

ELECTIONS

CHAPTER 171

SENATE BILL NO. 2409

(Senators Stenehjem, O'Connell)

(Representative Berg)

VOTING SYSTEM CERTIFICATION AND GRIEVANCES

AN ACT to create and enact two new sections to chapter 16.1-01, a new section to chapter 16.1-06, and a new section to chapter 16.1-13 of the North Dakota Century Code, relating to the secretary of state establishing an election fund, the establishment of a state-based voting grievance procedure and to certify and decertify electronic voting systems, and the casting of ballots after poll closings; to amend and reenact sections 16.1-01-01, 16.1-01-07, 16.1-05-04, 16.1-06-03, 16.1-06-04, 16.1-06-05, 16.1-06-08, 16.1-06-10.1, 16.1-06-11, 16.1-06-12, 16.1-06-14, 16.1-06-15, 16.1-06-17, 16.1-06-19, 16.1-07-13, 16.1-13-22, 16.1-13-24, 16.1-13-25, 16.1-13-26, 16.1-13-29, 16.1-13-32, 16.1-13-33, 16.1-15-01, 16.1-15-09, and 16.1-15-10, subsection 5 of section 16.1-16-01, and sections 16.1-16-07 and 40-21-09 of the North Dakota Century Code, relating to the duties of the secretary of state concerning administration of elections authorizing direct-recording electronic voting systems and prohibiting voting machines, electronic voting systems, and counting machines employing punch cards; to repeal sections 16.1-06-10, 16.1-06-13, 16.1-06-24, and 16.1-15-11 of the North Dakota Century Code, relating to voting machines, requirements for voting machines, violations for tampering with voting machines, preparation of punch card ballots, and locking and securing voting machines; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-01. Secretary of state to supervise election procedures - County administrator of elections.

1. The secretary of state must be, ex officio, supervisor of elections and may employ additional personnel to administer this title. The secretary of state shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, electronic voting system or counting machine authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16 of this Act. The secretary of state, upon determining that any ballot or other material, electronic voting system or counting machine, or device is not in sufficient compliance with the law or established criteria and

standards, shall direct the proper changes to be made, and in the case of electronic voting systems and counting machines, may decertify the electronic voting systems and counting machines according to the rules adopted under section 16 of this Act.

2. In addition to other duties provided elsewhere by law, the secretary of state shall:
 - a. Develop and implement uniform training programs for all election officials in the state.
 - b. Prepare information for voters on voting procedures.
 - c. Publish and distribute ~~to each county a political~~ an election calendar, a manual on election procedures, and a map of all election legislative districts for state and national office in that county.
 - d. Convene ~~an annual~~ a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state to discuss uniform implementation of state election policies.
 - e. Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments.
 - f. Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
 - g. Require such reports from county auditors on election matters as deemed necessary.
 - h. Certify results of statewide elections.
 - i. ~~Establish and carry out accounting procedures designed to reflect all election expenditures incurred by the state.~~
 - ~~j.~~ Prepare and publish biennial reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.
 - ~~k.~~ j. Establish standards for all election machinery, locations, voting precincts and polling locations, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including but not limited to, ballots, wrappers, seals, stamps, ballot boxes, pollbooks, tally sheets, and reports, voting machines, electronic voting systems, and voting places.
 - ~~l.~~ k. Prescribe the order in which each political subdivision will appear on a primary an election ballot.
3. In carrying out the secretary of state's duties and to assure uniform voting opportunities throughout the state, and for the purpose of implementing the provisions of this title and any other requirement

imposed upon the state by the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301 et seq.] not otherwise addressed in this Act, the secretary of state ~~shall~~ may from time to time issue rules and regulations the secretary of state deems necessary, which must be consistent with the provisions of this title or the Help America Vote Act of 2002 and be adopted and published in accordance with chapter 28-32, but which need not comply with section 28-32-07.

4. In each county there must be a county administrator of elections who must be the county auditor. The county auditor is responsible to the secretary of state for the proper administration within the auditor's county of state laws, rules, and regulations concerning election procedures.
5. In addition to other statutory duties, the county auditor shall:
 - a. Procure and distribute supplies required for voting in the county.
 - b. Prepare and disseminate voter information as prescribed by the secretary of state.
 - c. Carry out uniform training programs for all county and precinct election officials as prescribed by the secretary of state.
 - d. Receive and handle complaints referred to the county auditor by any voter or precinct official involving circulation of petitions, challenges to voters, actions of election officials, or irregularities of any kind in voting. The county auditor shall refer complaints to the secretary of state or the proper prosecuting authority, as the county auditor deems appropriate.

Upon completion of the duties required by this subsection, the county auditor shall certify to the secretary of state, in the manner prescribed by the secretary of state, that the duties have been completed.

SECTION 2. AMENDMENT. Section 16.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-07. Constitutional amendments and other questions to be advertised - Notification by secretary of state - Manner of publishing. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than fifty-five days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05. Questions to be submitted to the people of a particular county must be advertised in the same manner.

The secretary of state shall, at the same time the secretary of state certifies notice to the county auditors of the submission of a constitutional amendment or other question, certify the ballot form for such questions. The ballot form must conform to the provisions of section 16.1-06-09 and must be used by all county auditors in preparing ballots for submission to the electorate of each county and in the preparation of sample ballots. Any requirements in this title that a sample ballot be published will be met by the publication of either the paper ballot or the ballot as it will appear to persons using a an electronic voting machine system device, depending upon the method of voting used in the area involved. Absentee voter

ballots may not be considered in determining which method of voting is used in an area. If both paper ballots and electronic voting machines system ballots are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. For two consecutive weeks before the sample ballot is published, an analysis of any constitutional amendment, initiated measure, or referred measure, written by the secretary of state after consultation with the attorney general, must be published in columns to enable the electors to become familiar with the effect of the proposed constitutional amendment or initiated or referred measure.

SECTION 3. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to establish and maintain an election fund. The secretary of state shall establish and maintain a fund, known as the election fund, in the state treasury for the purpose of depositing payments and grants made to the state under the provisions of sections 101, 101(c), and 906, and title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301, 42 U.S.C. 15545, 42 U.S.C. 15481-15502], and funds appropriated by the state. The moneys in the election fund must be used for the exclusive purpose of carrying out activities of the Help America Vote Act of 2002 and are subject to chapter 54-16.

SECTION 4. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to establish a uniform state-based administrative complaint procedure. The secretary of state shall establish a uniform state-based administrative complaint procedure to remedy grievances according to section 402 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15512]. The complaint procedure must be uniform and nondiscriminatory and address complaints of violations of any provision of title III of the Help America Vote Act of 2002, including a violation that has occurred, is occurring, or is about to occur. A complaint filed under the complaint procedure must be in writing, notarized, and be signed and sworn by the person filing the complaint. The secretary of state is authorized to consolidate complaints. At the request of a complainant, the secretary of state shall establish a procedure for providing a review on the record. If the secretary of state determines there is a violation of a provision of title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15481-15502], the secretary of state shall determine and provide an appropriate remedy. If the secretary of state determines that a violation of title III of the Help American Vote Act of 2002 has not occurred, the secretary of state shall dismiss the complaint and publish the results of the review. The secretary of state shall make a final determination with respect to a complaint within ninety days of the date the complaint is filed with the secretary of state, unless the complainant consents to a longer period of time for the secretary of state to make a determination. If the secretary of state fails to meet the ninety-day deadline for determining a complaint, the complaint must be resolved within sixty days under an alternative dispute resolution procedure.

SECTION 5. AMENDMENT. Section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-04. Duties of the members of the election board during polling hours.

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the

polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.

2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.
3. The election inspector shall assign the poll clerks, an equal number from each political party represented on the election board, to perform the function of maintaining the pollbooks. The designated poll clerks shall maintain the pollbooks. Each pollbook must contain the name and address of each person voting at the precinct and must be arranged in the form and manner prescribed by the secretary of state.
4. The members of the election board shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector.
5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.
6. All members of the election board shall distribute ballots and other election materials to electors. An election judge from each party represented on the election board shall give any assistance requested by electors in marking ballots or operating electronic voting machines. ~~The election officers shall instruct voters on how to open and close voting machines and how to move the levers to cast and change votes system devices.~~
7. Each member of the election board shall maintain order in the polling place.
8. ~~All members of the election board at each precinct using an electronic voting system shall, before the polls are open, verify that each voting device in that precinct contains a ballot label that correctly lists the names of the candidates legally on the ballot for that precinct and verify that the booklets are all identical in arrangement.~~

SECTION 6. AMENDMENT. Section 16.1-06-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-03. Official ballots only to be used. The official ballot prepared by the county auditor or the local auditor or clerk must contain the name of each candidate whose name has been certified to or filed with such auditor or clerk in the manner provided in this title. Ballots other than official ballots prepared by the county auditor or local auditor or clerk may not be cast or counted in any election governed by this title. The list of officers and candidates and the statements of measures and questions to be submitted to the voters must be deemed an official ballot in precincts in which ~~voting machines~~ or electronic voting systems are used.

SECTION 7. AMENDMENT. Section 16.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under this title for use in precincts in which ~~voting machines~~ or electronic voting systems are not used must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at that election.
4. Have the language "Vote for no more than _____ name (or names)" placed immediately under the name of each office.
5. Have printed thereon "Place a ~~crossmark~~ cross mark (X) by the name of the person for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."
6. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.
7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark the voter's choice for each candidate opposite the name of that candidate, and the space must precede or follow the candidate's name on the same line in a uniform manner.
8. Provide a space enclosed in a rectangle and have printed next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted." If a stamp with an inkpad is not required under section 16.1-06-18, the language next to the rectangle must be: "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted."

Any precinct that uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

In precincts in which electronic voting systems ~~purchased after June 30, 1985,~~ are used, the ballot ~~card~~ must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot ~~card~~ must otherwise be arranged in a manner and form approximating as far as possible the requirements of this section.

