 16.1-11-01, 16.1-11-27, 16.1-11-30, 16.1-11-31, 16.1-11-32, 16.1-11-33, 16.1-13-06, 40-21-02, 44-02-05, and 44-02-08 of the North Dakota Century Code, relating to election mechanics; and to repeal sections 16.1-11-23, 16.1-11-34, and 40-21-12 of the North Dakota Century Code, relating to election mechanics.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-09 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-09. School district elections - Notice. Thirty days before the filing deadline for candidate names to be printed on the ballot, an official notice of this deadline must be published in the official newspaper of the city or county. At least fourteen days before the date of an annual or special school district election, the school board shall publish a notice in the official newspaper of the district stating the time and place of the election and the purpose of the vote. If a school board agrees to hold the election in conjunction with a primary election, the deadline for giving notice of the school district election and the purpose of the vote must meet the publishing requirements of the county. The governing body of the city of Fargo shall publish notice with respect to Fargo school district elections.

SECTION 2. AMENDMENT. Section 16.1-01-09.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-09.1. Recall petitions - Signature - Form - Circulation.

1. A request of the secretary of state for approval of a petition to recall an elected official or appointed official of a vacated elected office may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the recall; the printed name, signature, and address of the committee member; and notarization of the signature.
2. A person may not sign a recall petition circulated pursuant to article III of the Constitution of North Dakota or section 44-08-21 unless the person is a qualified elector. A person may not sign a petition more than once, and each signer shall add the signer's complete residential, rural route, or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition. A petition must be in substantially the following form:

RECALL PETITION

We, the undersigned, being qualified electors request that
_____ (name of the person being recalled)
the _____ (office of person being recalled) be recalled for the reason
or reasons of _____.

contained on the attached petition is the genuine signature of the person whose name it purports to be.

(signature of circulator)

Subscribed and sworn to before me on _____, _____, at _____, North Dakota.

(city)
(Notary Seal)

(signature of notary)

Notary Public

My commission expires _____

- ~~3.~~ 4. A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 1, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and addresses of not less than five qualified electors of the state, political subdivision, or district in which the official is to be recalled who are sponsoring the recall.
- ~~4.~~ 5. A petition may not be circulated under the authority of article III of the Constitution of North Dakota or section 44-08-21 by a person who is less than eighteen years of age, nor may the affidavit called for by subsection 2 be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety.
- ~~5.~~ 6. When recall petitions are delivered to the secretary of state or other filing officer with whom a petition for nomination to the office in question is filed, the chairman of the sponsoring committee shall submit to the secretary of state or other filing officer an affidavit stating that to the best of that person's knowledge, the petitions contain at least the required number of signatures.
- ~~6.~~ 7. The filing officer has a reasonable period, not to exceed thirty days, in which to pass upon the sufficiency of a recall petition. The filing officer may conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, postcards, telephone calls, personal interviews, or other accepted information gathering techniques, or any combinations thereof, to determine the validity of the signatures. Signatures determined by the filing officer to be invalid may not be counted and all violations of law discovered by the filing officer must be reported to the state's attorney for possible prosecution.

SECTION 3. AMENDMENT. Section 16.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-15. Mandatory testing of electronic voting systems before election and before and after tabulation of ballots.

1. All electronic voting systems used in this state must be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.
2. The test of an electronic voting system employing paper ballots must be conducted by processing a preaudited group of ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a

different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.

3. The test must be conducted at least one week before the election. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot a notice of the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.

SECTION 4. AMENDMENT. Section 16.1-06-16 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-16. County auditor to provide and distribute ballots - Other election supplies delivered at same time. For each election precinct in the county, the county auditor shall provide the number of ballots the auditor determines to be necessary. Each county auditor shall:

1. Have the ballots printed at least fifteen days before the election; ~~and the ballots may be inspected by any person~~ available for public inspection at the auditor's office.
2. Deliver to the inspector in each precinct ~~at least three days but not more or cause to be delivered in a secure manner to the polling location no later than fifteen days the day before the election the number of ballots, pollbooks, blanks for election returns with the proper captions if ballots are to be hand counted ballot boxes, voting equipment, forms of oaths, and certificates, tally sheets necessary to carry out this title, and other election supplies as the county auditor determines necessary.~~