~~In precincts in which voting machines or electronic voting systems purchased before July 1, 1985, are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating the requirements of this section. In precincts in which electronic voting systems are used, the requirements of subsection 8 must be met for the ballot card and ballot envelope.~~

SECTION 8. AMENDMENT. Section 16.1-06-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-05. Form of general election ballot. The official ballots provided for in this title for partisan election at general elections in precincts in which electronic voting machines systems are not used must be prepared as follows:

1. The ballots must be of sufficient length and width to contain a continuous listing of the designation of all the offices to be voted for.
2. On the top left-hand side of such ballot must begin a continuous listing of the designation of each office to be voted for, and under the designation of each office all of the names of the candidates duly nominated for that office must be printed.
3. The names of candidates nominated for each office must appear under the designation of that office, and under each candidate's name must appear, in smaller type, the appropriate party designation for each candidate. Where a candidate has been nominated by petition, the designation under that candidate's name, in smaller type, must be "independent nomination".
4. The names of candidates under the designation of each office must be alternated in the printing of the official ballot in the same manner as is provided for the primary election ballot.
5. The size of type must be as specified by the secretary of state.

In precincts in which electronic voting machines systems are used, the list of offices and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating as far as possible the requirements of this section.

SECTION 9. AMENDMENT. Section 16.1-06-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-08. No-party ballot at general elections - Contents - Delivered to elector. There must be a separate no-party ballot at the general election upon which must be placed the names of all candidates who have been nominated on the no-party primary ballot at the primary election. Such ballots must be in the same form as the no-party primary ballot and must be delivered to each elector by the proper election official. In precincts in which ~~voting machines~~ or electronic voting systems are used, the list of offices and candidates must be entitled "no-party ballot" in a manner to clearly indicate the separation of the no-party list of offices and candidates from the party list of offices and candidates.

SECTION 10. AMENDMENT. Section 16.1-06-10.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-10.1. Electronic counting machines authorized - Sharing of machines. The use of electronic counting machines is authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which the election precinct is located, that the use is advisable or necessary in that precinct. Thereafter, ~~the electronic counting machines must~~ may be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division

of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, provided the machines being procured have been certified for procurement and use in the state by the secretary of state according to section 16 of this Act. Two or more counties may enter an agreement concerning the shared use and transport between counties of electronic counting machines and apportioning of expenses. Any electronic counting machine used in an election must be so constructed that when properly operated it registers or records correctly and accurately every vote cast.

SECTION 11. AMENDMENT. Section 16.1-06-11 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-11. Electronic voting systems authorized. The use of electronic voting systems in accordance with the provisions of this chapter is hereby authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, ~~the a~~ a system or systems must may be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, provided the system or systems being procured have been approved and certified for procurement and use in the state by the secretary of state according to section 16 of this Act. The system or systems may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

SECTION 12. AMENDMENT. Section 16.1-06-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-12. Definitions. As used in this title with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on ~~ballot cards~~ ballots or entered directly into a computer or other electronic device by means of a touchscreen or other data entry device and data processing machines which can be used for counting votes and tabulating results.
2. "Ballot ~~card~~" means, ~~for a handcount paper ballot or for an electronic voting system purchased after June 30, 1985 includes,~~ a tabulating ~~card~~ paper ballot, recorded by optical scan reader, containing the names of offices and candidates and the questions to be voted on, which is used in conjunction with the ~~voting~~ marking device and on which votes may be recorded. ~~For an electronic voting system purchased before July 1, 1985, ballot card means a tabulating card on which votes may be recorded.~~ For direct recording electronic voting systems, ballot means the ballot display provided by electro-optical devices showing the names and candidates and the questions to be voted on that allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device.
3. "Ballot envelope" means ~~the envelope in which the ballot card is enclosed and upon which the names of write-in candidates may be written.~~

4. "Ballot label" means, for an electronic voting system purchased before July 1, 1985, the booklet or guide containing the names of offices, candidates, and questions to be voted on, which is used in conjunction with the voting device and voting card.
5. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.
4. "Direct-recording electronic voting system" means a voting system that records votes by means of a ballot display provided by electro-optical devices that allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device. An alphabetic keyboard may be employed as an entry device to facilitate voting for write-in candidates. A voter's choices are stored in the direct-recording electronic voting system's internal memory devices and added to the choices of all other voters.
6. 5. "Electronic voting system" means a system employing a, or the combination of electronic voting systems and devices authorized under this chapter, that may employ a marking device in conjunction with ballot labels ballots or ballot cards the use of a touchscreen or other data entry device and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.
6. "Electronic voting system device" means a single unit of an electronic voting system.
7. "Voting Marking device" means a device in which ballot cards are used in connection with a punch device for the piercing of ballots by the voter, a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.
8. "Optical scan" means a procedure in which votes cast on a paper ballot are tabulated by means of examining marks made in voting response locations on the ballot with an optical reader.

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

16.1-06-14. Requirements for electronic voting systems. Any electronic voting system used in an election in this state must:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.
2. Permit each voter to vote for as many persons for any office as the voter is entitled to vote for, and must allow each voter to vote in primary elections for candidates for nomination by the political party of the voter's choice, but it must preclude each voter from voting for more persons for any office than the voter is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.

3. Permit each voter, insofar as is possible, by the replacement of spoiled ballots, to change the voter's vote for any candidate, or upon any measure or question submitted to the voters, up to the time the voter begins the final operation to register the voter's vote.
4. Permit and require voting in absolute secrecy, and must be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, ~~save~~ except a voter whom the person has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism.
5. ~~Have a counter, or other device, the register of which is visible at all times from the outside of the system, which must show during any period of tabulation the total number of votes tabulated during the period of tabulation and have a protective counter, or other device, which must record the cumulative total number of movements of the tabulating equipment.~~
6. Be provided with a procedure by the use of which, immediately after the polls are closed, all voting is absolutely prevented.
- ~~7.~~ 6. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.
- ~~8.~~ 7. Be so constructed that a voter may readily learn the method of operating it.
- ~~9.~~ 8. Permit voting by ballot card or by entering directly into a computer or other electronic device by means of a touchscreen or other data entry device.
- ~~10.~~ 9. Permit voting for presidential electors by making only one mark ~~or punch~~.
- ~~11.~~ 10. Permit write-in voting and absentee voting.
- ~~12.~~ 11. Permit the rotation of names of candidates on ballots as required by this title.
12. In the case of electronic systems procured after August 1, 2003, be capable of notifying a voter that the voter has overvoted, undervoted, and in the case of a primary election, cross-party voted before the voter casts a ballot.
13. In the case of direct-recording electronic voting systems, capable of preventing a voter from overvoting and cross-party voting before the voter casts a ballot.
14. In the case of direct-recording electronic voting systems, be capable of producing in random order a paper copy of each ballot cast on the system.
15. Ensure that any direct-recording electronic voting system procured or used in the state may not transmit uncounted votes or ballots through the internet.

16. Fulfill the criteria and standards established by the secretary of state according to section 16 of this Act.

SECTION 14. 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 ~~and before and after the counting of the ballots at each election.~~ The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials, ~~programs,~~ and any preaudited ballots used during the test must be sealed and retained in the same manner as ~~paper ballots~~ 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 ~~ballot cards~~ 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 ~~that is conducted before the election~~ must be conducted at least one week before the election ~~and.~~ 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 ~~must be sent a~~ notice of the test by the county auditor at least one week before 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 15. AMENDMENT. Section 16.1-06-17 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-17. County auditor to provide ballots and other electronic voting system supplies. At the same time as other election supplies are provided and distributed, the county auditor shall provide to each precinct in the county using an electronic voting system:

1. A sufficient number of electronic voting system devices and ballots if the electronic voting system employs ballots.
2. Four facsimile diagrams of the entire face of the electronic voting system device as it will appear on election day.
3. Appropriate instruction material for the use of the electronic voting system devices.

4. All other materials required to carry ~~on~~ out the election process through the use of electronic voting systems.

SECTION 16. A new section to chapter 16.1-06 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to adopt rules for the purpose of certifying and decertifying electronic voting systems and electronic counting machines. The secretary of state may adopt rules according to subsection 3 of section 16.1-01-01 for certifying and decertifying electronic counting machines authorized in section 16.1-06-10.1 and electronic voting systems authorized in section 16.1-06-11, including any software, hardware, and firmware components used as a part of an electronic voting system or electronic counting machine for use and procurement in the state. The rules may:

1. Establish criteria and standards with which all electronic voting systems and electronic counting machines must comply.
2. Describe the procedures for electronic voting systems and electronic counting machines, any single device of an electronic voting system and electronic counting machine, and any update and enhancement made to them, to be certified and decertified for procurement and use in the state.
3. Define what constitutes a vote on each electronic voting system and electronic counting machine which has been certified for procurement in the state.
4. Describe the procedures for the secretary of state to follow when defining what constitutes a vote on any new electronic voting system and electronic counting machine, any single device of an electronic voting system and electronic counting machine, and any update and enhancement made to them.

An electronic voting system and electronic counting machine, a single device of an electronic voting system and electronic counting machine, and an update and enhancement made to them, in use by a county prior to August 1, 2003, must be reviewed by the secretary of state according to rules adopted under this section by April 1, 2004, and must meet the requirements of the rules, or must be replaced by another electronic voting system and electronic counting machine, a single device of an electronic voting system and electronic counting machine, and an update and enhancement made to them, that meets the requirements of the rules by January 1, 2006.

SECTION 17. 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 ~~preparing~~ 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, ~~prior to~~ 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 of the cards in and about the polling place. Three of the official ballots without the official stamp 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 of ~~such~~ 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, ~~prior to~~ 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 18. AMENDMENT. Section 16.1-07-13 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-13. Registration of absent voters' ballots on voting machines or on electronic voting systems. At polling places using ~~voting machines or~~ electronic voting systems, absent voters' ballots, if any, must be ~~registered on the voting machines or electronic voting systems entered in secrecy~~ by the two election judges. ~~The voting of absent voters' ballots on voting machines or voting systems must be done in secrecy by the two election judges, acting jointly, during the voting day at times when the voting machines or voting systems are not in use by voters, or after the close of the voting day and before the machines are unlocked for tallying.~~ The absentee electronic voting system ballots prepared pursuant to this section must be deposited in the ballot boxes and counted as other ballots. If the electronic voting system in use so provides, the actual electronic voting system ballot may be used as the absentee ballot.

SECTION 19. AMENDMENT. Section 16.1-13-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-22. Delivering ballot to elector - Stamping. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot ~~or ballot card, ballot stub, and ballot envelope~~ shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been stamped and initialed.

1. The paper ballot is considered stamped if it is either stamped with a stamp and an inkpad or has the stamped information preprinted on the paper ballot, as provided in section 16.1-06-18.
2. ~~When an electronic voting system is used, the inspector or judge delivering the ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot stub is detached by anyone except an election inspector or judge, the ballot card and ballot envelope may not be deposited in the ballot box, but must be marked spoiled and placed with the other spoiled ballots.~~
3. At primary elections, the inspector or judge shall also inform each elector that if the elector splits the party ballot or votes for candidates of more than one party the elector's party ballot will be rejected.

4. 3. Before delivering any paper ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot ~~or ballot card and ballot envelope~~, if required under subsection 1, the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall initial the ballot. Failure to stamp and initial a paper ballot ~~or ballot card~~ in the proper place does not invalidate the ballot ~~or ballot card~~, but a complete failure to stamp and initial a paper ballot ~~or ballot card~~ does invalidate the ballot ~~or ballot card~~. ~~Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope does not invalidate the ballot envelope, but complete failure to stamp and initial a ballot envelope that has been used to write in a vote does invalidate the ballot envelope and the vote found thereon.~~

SECTION 20. AMENDMENT. Section 16.1-13-24 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-24. Preparation of Voting on electronic voting system ballots devices. Except as provided in this section, voting procedures for electronic voting systems must be the same as for similar or as close as practicable to regular paper ballot voting. ~~After marking the ballot envelope or punching the ballot card for electronic voting systems, the voter shall place the ballot inside the ballot envelope and return it to the election judge. The judge shall remove the stub and deposit the envelope with the ballot inside the ballot box. The ballot stub must be deposited in an envelope provided for that purpose. Ballot cards from which the ballot stub has been detached by anyone except an election judge may not be deposited in the ballot box but must be marked spoiled and placed with other spoiled ballots.~~ Voting procedures on direct-recording electronic voting system devices must follow as close as practicable the procedures for voting by paper ballot, with the exception of voting on a ballot display provided by electro-optical devices which shows the names and candidates and the questions to be voted on and which allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device.

SECTION 21. AMENDMENT. Section 16.1-13-25 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-25. Elector may write or paste name on ballot - Counting. The provisions of this title do not prevent any elector from writing or pasting on the paper ballot ~~or ballot envelope~~, or in the case of direct-recording electronic voting system devices, entering by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted the same as if printed on the ballot and marked by the elector.

SECTION 22. AMENDMENT. Section 16.1-13-26 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-26. Name written or pasted on ballot evidence of vote without marking "x". If a name has been written or pasted, or in the case of direct-recording electronic voting system devices, entered by touchscreen or other data entry device, opposite an office to be voted for, it must be deemed sufficient evidence that the person depositing ~~casting~~ the ballot ~~or ballot envelope~~ intended to vote for the person whose name is written ~~or~~, pasted, or entered thereon, and not for the person whose name originally was printed on the ballot, whether or not the elector made a mark or cross opposite the written ~~or~~, pasted, or entered name.

SECTION 23. AMENDMENT. Section 16.1-13-29 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-29. Election booths or compartments - Number required - Expense. The inspector of elections shall provide a sufficient number of voting booths or compartments in the inspector's polling place, which must be designed to enable the elector to mark, or in the case of direct-recording electronic voting system devices, enter by touchscreen or other data entry device, the elector's ballot screened from observation. The number of booths or compartments in precincts ~~in which voting machines are not used~~ may not be less than one for each one hundred fifty electors or fraction thereof in the precinct. The expense of providing the booths or compartments must be paid in the same manner as other election expenses. One ~~voting machine or~~ electronic voting system device must be provided ~~for each two hundred electors or fraction thereof in the~~ each precinct.

SECTION 24. AMENDMENT. Section 16.1-13-32 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-32. Securing new ballot upon spoiling of others. If any elector spoils a ballot, ~~including an electronic voting system ballot,~~ the elector may obtain others successively, one at a time, not exceeding three in all, upon returning each spoiled ballot. Each paper ballot returned must be canceled immediately and, together with those not distributed to the electors, must be preserved and secured in sealed packages and returned to the county auditor from whom received.

SECTION 25. AMENDMENT. Section 16.1-13-33 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-33. ~~Voting machines~~ - Electronic voting systems - Election laws apply. All provisions of law relating to the conduct of elections apply as closely as possible to elections at which ~~voting machines or~~ electronic voting systems are used.

SECTION 26. A new section to chapter 16.1-13 of the North Dakota Century Code is created and enacted as follows:

Voters casting ballots after regular poll closings - Provisional ballots.
An individual who votes after the regular poll closing time in an election in which a federal office appears as a result of a federal or state court order or any other order extending the time established for closing the polls under state law in effect ten days before the date of that election may only vote in that election by casting a provisional ballot. The ballot must be marked as a provisional ballot and must be separated and held apart from other ballots cast by those not affected by the order. The secretary of state shall approve the form of any provisional ballot and may prescribe any procedures the secretary of state determines to be necessary to facilitate the casting, secrecy, and counting of provisional ballots.

SECTION 27. AMENDMENT. Section 16.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-01. Ballots void and not counted - Part of ballot may be counted.

1. In the canvass of the votes at any election, a ballot is void and may not be counted if:
 - a. It is not endorsed with the official stamp and initials as provided in this title; or

- b. It is impossible to determine the elector's choice from the ballot or parts of a ballot, and in the case of electronic voting systems, based upon the criteria established by the secretary of state for counting votes on each electronic voting system authorized for procurement and use in the state according to section 16 of this Act.
2. If a ballot is marked so only a part of the voter's intention can be determined, the election judges shall count such part. If an elector votes for more than the number of persons to be elected to any office, the elector's ballot may be invalidated only insofar as the elector's vote for such office is concerned, and the balance of the elector's ballot, if otherwise proper, may not be invalidated. However, at primary elections only, a party ballot is void if the elector votes for candidates of more than one party.

SECTION 28. AMENDMENT. Section 16.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-09. ~~Voting machines~~ - Electronic voting systems - Electronic counting machines - Returns.

1. Election officers shall make returns of votes cast upon ~~voting machines~~ ~~and on~~ electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law or rule insofar as such provisions of law or rule are applicable.
2. Within the ability of ~~the an~~ electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes.
3. Votes cast upon a direct-recording electronic voting system must be tabulated from the voter's choices stored in the system's internal memory devices that are added to the choices of all other voters.
4. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. The county auditor shall designate the public place or places where votes cast upon direct-recording electronic voting systems are to be counted.
5. All ~~such~~ counting centers used for counting votes cast upon electronic voting ~~system ballots~~ ~~systems~~ shall have tabulating equipment that has an element that generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element that generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. ~~Both printed~~

~~records must be certified by the~~ The election inspector and the two election judges must certify both printed records.

6. If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number that must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the district judge or to the clerk of district court.

SECTION 29. AMENDMENT. Section 16.1-15-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-10. Failure of automatic tabulating or electronic counting equipment - Counting by alternate method. If the automatic tabulating or electronic counting equipment used as part of any electronic voting system, any electronic voting system device, or any electronic ~~voting~~ machine fails to operate during the ballot count at any election, the ballots must be counted by an alternate method.

SECTION 30. AMENDMENT. Subsection 5 of section 16.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~Except for~~ For recounts conducted by ~~political subdivisions other than~~ counties of federal, state, district, and county offices, measures, and questions, ~~recounts must be conducted by the county auditor who must conduct the recount and~~ may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper, ~~machine,~~ and electronic voting system ballots and associated records, whether the ballots were counted at the precinct or the county canvass, and all absentee ballots cast pursuant to section 16.1-07-09 to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor is disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section. ~~The~~ For recounts conducted by political subdivisions other than counties of local offices, measures, and questions, the election officer in a political subdivision other than a county which is conducting a recount shall administer a recount in the same manner as is required under this subsection for counties with respect to political subdivision ballot measures, questions, or bond issues.

SECTION 31. AMENDMENT. Section 16.1-16-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots. Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the district judge or to the clerk of district court of any county where the contestant or the contestee desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the district judge or the clerk of district court to

preserve all the paper ballots, and electronic voting system ballots, and ~~voting machine~~ associated records until the contest has been finally determined.

SECTION 32. AMENDMENT. Section 40-21-09 of the North Dakota Century Code is amended and reenacted as follows:

40-21-09. Election districts in council cities - Division and consolidation by ordinance - Ballots to be kept separate by wards. Each city operating under the council form of government in which council members are elected at large constitutes an election district or voting precinct, and in all other cities each ward constitutes an election district or voting precinct. Whenever the number of electors in any two or more contiguous wards does not exceed one hundred as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate those two or more wards into one precinct for voting purposes. In any city containing less than four hundred electors as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate all the wards of the city into one precinct for voting purposes. An ordinance dividing or consolidating wards must be passed and takes effect before the time of giving notice of the election. Wards and precincts established under this section constitute election districts for all state, county, and city elections. In city elections, separate ballot boxes and pollbooks must be provided and kept for each precinct. The terms "wards", "precincts", and "election districts" have the same meaning except where two or more wards are consolidated into one precinct for voting purposes or where one ward is divided into more than one precinct for voting purposes. This section does not prohibit the use of one building as the election polling place for more than one ward or the installation of ~~voting machines~~ electronic voting systems from separate wards in one building.

SECTION 33. REPEAL. Sections 16.1-06-10, 16.1-06-13, 16.1-06-24, and 16.1-15-11 of the North Dakota Century Code are repealed.

SECTION 34. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 2003
Filed April 16, 2003

CHAPTER 172

SENATE BILL NO. 2394

(Senators Krebsbach, J. Lee, Nelson, Traynor)
(Representatives Froelich, Koppelman)

CENTRAL VOTER FILE

AN ACT to create and enact chapter 16.1-02 and two new sections to chapter 16.1-05 of the North Dakota Century Code, relating to providing a central voter file, verifying voter eligibility, and creating precinct maps and precinct locators; to amend and reenact sections 16.1-01-04, 16.1-05-06, and 54-09-08 of the North Dakota Century Code, relating to qualifications of voters, challenging voters, and fees received by the secretary of state; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-04. Qualifications of electors.