SECTION 5. AMENDMENT. Section 16.1-06-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-19. Instructions, advertisements, maps, and ballots posted in polling places. Each county auditor shall have cards printed, in large type, containing full instructions to electors on obtaining and voting ballots and a copy of section 16.1-01-12, any federal laws regarding prohibitions on acts of fraud and misrepresentations, and general information on voting rights under applicable federal and state laws, including instructions on how to contact the appropriate officials if these rights are alleged to have been violated. The county auditor shall furnish ten such cards to the election inspector in each election precinct who, before the opening of the polls, shall post at least one of the cards in each booth or compartment provided for the preparation of ballots and at least ~~three~~ one of the cards in ~~and about~~ the polling place. Three of the official ballots without the ~~official stamp~~ initials of an election board member thereon must be posted conspicuously in the polling place on the morning of the election. The county auditor, at the time of delivering the ballots to the inspector of elections in each precinct, shall deliver at least five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to such inspector of elections. ~~Not less than three~~ One of the newspaper publications or copies must be posted conspicuously in the polling place on the morning of the election. Each county auditor shall furnish the election inspector in each precinct with four copies of a map showing the election precinct's boundaries and information regarding the date of the election and the hours during which polling places will be open. The inspector shall, before the opening of the polls, post the maps and information regarding the date of the election and the hours during which polling places will be open at the entry to and in other conspicuous places around the polling place.

SECTION 6. AMENDMENT. Section 16.1-06-20 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-20. Election inspector and judges to display material and provide instruction. In addition to other duties provided by law, the election inspector ~~in precincts using an electronic voting system~~ shall post in a conspicuous manner at the voting place the ~~four~~ two facsimile diagrams of the voting devices used to vote with electronic voting systems and three copies of the official ballot used

with electronic voting systems. The election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before the voter enters the voting booth.

SECTION 7. AMENDMENT. Section 16.1-06-23 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-23. Secretary of state to send ~~blanks~~ instructions and envelopes to county auditor to make returns. The secretary of state shall send ~~blank forms~~ instructions for generating reports and envelopes, for all returns of votes required to be made to the secretary of state's office, to each county auditor with such printed directions on the envelope as the secretary of state deems necessary for the guidance of election officers in making returns according to law. The expense of furnishing such ~~blanks~~ instructions and envelopes must be paid by the state.

SECTION 8. AMENDMENT. Section 16.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-01. Primary election - When held - Nomination of candidates - Nomination for special elections. On the second Tuesday in June of every general election year, a primary election must be held for the nomination of candidates for the following offices in the years of their regular election: United States senators, member of the United States house of representatives, county officers, state officers, judges of the supreme court and district court, members of the legislative assembly, elected state officials, judges of the supreme court and district court, county officers, and county commissioners, and United States senators. In special elections the nominations for the officers enumerated in this section must be made as provided in this title.

SECTION 9. AMENDMENT. Section 16.1-11-27 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-27. Arrangement of names on ballots. Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest total vote for governor at the last general election at which the office of governor was filled. In the event that this determination is no longer possible due to changes in precinct boundaries, the precincts are to be ordered according to the precincts with the greatest voting age population to the least. This information is to be provided by the North Dakota state data center or based on the best available data as determined by the county auditor. On the official ballot used at the election, including electronic voting system ballots, the names of candidates beside or under headings designating each office to be voted for must be alternated in the following manner:

1. The ballot must first be arranged with all the names for each office on the ballot in an order determined by lot by the county auditor and prepared by the county auditor for all state, district, and county offices.
2. The position of names that require alternating under the provisions of this section must be alternated ~~so the name appearing first in one precinct will be last in the next precinct, and the name that appeared second must be first in the next precinct, and so on until each name has been moved up or over one space accordingly. This process must be continued from one precinct to another and for as many names as are involved by an algorithm approved by the secretary of state designed to ensure to the extent possible that each name on the ballot for an office is listed in each position order on an equal number of precinct ballots spread across the county.~~ There must be a different alternation sequence for each of the following, based on the geographical area by which the office is filled:
 - a. Offices to be filled by the electors of the state, the entire county, or any district which includes the entire county.
 - b. Offices to be filled by the electors of districts smaller than the county, with a different rotation for each of those districts.

- ~~3. 2. The precincts must be arranged according to the total votes cast for governor at the last general election in which the office of governor was filled, starting with the precinct having the highest total votes cast and ending with the precinct having the lowest total votes cast in that election. Although the names are to be alternated within the offices on the ballot, the name order for an office is to be the same for all ballots within a precinct.~~

SECTION 10. AMENDMENT. Section 16.1-11-30 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-30. Separate column on primary election ballot required for each political party.

Any party that had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election; any party that had printed on the ballot at the last preceding nonpresidential election a candidate for attorney general or secretary of state, and the candidate received at least five percent of the total vote cast for the office the candidate was seeking at the election; or any party that has organized according to all the requirements of chapter 16.1-03 must be provided with a separate column on primary election ballots.

Any other political organization is entitled to endorse candidates or have candidates petition to be included on the primary ballot in a consolidated column or on a special election ballot, if a petition signed by at least seven thousand qualified electors of this state is filed with the secretary of state before four p.m. of the sixtieth day before a primary or special election, naming the political organization, stating the platform principles of the party, and requesting the names of its candidates to be included on the state's primary ballot in a consolidated column. If the petition is mailed, it must be in the possession of the secretary of state before four p.m. on the sixtieth day prior to a primary or special election. Candidates of that party are entitled to the same rights and privileges as those of other parties. Petitions circulated according to this section must be filed with the secretary of state in accordance with section 1-01-50.