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.
2. Every For the purposes of this title, every qualified elector ~~of the state~~ may have only one ~~voting~~ residence, shown by an actual fixed permanent dwelling, establishment, or any other abode.
3. A person's voting Except as otherwise provided in this section, an individual's residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by ~~persons~~ individuals convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.
5. For the purposes of this title, an individual may not be deemed to have gained or lost a residence solely by reason of the individual's presence or absence while enrolled as a student at a college, university, or other postsecondary institution of learning in this state.
6. For the purposes of this title, a member of the armed forces of the United States may not be deemed to have gained or lost a residence in this state solely by reason of the member being stationed on duty in this state.
7. For the purposes of this title, an individual may not be deemed to have lost residence in the individual's precinct or in the state by reason of the individual engaging in temporary government service or private employment outside the individual's precinct or outside the state.

SECTION 2. Chapter 16.1-02 of the North Dakota Century Code is created and enacted as follows:

16.1-02-01. Permanent central voter file. A permanent, centralized electronic data base of voters, to be known as the central voter file, is established with the offices of the secretary of state and county auditors linked together by a centralized statewide system. The county auditor is chief custodian of the central voter file records in each county. The secretary of state is responsible for maintaining the central voter file. The central voter file must be accessible by the secretary of state and all county auditors for purposes of preventing and determining voter fraud, making changes and updating the central voter file, and generating information, including pollbooks, reports, inquiries, forms, and voter lists.

16.1-02-02. Costs of creating and maintaining a central voter file. The creation of the central voter file and its maintenance through June 30, 2009, must be paid for with funds from the state's election fund, provided the election fund contains adequate funding to create and maintain the central voter file. The creation of the central voter file and its maintenance through June 30, 2009, may not be paid for from funds in the secretary of state's budget, the state's general fund, or from county funds. Beginning July 1, 2009, the offices required to perform the functions and duties of this chapter shall bear the costs incurred in performing those duties and the secretary of state shall pay the costs of operating and maintaining the central voter file.

16.1-02-03. Secretary of state to establish the central voter file with department of transportation and county auditors.

1. Not later than the primary election in 2006, the secretary of state shall establish the central voter file in cooperation with the department of transportation and county auditors.
2. The secretary of state shall establish the initial central voter file from records maintained by the department of transportation. Each county auditor shall compare the initial central voter file against all precinct pollbooks used in the auditor's county during and created from the general elections in the two previous election years and any reasonably reliable updates made by the county auditor since the general elections in the two previous election years. Any individual contained in the initial central voter file who voted at either of the general elections in the two previous election years must be designated as "active" in the initial central voter file. Any individual contained in the initial central voter file who did not vote at either of the general elections in the two previous election years must be designated as "inactive" in the initial central voter file.
3. Each individual contained in the initial central voter file must be assigned a unique identifier. An individual's unique identifier must be created from unique information and data obtained from records maintained by the department of transportation and the pollbooks from the general elections in the two previous election years. If it is not possible to assign a unique identifier to an individual contained in the initial central voter file, a unique identifier must be randomly generated and assigned to the individual.

4. The secretary of state shall adopt rules for generating and assigning a unique identifier to each individual contained in the central voter file according to section 16.1-02-11 and subsection 3 of section 16.1-01-01.
5. When establishing the initial central voter file from the records maintained by the department of transportation and the pollbooks from the general elections in the two previous election years, the secretary of state and county auditors shall attempt to correct address errors and misspellings of names.

16.1-02-04. Precinct boundaries changed - Change to the central voter file. When the boundaries of a precinct are changed, the county auditor shall immediately update the voter records for that precinct in the central voter file to accurately reflect those changes.

16.1-02-05. Entry of new voters into the central voter file - Query of the central voter file for double voting - Verification by mail - Challenges - Post election verification.

1. Within sixty days following an election, the county auditor shall enter the name and required information of each individual who voted at the last election who is not already contained in the central voter file and update any required information requested and obtained at the last election for any individual contained in the central voter file.
2. The secretary of state, with the assistance of the county auditors, within seventy days following an election, shall query the central voter file to determine if any individual voted more than once during the preceding election. The secretary of state shall immediately notify the county auditor and state's attorney in each affected county for further investigation.
3. The county auditor shall mail to a random sampling of individuals contained in the central voter file a notice stating the individual's name and address as the name and address appear in the central voter file. The random sampling must be determined in the manner established by the secretary of state. The notice must request the individual to notify the county auditor if there is any mistake in the information.
4. Upon return of any nonforwardable mail from an election official, the county auditor shall ascertain the name and address of that individual. If the individual is no longer at the address recorded in the central voter file, the county auditor shall designate the individual as "challenged" in the central voter file. An individual designated as "challenged" shall comply with section 16.1-05-06 before being allowed to vote at the next election in that precinct. If a notice mailed at least sixty days after the return of the first nonforwardable mail is also returned by the postal service, the county auditor shall designate the individual as "inactive" in the central voter file.
5. Within ninety days after an election, the county auditor shall send the notice provided for under subsection 3 to each individual who was challenged on election day according to section 16.1-05-06. If a notice is returned as not deliverable, the county auditor shall attempt to determine the reason for the return. A county auditor who does not receive or obtain satisfactory proof of an individual's eligibility to vote

shall immediately notify the state's attorney to conduct an investigation of the individual's eligibility to vote in that election.

16.1-02-06. Reporting deceased individuals and changes of names - Changes to records in the central voter file.

1. The state health officer shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older who has died while maintaining residence in this state since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "deceased" in the central voter file. The secretary of state shall prepare and distribute a list of individuals designated as "deceased" to each county auditor.
2. The state health officer shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older whose name was changed by marriage since the last report. Within sixty days after receiving a report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose name was changed that the individual's name has been changed accordingly in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
3. After receiving notice of death of an individual who has died outside the county, the county auditor shall designate that individual as "deceased" in the central voter file. Notice must be in the form of a printed obituary or a written statement signed by an individual having knowledge of the death of the individual.

16.1-02-07. Reporting individuals placed under guardianship and changes of names - Changes to records in the central voter file.

1. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older who has been placed under a guardianship and as a result has been deprived of the legal right to vote since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "ineligible" in the central voter file. The secretary of state shall prepare and distribute a list of individuals designated as "ineligible" to each county auditor.
2. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, and date of birth, if available, of each individual eighteen years of age or older whose legal right to vote has been restored by the court since the last report. Within thirty days after receiving a report, the secretary of state shall remove the "ineligible" designation of the individual in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
3. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older

whose name was changed by divorce or any order or decree of the court since the last report. Within sixty days after receiving the report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose name was changed that the individual's name has been changed accordingly in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.

16.1-02-08. Reporting incarcerations - Changes to records in the central voter file.

1. The director of the department of corrections and rehabilitation shall provide for the regular reporting to the secretary of state the name, address, date of birth, date of sentence, effective date of the sentence, and county in which the conviction occurred, if available, of each individual who has been convicted of a felony and incarcerated under the legal and physical custody of the department of corrections and rehabilitation since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual in the report as "ineligible" in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
2. The director of the department of corrections and rehabilitation shall provide for the regular reporting to the secretary of state the name, address, and date of birth, if available, of each individual previously convicted of and incarcerated for a felony whose civil rights have been restored as provided in chapter 12.1-33 since the last report. Within thirty days after receiving a report, the secretary of state shall remove the "ineligible" designation of the individual in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.

16.1-02-09. Department of transportation to report updates to the secretary of state - Changes to records in the central voter file.

1. The department of transportation shall report regularly to the secretary of state any relevant changes and updates to records maintained by the department of transportation which may require changes and updates to be made to records of individuals contained in the central voter file.
2. The county auditor may change the designation of individuals contained in the central voter file whose change of address can be confirmed by the United States postal service. The secretary of state may provide each county auditor with periodic reports on any individual whose change of address can be confirmed by the United States postal service.
3. If an individual makes a written request to the county auditor for removal of the individual's record from the central voter file, the county auditor shall change the designation of the individual contained in the central voter file to "inactive".
4. If a qualified elector makes a written request to the county auditor for inclusion in the central voter file, the county auditor shall collect the required information from the individual and add the individual's name to the central voter file with the designation of "inactive".

16.1-02-10. Posting voting history - Failure to vote - Individuals designated "inactive". Within ninety days after each election, each county auditor shall post the voting history for each individual who voted in the election. After the close of the 2008 calendar year, the secretary of state shall determine if any individual has not voted during the preceding four years and shall change the status of each such individual to "inactive" in the central voter file. The secretary of state shall prepare a report to each county auditor which contains the name of each individual who has been designated as "inactive" in the central voter file. Although not counted in an election, a late absentee ballot from an individual may not be used to designate an individual as "inactive" in the central voter file.

16.1-02-11. Secretary of state to adopt rules for the purpose of maintaining the central voter file. The secretary of state shall adopt rules and procedures according to subsection 3 of section 16.1-01-01 for the purpose of implementing this chapter and for updating and maintaining the central voter file. The rules must:

1. Provide for the establishment and maintenance of a central voter file.
2. Provide for the generation and assignment of a unique identifier to each individual contained in the central voter file.
3. Provide procedures for entering data into the central voter file.
4. Provide for any additional information to be requested of and obtained from an individual which is to be maintained in the central voter file, not already provided by law, but necessary for the proper administration of the central voter file.
5. Provide for the exchange of records maintained by the appropriate state and county agencies and officials for receiving regular reports regarding individuals and records of individuals contained in the central voter file.
6. Allow each county auditor and the secretary of state to add, modify, and delete information from the central voter file to ensure accurate and up-to-date records.
7. Allow each county auditor and the secretary of state to have access to the central voter file for review, search, and inquiry capabilities.
8. Provide security and protection of all information contained in the central voter file and to ensure that unauthorized access and entry is prohibited.
9. Provide a system for each county to identify the precinct to which an individual should be assigned for voting purposes.

16.1-02-12. Information contained and maintained in the central voter file. The central voter file must contain the following information for each individual included in the file:

1. The complete name of the individual.
2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.

4. The unique identifier generated and assigned to the individual.
5. A designation showing whether the individual's ability to vote in a precinct has been inactivated as a result of death, incarceration, or because of a change in guardianship status, or because the individual is no longer a resident of the precinct according to section 16.1-01-04.
6. A designation showing whether the individual must be challenged according to section 16.1-05-06.
7. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides.
8. Beginning in 2008, four years of an individual's voting history, if applicable.
9. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the central voter file.

16.1-02-13. Information contained in pollbooks generated from the central voter file. The county auditor shall generate a pollbook for each precinct in the county from the central voter file by the fifteenth day before an election. Between the fifteenth day before the election and the day of the election, no changes or updates to records of individuals contained in the central voter file or a pollbook generated from the central voter file may be made, other than changes related to the status of an individual voting early or an individual requesting and returning an absent voter's ballot. The secretary of state shall prescribe procedures for generating pollbooks and for transporting the pollbooks to the election judges for use on election day. Pollbooks generated from the central voter file must contain the following information for each individual contained therein:

1. The complete name of the individual.
2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.
5. A designation showing whether the individual must be challenged according to section 16.1-05-06.
6. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides.
7. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the pollbook.

16.1-02-14. Voter lists and reports to be made available for jury management. By February first of each year, the secretary of state shall transmit

information from the central voter file to the state court administrator for the purpose of compiling the master list of jurors under chapter 27-09.

16.1-02-15. Voter lists and reports may be made available for election related purposes - Funds received. Except as otherwise provided by law, a voter list or a report generated from the central voter file may be made available to a candidate, political party, or a political committee for election-related purposes. Any information obtained by a candidate, political party, or political committee for election-related purposes from a list or report generated from the central voter file may not be sold or distributed for a purpose that is not election-related. Except for information identified in the central voter file under subsections 1, 2, 3, 5, 7, and 8 of section 16.1-02-12, which may be made available to a candidate, political party, or political committee for election-related purposes, information in the central voter file is an exempt record. Any funds received by the secretary of state to pay the cost of producing a report or list of voters contained in the central voter file must be deposited in the secretary of state's general services operating fund.

16.1-02-16. Violations - Penalties.

1. An individual may not intentionally:
 - a. Remove an individual from the central voter file or change a record of an individual contained in the central voter file in a manner or for a purpose not authorized by law; or
 - b. Add a name of an individual to the central voter file or add a record of an individual contained in the central voter file in a manner or for a purpose not authorized by law.
2. A deputy, clerk, employee, or other subordinate of a county auditor who has knowledge or reason to believe that a violation of this chapter has occurred shall immediately transmit a report of the knowledge or belief to the county auditor, except if the suspected violation may have been committed by the county auditor, in which case the report must be immediately transmitted to the state's attorney, together with any evidence of the violation. A county auditor who has knowledge or reason to believe that a violation of this chapter has occurred shall immediately transmit a report of the knowledge or belief to the state's attorney of the county where the violation is believed to have occurred, together with any evidence of the violation. The county auditor shall also immediately send a copy of the report to the secretary of state.
3. An individual who intentionally violates any provision of this chapter is guilty of a class A misdemeanor, unless a different penalty is specifically provided by law.

SECTION 3. AMENDMENT. Section 16.1-05-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-06. Challenging right of person to vote - Identification or affidavit required - Penalty for false swearing - Optional poll checkers.

1. One poll challenger appointed by the district chairman of each political party represented on the election board is entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger

from each political party is entitled to be in attendance at each polling place at any one time.

2. ~~The members~~ Any member of the election board ~~and poll challengers~~ may challenge the right of ~~anyone~~ an individual to vote ~~whom they know or have~~ if the election board member has knowledge or has reason to believe the individual is not a qualified elector. ~~Members~~ A poll challenger may request members of the election board ~~or poll challengers~~ may to challenge a voter if ~~they know or have~~ the right of an individual to vote if the poll challenger has knowledge or has reason to believe the individual is not a qualified elector of the precinct. A challenge may be based upon any one of the following:
 - a. The ~~person~~ individual offering to vote does not meet the age or citizenship requirements.
 - b. The ~~person~~ individual offering to vote has never voted in the precinct before, the name of the individual offering to vote does not appear in the pollbook generated from the central voter file, and the individual fails to provide reasonable evidence of residency in the precinct.
 - c. Except as provided in section 16.1-01-05, the ~~person~~ individual offering to vote physically resides outside of the precinct.
 - d. The ~~person~~ individual offering to vote does not meet the residency requirements provided in section ~~16.1-01-05~~ 16.1-01-04.
 - e. The individual offering to vote fails or refuses to provide an appropriate form of identification as requested under subsection 3.
3. ~~A poll challenger or~~ If after an election board member ~~may request~~ has requested that the ~~person~~ individual offering to vote provide an appropriate form of identification to address any of the voting eligibility concerns listed in subsection 2- If and the identification is not provided or does not adequately ~~resolve~~ confirm the voter eligibility ~~concerns of the poll challenger or election board member of the challenged individual,~~ the challenged ~~person~~ individual may not vote unless the challenged ~~person~~ individual executes an affidavit, acknowledged before the election inspector, that the challenged ~~person~~ individual is a legally qualified elector of the precinct.
4. The affidavit must include:
 - a. The name and present address of the affiant and the address of the affiant at the time the affiant last voted.
 - b. The previous last name of the affiant if it was different when the affiant last voted.
 - c. A recitation of the qualifications for voting as set forth in section 16.1-01-04 and the rules for determining residence.
 - d. Notice of the penalty for making a false affidavit and that the county auditor may verify the affidavit.

- e. A place for the affiant to sign and swear to the affiant's qualifications as a voter.
5. Written notice of the penalty for making a false affidavit and that the county auditor may verify the affidavits must also be prominently displayed at the polling place in a form prescribed by the secretary of state. ~~Any person~~ An individual who falsely swears in order to vote is guilty of a class A misdemeanor and must be punished pursuant to chapter 16.1-01.
6. ~~The county auditor shall verify randomly at least ten percent of the affidavits signed in the county and shall report all known or suspected violations to the state's attorney for investigation and possible prosecution.~~
- ~~7.~~ In addition to the poll challenger, not more than two poll checkers appointed by the district chairman of each political party represented on the election board may be in attendance at each polling place, provided ~~such~~ the poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. The poll challengers and poll checkers must be qualified electors of the district in which they are assigned.
8. 7. No poll challenger or checker may be a member of the election board.
8. The district chairman shall notify the county auditor of each county contained in the legislative district before the third day before the day of the election of the names of individuals whom the district chairman has appointed to serve as poll challengers and poll checkers in the precincts in the legislative district.

SECTION 4. A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

Poll clerks to check identification and verify eligibility - Poll clerks to request, correct, and update incorrect information contained in the pollbook.

1. Before delivering a ballot to an individual according to section 16.1-13-22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.
2. If the individual's name is not contained in the pollbook generated from the central voter file, the individual may be challenged according to section 16.1-05-06 and the individual's name must be recorded in the

pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook.

3. When verifying an individual's eligibility or when entering the name of an individual into the pollbook, poll clerks shall request, correct, and update any incorrect or incomplete information about an individual that is required to be contained in the pollbook generated from the central voter file.
4. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct to the proper precinct and voting location.

SECTION 5. A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

County auditor to provide election board members with precinct maps or precinct finder. The county auditor shall provide each precinct election board with an accurate precinct map or precinct finder to assist the election board member in determining whether an address is located in that precinct and for determining which precinct and polling location to which to direct an individual who may be attempting to vote incorrectly in that precinct.

SECTION 6. AMENDMENT. Section 54-09-08 of the North Dakota Century Code is amended and reenacted as follows:

54-09-08. Secretary of state's general services operating fund. The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and sections 54-09-10 and 54-09-11. At the close of each fiscal year, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.

Approved April 16, 2003
Filed April 16, 2003

CHAPTER 173

HOUSE BILL NO. 1410

(Representatives Iverson, Eckre, Ekstrom, Thoreson)

POLITICAL PARTY ORGANIZATION

AN ACT to amend and reenact section 16.1-03-03, subsection 2 of section 16.1-03-07, and section 16.1-03-11 of the North Dakota Century Code, relating to political party organization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-03-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-03. Caucus business and elections - Political parties entitled to elect committeemen.

1. Each precinct caucus shall elect a chairman, committeemen as provided in subsection 3, and other officers as may be provided by party rules. The caucus may also discuss party policies, candidates, and any other business as prescribed by party rules.
2. No political organization is entitled to elect a precinct committeeman at its precinct caucus unless:
 - a. The organization nominated and 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
 - b. The candidates provided for in subdivision a received at least five percent of the total vote cast for presidential electors or governor within this state at that election.
3. Each political party in each voting precinct of this state, otherwise qualifying under subsection 2, is entitled to elect one precinct committeeman for each two hundred fifty votes, or fraction thereof, cast for the party's presidential electors in the precinct in the last presidential election. Each precinct is entitled to at least one precinct committeeman for each party which qualifies under subsection 2. Each precinct committeeman must be an elector of the precinct in which the committeeman resides and must be elected for a two-year term.
4. ~~The caucus chairman shall notify the county auditor of those precinct committeemen elected.~~

SECTION 2. AMENDMENT. Subsection 2 of section 16.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The newly elected chairman shall notify the secretary of state of the names of the party officers selected. The secretary of state shall certify~~

~~the names of the party officers to the county auditors. If the office of chairman becomes vacant, the vice chairman shall hold the office until the next regular election for the office or until a new chairman is selected by the district committee for the balance of the term, whichever occurs first. The secretary of state must be notified of any changes in membership of the district's committee officers by the district committee and must notify the county auditors of any changes.~~

SECTION 3. AMENDMENT. Section 16.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-11. State committee - Meetings - Organization - Vacancies. The state committee shall meet on or before July first of each odd-numbered year. The committee shall organize by selecting a chairman, vice chairman, secretary, and treasurer and by adopting rules and modes of procedure. The party's bylaws must be filed with the secretary of state. The officers elected need not be members of the committee, but they shall become voting members of the committee after their election. The Within thirty days following the state committee's organization, the newly elected chairman shall notify the secretary of state of the names of the party officers selected and the names and addresses of the party's district chairmen. These officers, with any other persons provided for by the party's bylaws and as the state committee designates, constitute the executive committee of the state committee. If the office of chairman becomes vacant, the vice chairman holds the office until the next regular election for the office or until a new chairman is selected by the state committee for the balance of the term, whichever occurs first. A vacancy in an office of the state committee, other than chairman and a party district chairman, must be filled upon a majority vote of the state committee. The chairman of the state committee may temporarily fill any vacancy existing on the state committee until the state committee convenes to fill the vacancy. The secretary of state must be notified of any changes in membership of the state's committee officers or the party's district chairmen.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 174

SENATE BILL NO. 2288

(Senators Dever, Nelson, O'Connell)
(Representatives Carlisle, Delmore, Haas)

PRESIDENTIAL PREFERENCE CAUCUSES

AN ACT to create and enact a new section to chapter 16.1-03 of the North Dakota Century Code, relating to requirements for political parties conducting presidential preference caucuses; to amend and reenact sections 16.1-11-15, 16.1-11-30, and 16.1-12-02 and subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to circulating petitions to establish a political party, independent nominations for president of the United States, and rules adopted by the secretary of state for the presidential preference contest; and to repeal sections 16.1-11-02, 16.1-11-02.1, 16.1-11-02.3, 16.1-11-03, and 16.1-11-04 of the North Dakota Century Code, relating to the presidential preference contest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-03 of the North Dakota Century Code is created and enacted as follows:

Political parties may conduct presidential preference caucuses.