A political organization that had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election are entitled to organize according to the requirements of chapter 16.1-03.

SECTION 11. AMENDMENT. Section 16.1-11-31 of the North Dakota Century Code is amended and reenacted as follows:

~~**16.1-11-31. Tally books or sheets provided for election precincts — Form and contents**~~
Precinct election reports. ~~Two tally books or two sets of tally sheets must be provided for each voting precinct not using electronic ballot counters. The books or sheets must contain a column for each political party or principle having candidates to be voted for at the voting precinct. Two tally books or two sets of tally sheets for candidates on the no-party ballot must be provided for each voting precinct. The books or sheets must be furnished by the county auditor at the same time and in the same manner as the pollbooks and ballots are furnished. The names of the candidates must be placed on the tally books or sheets in the order in which they appear on the official sample ballot and, as appropriate, must have the proper party or no party designation at the head thereof. Optical scan ballot tabulation machines must print reports detailing the election results from the precinct after the close of the polls.~~

SECTION 12. AMENDMENT. Section 16.1-11-32 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-32. Poll lists kept by clerks of elections. The clerks of primary elections shall keep two lists of the names of all persons voting at each primary election. Each clerk shall return one list ~~and one tally sheet~~, which must be a part of the records and filed with other election returns. Only two

complete lists of voters may be kept whether or not a special election is held simultaneously with the primary election.

SECTION 13. AMENDMENT. Section 16.1-11-33 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-33. Judges of election to ~~make statement~~ run report of primary election - Contents. The judges of a primary election in each precinct shall ~~make run~~ a separate ~~statement, on blanks provided for that purpose,~~ report for each political party or principle, containing the names of all persons voted for at the primary election, the number of votes cast for each candidate, and for what office. The ~~statement~~ report must be subscribed by the election judges and must be filed with the returns in the office of the county auditor.

SECTION 14. AMENDMENT. Section 16.1-13-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-06. Defeated primary candidate ineligible to have name printed on general ballot - Exception. Except to fill a vacancy occurring on the ballot, an individual who was a candidate for nomination by any party or a candidate for a no party office at any primary election in any year and who was defeated for the nomination may not have that individual's name printed upon the official ballot at the ensuing general election for the same office.

SECTION 15. AMENDMENT. Section 40-21-02 of the North Dakota Century Code is amended and reenacted as follows:

40-21-02. City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors. Biennial municipal elections must be held on the second Tuesday in June in each even-numbered year.

1. Thirty days before the filing deadline for candidate names to be printed on the ballot, an official notice of this deadline must be published in the official newspaper of the city as provided by section 40-01-09.
2. Ten days' notice of the time and place of the election and of the offices to be filled at the election must be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09.
3. The governing body of a city shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses.
4. For city elections that are not held under an agreement with any county, the governing body of the city shall appoint one inspector and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. In voting precincts in which over three hundred votes are cast in any previous election, two election clerks may be appointed by the governing body. For a city election that is not held under an agreement with any county in a precinct in which seventy-five or fewer votes were cast in the last city election, the governing body of the city may appoint one inspector and one judge.
5. When a city enters into an agreement with the county to hold the city election in conjunction with the county election, the deadline for giving notice of the city election along with the offices to be filled at the election may be adjusted in order to meet the publishing requirements of the county. Each city governing body that enters into an agreement with the county must notify the county auditor, in writing, at least fifty-five days before the election of the offices to be filled at the election and any measures to appear on the ballot.

SECTION 16. AMENDMENT. Section 44-02-05 of the North Dakota Century Code is amended and reenacted as follows:

44-02-05. Vacancy in board of county commissioners - How filled. When a vacancy occurs in the board of county commissioners, the remaining members of the board, with the district judge selected by the remaining county commissioners, immediately shall appoint some suitable person to fill the vacancy from the district in which the vacancy occurred. If a majority of the officers fails to agree upon a person to fill the vacancy, the county treasurer or, if the county does not have an elected treasurer, another elective county officer must be called in and shall act as an additional member of the board to fill the vacancy. The appointee holds office until the appointee's successor is elected at the next general election that occurs at least sixty days after the vacancy and the successor has qualified.

SECTION 17. AMENDMENT. Section 44-02-08 of the North Dakota Century Code is amended and reenacted as follows:

44-02-08. Appointment to be made in writing - Term. Any appointment to fill a vacancy under ~~the provisions of~~ this chapter must be made in writing, and, except as otherwise expressly provided by law, continues in force until the first general election ~~thereafter~~ that occurs at least sixty days after the vacancy, when the vacancy will be filled by election, and thereafter until the appointee's successor by election is qualified.

SECTION 18. REPEAL. Sections 16.1-11-23, 16.1-11-34, and 40-21-12 of the North Dakota Century Code are repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1433.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State