1. On one designated day, following presidential nominating contests in the states of Iowa and New Hampshire and prior to the first Wednesday in March in every presidential election year, every political party entitled to a separate column under section 16.1-11-30 may conduct a presidential preference caucus.
2. Before August fifteenth of the odd-numbered year immediately preceding the presidential election year, the secretary of state shall designate the day after consulting with and taking recommendations from the two political parties casting the greatest vote for president of the United States at the most recent general election when the office of president of the United States appeared on the ballot.
3. A political party entitled to conduct a presidential preference caucus must notify the secretary of state before September first of the odd-numbered year immediately preceding the presidential election year if the political party will conduct a presidential preference caucus in that presidential election year according to this section. If selected by a political party, the results of a presidential preference caucus must be used to instruct delegates attending the political party's national political convention.
4. A political party that establishes itself according to section 16.1-11-30 after September first of the odd-numbered year immediately preceding the presidential election year and before the day designated by the secretary of state according to subsection 2 is entitled to conduct a presidential preference caucus according to this section. The political party is entitled to conduct a presidential preference caucus on the day

designated by the secretary of state according to subsection 2 and shall notify the secretary of state of the political party's intent to conduct a presidential preference caucus at the time it establishes itself.

5. Before the presidential preference caucuses, the legislative district chairman of each participating party shall issue the call for the presidential preference caucus, which may be held in conjunction with any other caucuses or meetings of the political party that are scheduled for the purpose of endorsing legislative candidates or selecting officers of the legislative district, at least thirty days before the time set for holding the caucus. At the time of making the call, the district chairman shall notify the secretary of state of the information contained in the call, which must include the following:

 - a. Name of the party.
 - b. Precinct number or name.
 - c. Date of caucus.
 - d. Place of caucus.
 - e. Hours of caucus.
 - f. A statement of the business to be conducted, including the nomination of a candidate for president of the United States.
 - g. The name of the district chairman issuing the call.
6. The district chairman shall provide ten days' published notice in the official county newspaper in circulation within each precinct in the district. The notices must contain that information set forth in subsection 5.
7. A presidential preference caucus must be conducted in the manner provided in this chapter with the exception that a political party is not required to hold individual caucuses in every election precinct throughout a legislative district. Only those persons who either voted or affiliated with the political party at the last general election or intend to vote or affiliate with the political party at the next general election may participate and vote at the presidential preference caucus.
8. Unless specifically forbidden by national party rules, the voting delegates selected by political parties are bound to cast their first ballots at the political party's national convention in the same proportion as the total votes cast for all candidates for president of the United States at the political party's presidential preference caucus. If political party rules do not allow apportionment of a delegate and such an apportionment appears necessary because a candidate did not receive more than one-half of a delegate, those partial delegates must be assigned to the candidate receiving the highest number of votes at the caucus. If a candidate withdraws before voting begins on the first ballot, delegates obligated to vote for the candidate on the first ballot are released from that obligation.

9. Every political party entitled to a separate column under section 16.1-11-30 that chooses not to conduct a presidential preference caucus is entitled to nominate a presidential candidate and select presidential electors for inclusion on the general election ballot in the presidential election year according to section 16.1-03-14.

SECTION 2. AMENDMENT. Section 16.1-11-15 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-15. Nominating petition not to be circulated more than ninety days prior to filing time. No nominating petition provided for in ~~this chapter~~ sections 16.1-11-06 and 16.1-11-11 may be circulated or signed more than ninety days previous to the time when any petition must be filed under the provisions of this chapter. Any signatures to a petition secured more than ninety days before that time may not be counted.

SECTION 3. 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 or 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.

~~Within the consolidated column, the group of candidates for each organization must be inverted from the next group appearing in that column.~~

SECTION 4. AMENDMENT. Section 16.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02. Certificates of nomination by petition - Form and contents.

Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. The Except for nominees for president of the United States, names of nominees so nominated must appear on the ballot as independent nominations. The names of nominees for president of the United States may appear on the ballot with a designation, not to exceed five words, that names the organization or political party to which the presidential candidate affiliates. The designation may not falsely indicate an affiliation with or the support of any political party organized in accordance with this title or include any substantive word or phrase that is profane or that is already included in or resembles the name of a political party entitled to a separate column under section 16.1-11-30. Each certificate of nomination by petition must meet the specifications for nominating petitions set forth in section 16.1-11-16. The signatures on the petition must be in the following number:

1. Except as provided in subsection 3, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.
2. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be at least two percent of the resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.
3. If the nomination is for the office of president, there must be no fewer than four thousand signatures.
4. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

⁷⁸ **SECTION 5. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the central personnel

⁷⁸ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2092, chapter 493, and section 3 of Senate Bill No. 2151, chapter 469.

system as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The state department of health with respect to the state toxicologist.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

- v. ~~The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.3.~~
- w. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

SECTION 6. REPEAL. Sections 16.1-11-02, 16.1-11-02.1, 16.1-11-02.3, 16.1-11-03, and 16.1-11-04 of the North Dakota Century Code are repealed.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 175

SENATE BILL NO. 2248

(Senators Fischer, Traynor, Trenbeath)
(Representatives Delmore, Devlin, Price)

ABSENTEE AND EARLY VOTING

AN ACT to create and enact three new sections to chapter 16.1-07 of the North Dakota Century Code, relating to providing absentee voting information to military and overseas voters, rejecting absentee ballots cast by military and overseas voters, and creating early voting precincts; and to amend and reenact subsection 2 of section 16.1-07-01 and sections 16.1-07-05, 16.1-07-06, 16.1-07-07, and 16.1-07-08 of the North Dakota Century Code, relating to absentee voting for federal offices by citizens who have never lived in the United States, applications for absent voter's ballots, and absentee voting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 16.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

2. A qualified elector who is a citizen of the United States and lives outside the United States or a citizen of the United States who is eighteen years of age or older and has never lived in the United States and whose parent is a qualified elector of the state may vote absentee in this state pursuant to this chapter if the individual:
 - a. Does not maintain a domicile;
 - b. Is not registered to vote;
 - c. Is not voting in any other state, territory, or possession of the United States; and
 - d. Possesses a valid passport or card of identity and registration issued under the authority of the secretary of state of the United States.

Such an elector may vote only in federal elections, which means any election held solely or in part for the purpose of electing or nominating any candidate for the office of president, vice president, presidential elector, member of the United States senate, or member of the United States house of representatives.

SECTION 2. AMENDMENT. Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-05. Time for applying for ballot. At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county

election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine living outside the United States or is a qualified elector living outside the United States may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to any individual eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election except to persons prevented from voting in person on the day of the election due to an emergency. A person requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one person. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election.

A completed application must be submitted to the appropriate election official in a timely manner so as to allow the applicant to receive, complete, and mail the absent voter's ballot before the day of the election.

SECTION 3. AMENDMENT. Section 16.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-06. Application form.

1. Application for an absent voter's ballot must be made on a blank form, prescribed by the secretary of state, to be furnished by the proper officer of the county, city, or school district in which the applicant is an elector or, on any blank form, approved by the secretary of state, or any blank containing the following information:
 - a. The applicant's name.
 - b. The applicant's ~~voting~~ residential address.
 - c. The applicant's mailing address.
 - d. The applicant's current home telephone number.
 - e. The election for which the ballot is being requested.
 - f. The date of the request.
 - g. An affirmation that the applicant has resided, or will reside, in the precinct for at least thirty days next preceding the election.
 - h. The applicant's signature.
 - i. A space for the voter to include the voter's precinct or voting location, if known.

If the applicant is unable to sign the applicant's name, the applicant shall mark (X) on the application in the presence of a disinterested person. The disinterested person shall print the name of the person

marking the X below the X and shall sign that person's own name following the printed name together with the notation "witness to the mark".

2. A qualified elector absent from the state is not required to file an application for an absent voter's ballot for any statewide election if either of the following apply:
 - a. The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine living outside the United States.
 - b. The elector is a United States citizen living outside the United States.

If the qualified elector furnishes the county auditor with a current mailing address and the elector's ~~local residence or precinct residential address~~, the county auditor either shall mail to the qualified elector a ballot with a return envelope and instructions or send to the qualified elector the ballot and instructions by facsimile for voting for any statewide election in that calendar year.

SECTION 4. AMENDMENT. Section 16.1-07-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-07. Delivering application ~~blank form~~ for ballot. The officers specified in section 16.1-07-05, upon request, shall mail an application ~~blank form~~ for an absent voter's ballot to the voter, or they may deliver the application ~~blank form~~ to the voter upon a personal application made at the officer's office. The officers may also make available or distribute the applications, prescribed by the secretary of state, to the public without any specific request being made for the applications.

SECTION 5. AMENDMENT. Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Challenging electors voting by absentee ballot - Inability of elector to sign name.

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. The auditor or business manager of the school district, as the case may be, may not provide an absent voter's ballot to a person acting as an agent who cannot provide a signed, written authorization from an applicant. No person may receive compensation, including money, goods, or services, for acting as an agent for an

elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

2.
- If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and an envelope must be enclosed with the ballot or ballots. The front of the envelope must bear the official title and post-office address of the officer supplying the voter with the ballot and upon the other side a printed statement in substantially the following form:

Precinct _____

Name _____

Residential Address _____

City _____ ND Zip Code _____

Under penalty of possible criminal prosecution for making a false statement, I swear that I reside at the residential address provided above, that I have resided in my precinct for at least thirty days next preceding the election, and this is the only ballot I will cast in this election.

Applicant's Signature _____

Date _____

If the absent voter is unable to sign the voter's name, the voter shall mark (X) ~~that~~ on the statement in the presence of a disinterested person. The disinterested person shall print the name of the person marking the X below the X and shall sign that person's own name following the printed name together with the notation "witness to the mark".

3.
- The county auditor, city auditor, or business manager of the school district, as the case may be, may challenge the right of anyone to vote an absent voter's ballot whom that officer knows or has reason to believe is not a qualified elector. When challenging a voter who has applied for an absentee voter's ballot, the election official shall follow the procedures and use the affidavit provided for in section 16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot along with an explanation that the voter's right to vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absentee voter's ballot to be accepted.
4.
- Each person requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.
5.
- Each individual requesting an absent voter's ballot under this chapter who cannot read the English language or who because of blindness or other disability is unable to mark the voter's ballot, upon request, may receive the assistance of any person of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

SECTION 6. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Early voting precinct - Election board appointment - Closing and canvassing.

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixtieth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to chapters 16.1-13 and 16.1-15. The election board of the early voting precinct must be known as the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners establishes an early voting precinct according to this section, the following provisions apply:

 - a. Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the dates and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election.
 - b. The county auditor shall appoint the early voting precinct election board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
 - c. The county auditor shall designate a space in a government-controlled facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02, to locate the early voting precinct.
 - d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board shall secure all election related materials, including:

 - (1) The pollbooks and access to any electronically maintained pollbooks.
 - (2) Any stamp and inkpads.
 - (3) The ballot boxes containing voted ballots.
 - (4) Any void, spoiled, and unvoted ballots.
 - e. Ballot boxes containing ballots cast at an early voting precinct may not be opened until the day of the election.
 - f. The early voting precinct may be closed, as provided in chapter 16.1-15, at the end of the last business day designated for early

voting in the county. Results from the early voting precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.

- g. The early voting precinct election board shall comply with the requirements of chapters 16.1-05, 16.1-13, and 16.1-15, as applicable.

SECTION 7. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to provide information regarding absentee voting for military and overseas voters. The secretary of state is designated as the official responsible for providing information regarding absentee voting by military and overseas citizens eligible to vote in the state according to section 702 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 1973ff-1]. The secretary of state shall develop and provide uniform procedures for county auditors to follow when transmitting and receiving applications for absentee ballots to and from military and overseas voters.

SECTION 8. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Notification of rejected absentee ballots cast by military and overseas voters. The secretary of state shall establish a uniform procedure for county auditors to follow when notifying a military or overseas voter that the voter's absentee ballot was rejected. The procedure must provide that the notice include the reason why the voter's absentee ballot was rejected as provided by section 707 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 1973ff-1].

Approved April 24, 2003
Filed April 24, 2003

CHAPTER 176

SENATE BILL NO. 2403

(Senators Stenehjem, O'Connell)
(Representatives Berg, Boucher)

CAMPAIGN CONTRIBUTIONS

AN ACT to create and enact three new sections to chapter 16.1-08.1 of the North Dakota Century Code, relating to campaign contribution statements; and to amend and reenact sections 16.1-08.1-01, 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, 16.1-08.1-03.2, 16.1-08.1-03.3, 16.1-08.1-03.5, 16.1-08.1-03.7, 16.1-08.1-03.8, 16.1-08.1-04, 16.1-08.1-05, and 16.1-08.1-06 of the North Dakota Century Code, relating to campaign contributions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁹ **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
2. "Candidate" means an individual who seeks nomination for election or election to public office.
3. "Contribution" means a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source ~~except as provided in subdivision d.~~ The term does not include:

⁷⁹ Section 16.1-08.1-01 was also amended by section 1 of Senate Bill No. 2063, chapter 177.

- a. A loan of money from a bank or other lending institution made in the regular course of business.
 - b. Time spent by volunteer campaign or political party workers.
 - c. Money spent by a candidate on the candidate's own behalf.
 - d. ~~Any money received by a candidate for legislative office which is immediately transferred or signed over to a district committee of a political party within thirty days of the candidate receiving the money. The district committee of the political party shall report a transfer of this kind as a contribution according to section 16.1-08.1-03 and shall show the origin of the contribution to the legislative candidate. Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.~~
 - e. Contributions of products or services for which the actual cost or fair market value are reimbursed by a payment of money.
4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations.
5. "Expenditure" means a ~~purchase, payment, distribution, loan, advance, deposit, or gift of money or property~~ gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
6. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
7. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
8. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures primarily for political purposes and includes the following:
 - a. A political action committee, derived from a corporation, cooperative corporation, limited liability company, or an association that is prohibited from making direct contributions for political purposes under section 16.1-08.1-03.3, and which solicits or receives contributions or makes expenditures for political purposes;

- b. A candidate committee, established to support an individual candidate seeking statewide office, that solicits or receives contributions for political purposes;
 - c. A multicandidate political committee, established to support multiple groups or slates of candidates seeking public office, that solicits or receives contributions for political purposes; and
 - d. A measure committee that solicits or receives contributions for the purpose of aiding or opposing a measure to be voted upon by the voters of the state.
- 9. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
- 10. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person. The term does not include activities undertaken in the performance of a duty of a state office.
- 11. "Public office" means every statewide or legislative office to which persons can be elected by vote of the people under the laws of this state.

SECTION 2. AMENDMENT. Section 16.1-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-02. Contributions statement required of candidate committees, candidates, and candidates for legislative office.

- 1. Any candidate ~~who is~~ candidate committee, as described in section 16.1-08.1-01, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office soliciting or accepting contributions for any political purpose shall make and file a statement in accordance with this section.
- 2. The candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office shall include in the statement the name and mailing address of all contributors who contributed in excess of two hundred dollars in the aggregate during the reporting period to the candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office, the amount of each reportable contribution, and the date each reportable contribution was received.
- 3. The candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office shall file the statement in the office of the secretary of state no later than the twelfth day before the date of the election in which the candidate's name appears on the ballot or in which the candidate seeks election through write-in votes complete from the beginning of that calendar year

through the twentieth day before the date of the election. The Every candidate committee, or candidate for statewide office who does not have a candidate committee, and every candidate for legislative office shall file a complete statement for the entire each calendar year no later than the thirty-first day of January of the following year, regardless of whether the candidate's name appeared on the ballot for any office during that calendar year or whether the candidate did not seek election at any election through write-in votes.

4. Even if the candidate committee, or candidate for statewide office who does not have a candidate committee, or the candidate for legislative office has not received any contributions in excess of two hundred dollars during the reporting period, the candidate committee, or candidate for statewide office who does not have a candidate committee, or the candidate for legislative office shall file a statement as required by this chapter. A statement filed according to this section by a candidate committee or candidate for statewide office who does not have a candidate committee during the reporting period must show the following:
 - a. The gross total of all contributions received in excess of two hundred dollars;
 - b. The gross total of all contributions received of two hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.
5. A candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office shall report the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, who contributed five thousand dollars or more in the aggregate during the reporting period.

SECTION 3. AMENDMENT. Section 16.1-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03. Contributions statement required of political parties.

1. Any political party that receives contributions in excess of two hundred dollars in the aggregate during the reporting period shall file a statement containing a detailed list of all contributions received from a person or political committee which exceed two hundred dollars in amount. The statement must include the name and mailing address of all contributors listed, the amount of each reportable contribution, and the date each reportable contribution was received, and for a state political party, a listing that includes the name and mailing address of each recipient of an expenditure exceeding two hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made.
2. A ~~year-end~~ year-end statement covering the entire calendar year must be filed with the secretary of state no later than the thirty-first day of January of the following year. A preelection statement must be filed no

later than the twelfth day before any election at which the party has endorsed or will nominate a candidate and must be complete from the beginning of that calendar year through the twentieth day before the election.

3. Even if the political party has not received any contributions in excess of two hundred dollars during the reporting period, the political party shall file a statement as required by this chapter. A statement filed by a state political party according to this section during the reporting period must show the following:
 - a. The gross total of all contributions received and expenditures made in excess of two hundred dollars;
 - b. The gross total of all contributions received and expenditures made of two hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.
4. A political party shall report the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, who contributed five thousand dollars or more in the aggregate during the reporting period.

SECTION 4. AMENDMENT. Section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.1. Contributions statement required of persons and measure committees promoting passage or defeat of initiated or referred measure.

1. Any person or measure committee, as described in section 16.1-08.1-01, who is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly at any election shall file a statement in accordance with this section if the person has received any contributions from a person in excess of one hundred dollars. The statement must include the name and mailing address of all contributors who contributed in excess of one hundred dollars to the person, the amount of each reportable contribution, and the date each reportable contribution was received. The statement must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made.
2. A person or measure committee who is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly may not accept a contribution of more than one hundred dollars from a person who does not reside in this state or from an out-of-state political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person who contributed more than one hundred

dollars of the contribution. The statement must indicate if no individual person contributed in excess of one hundred dollars of the out-of-state person's or political committee's overall contribution. The certified statement must also list the occupation, employer, and principal place of business for each person who contributed more than one hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or referred measure must include this statement with the contribution statement required to be filed under subsection 1.

3. The statement required of a person under subsection 1 must be filed with the secretary of state no later than the twelfth day prior to the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election. A complete statement for the entire calendar year must be filed no later than the thirty-first day of January of the following year. Even if a person required to report according to this section has not received any contributions in excess of one hundred dollars during the reporting period, the person shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:
 - a. The gross total of all contributions received and expenditures made in excess of one hundred dollars;
 - b. The gross total of all contributions received and expenditures made of one hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.

SECTION 5. AMENDMENT. Section 16.1-08.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.2. Political committee registration. A political committee, as described in section 16.1-08.1-01, other than a political party and a committee organized in support of a an individual legislative candidate, and a person aiding or opposing a measure to be voted upon by the voters of the state shall register its name, address, and its agent's name and address with the secretary of state each calendar year in which it receives any contribution. The registration must be completed within five fifteen business days of the receipt of any contribution or expenditure made and must be submitted with a registration fee of five twenty-five dollars. A political committee that organizes and registers according to federal law and makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office, a political party, or political committee in this state is not required to register as a political committee according to this section if the political committee reports according to section 16.1-08.1-03.7. Registration under this section does not reserve the name for exclusive use nor does it constitute registration of a trade name under chapter 47-25.

SECTION 6. AMENDMENT. Section 16.1-08.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.3. Campaign contributions by corporations, cooperative corporations, limited liability companies, and associations prohibited - Violation - Penalty.

1. A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution:
 - a. To aid any political party, political committee, or organization.
 - b. To aid any corporation, limited liability company, or association organized or maintained for political purposes.
 - c. To aid any candidate for political office or for nomination to political office.
 - d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
 - e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.
2. This section does not prohibit the establishment, administration, and solicitation of contributions to a separate and segregated fund to be utilized for political purposes by a corporation, cooperative corporation, limited liability company, or association. It is unlawful for:
 - a. The person or persons controlling the fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilize money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilize money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund.
 - b. Any person soliciting an employee, stockholder, patron, or member for a contribution to the fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation or of the general political philosophy intended to be advanced through committee activities.
 - c. Any person soliciting an employee or member for a contribution to the fund to fail to inform the employee or member at the time of the solicitation of the right to refuse to contribute without any reprisal.
 - d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed and of amounts expended for political purposes.
 - e. Any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, limited liability company, or association maintaining the political action committee.

- f. Any expenditure, except a contract, promise, or agreement, express or implied, to make any expenditure, made for political purposes to be reported under this section before control of the expenditure has been released by the political action committee.
3. All political action committees, as described in section 16.1-08.1-01, formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of two hundred dollars in the aggregate made for political purposes with the secretary of state. The statement must include the amount of each reportable contribution and the date it was received and the amount of each reportable expenditure and the date it was made. A ~~year-end~~ year-end statement covering the entire calendar year must be filed no later than the thirty-first day of January of the following year. A preelection statement must be filed no later than the twelfth day before any primary, special, or general election and must be complete from the beginning of the calendar year through the twentieth day before the election. Even if a political action committee has not received any contributions or made any expenditures in excess of two hundred dollars during the reporting period, the political action committee shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:
 - a. The gross total of all contributions received and expenditures made in excess of two hundred dollars;
 - b. The gross total of all contributions received and expenditures made of two hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.
4. A political action committee shall report the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, who contributed five thousand dollars or more in the aggregate during the reporting period.
5. A person may not make a payment of that person's money or of another person's money to any other person for a political purpose in any name other than that of the person who supplies the money and a person may not knowingly receive the payment nor enter nor cause the payment to be entered in that person's account or record in any name other than that of the person by whom it actually was furnished.
- ~~5.~~ 6. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, limited liability company, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, limited liability company, or association funds or otherwise violates this section, it is prima facie evidence of a violation by the corporation, cooperative corporation, limited liability company, or association.

- ~~6-~~ 7. A violation of this section may be prosecuted in the county where the contribution is made or in any county in which it has been paid or distributed.
- ~~7-~~ 8. It is a class A misdemeanor for an officer, director, stockholder, manager, governor, member, attorney, agent, or representative of any corporation, cooperative corporation, limited liability company, or association to violate this section or to counsel or consent to any violation. Any person who solicits or knowingly receives any contribution in violation of this section is guilty of a class A misdemeanor.
- ~~8-~~ 9. Any officer, director, stockholder, manager, governor, member, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section is liable to the company, corporation, limited liability company, or association for the amount so contributed.

SECTION 7. AMENDMENT. Section 16.1-08.1-03.5 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.5. Expenditures for other purposes - Report required.

1. This chapter does not prohibit the exercise by corporations, cooperative corporations, limited liability companies, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, limited liability company, or association other than a "political purpose" as defined by this chapter. Any corporation, cooperative corporation, limited liability company, or association that receives contributions pursuant to section 16.1-08.1-03.1 or spends money for the purpose of promoting passage or defeat of initiated or referred measures, other than a contribution to another person or measure committee promoting passage or defeat of an initiated or referred measure, shall file a statement pursuant to section 16.1-08.1-03.1 along with a statement listing the total amount of money spent for that purpose. The statements filed pursuant to section 16.1-08.1-03.1 must be filed with the secretary of state no later than the twelfth day before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day before the date of the election. Statements showing the total amount of money spent for the purpose of promoting passage or defeat of initiated or referred measures must be filed with the secretary of state through the end of the calendar year in which the measure appeared on the ballot.
2. A corporation, cooperative corporation, limited liability company, or association may make a donation of property or money to a state political party or nonprofit entity affiliated with or under the control of a state political party for deposit in a separate and segregated fund. Money in the fund must to be used exclusively by the state political party or nonprofit entity affiliated with or under the control of a state political party for purchasing, maintaining, or renovating a building and for the purchase of fixtures for the building. A state political party or nonprofit

entity affiliated with or under the control of a state political party receiving a donation under this subsection shall file a statement with the secretary of state no later than the thirty-first day of January of each calendar year. The statement must include the name and mailing address of each donor, the amount of each donation, the date each donation was received, all expenditures made from the fund during the previous calendar year, and cash on hand in the fund at the start and close of the reporting period. Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection.

SECTION 8. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make disbursements to nonfederal candidates, political parties, and political committees. A political committee that organizes and registers according to federal law and makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the disbursement made to the candidate. The political committee shall file a copy of the committee's federal report with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; and
3. The date and amount of the disbursement made.

SECTION 9. AMENDMENT. Section 16.1-08.1-03.8 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.8. Contributions statement required of multicandidate political committees.

1. A multicandidate political committee, as described in section 16.1-08.1-01, that solicits or accepts contributions for any political purpose shall file statements as required by this section.
2. A multicandidate political committee shall file a detailed list showing the name and mailing address of each contributor who contributed in excess of two hundred dollars in the aggregate to the committee during a reporting period, the amount of each reportable contribution in excess of two hundred dollars, and the date each reportable contribution was received.
3. A multicandidate political committee required to file a statement under this section shall file the statement in the office of the secretary of state no later than the twelfth day before the date of any primary, special, or general election. The statement must be complete from the beginning of that calendar year through the twentieth day before the date of the

primary, special, or general election. The political committee shall file a complete statement for the entire calendar year no later than the thirty-first day of January of the following year in which the political committee received a reportable contribution.

4. Even if a multicandidate political committee has not received any contribution in excess of two hundred dollars during the reporting period, the political committee shall file a statement as required by this chapter. A statement filed according to this section during the reporting period must show the following:
 - a. The gross total of all contributions received in excess of two hundred dollars;
 - b. The gross total of all contributions received of two hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.
5. A multicandidate political committee shall report the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, who contributed five thousand dollars or more in the aggregate during the reporting period.

SECTION 10. AMENDMENT. Section 16.1-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04. Supplemental statement required on large contributions received after original statement - Filing time. ~~If any candidate, political party, or political committee, or person soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of a statewide initiated or referred measure,~~ receives any contribution in excess of five hundred dollars in the twenty-day period before any election from any individual contributor, that candidate, political party, political committee, or person shall make and file a supplemental statement in the same form as required by section 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, or 16.1-08.1-03.3, or 16.1-08.1-03.8 stating the name and street address of the contributor and the amount of the contribution, and file the statement in the appropriate office within forty-eight hours of the receipt of the contribution.

SECTION 11. AMENDMENT. Section 16.1-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-05. Audit by secretary of state - ~~Random and requested~~ Requested audits - Reports.

1. ~~The~~ If a substantial irregularity is evident or reasonably alleged, the secretary of state may arrange an audit of any statement filed pursuant to this chapter, to be performed by a certified public accountant of the filer's choice, subject to approval by the secretary of state. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit must be reported to the attorney general. If an audit of a statement arranged by the secretary of state under this subsection reveals a violation of this

chapter, the candidate, political party, or political committee filing the statement shall pay a fine to the secretary of state equal to five percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater. If an audit of a statement arranged by the secretary of state under this subsection does not reveal a violation of this chapter, the cost of the audit must be paid for by the secretary of state.

2. If a substantial irregularity is reasonably alleged, the secretary of state may arrange an audit of any statement filed pursuant to this chapter, performed by a certified public accountant of the filer's choice, subject to approval by the secretary of state, upon written request by any interested party made to the secretary of state within thirty days following receipt of a statement by the secretary of state. The request must be made in writing, recite a substantial irregularity and a lawful reason for requesting an audit, and be accompanied by a bond in an amount established by the secretary of state sufficient to pay the cost of the audit. If an audit of a statement arranged by the secretary of state under this subsection reveals a violation of this chapter, the candidate, political party, or political committee filing the statement shall pay a fine to the secretary of state equal to five percent of the aggregate of contributions and expenditures found to be in violation or an amount sufficient to pay the cost of the audit, whichever is greater, and the bond shall be returned to the person submitting it. If an audit of a statement arranged by the secretary of state under this subsection does not reveal a violation of this chapter, the cost of the audit must be satisfied from the bond filed with the secretary of state.

An audit may not be made or requested of a statement for the sole reason that it was not timely filed with the secretary of state. An audit made or arranged according to this section must audit only those items required to be included in any statement, registration, or report filed with the secretary of state according to this chapter. The secretary of state may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer. Any remaining moneys collected by the secretary of state after an audit is paid for under this section must be deposited in the state's general fund. This section does not apply to statements filed according to section 13 of this Act.

SECTION 12. AMENDMENT. Section 16.1-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06. Contributions statement requirements.

1. A Except for a statement required to be filed under section 13 of this Act, any other statement required by this chapter to be filed with the secretary of state must be:

 - a. Deemed properly filed when deposited with or delivered to the secretary of state within the prescribed time and in the format established by the secretary of state. A statement that is mailed is deemed properly filed when it is postmarked and directed to the secretary of state within the prescribed time. If a statement is not received by the secretary of state does not receive a statement, a duplicate of the statement must be promptly filed upon notice by the secretary of state of its nonreceipt. After a statement has been

filed, the secretary of state may request or accept written clarification along with an amended statement from a candidate, political party, or political committee filing the statement when discrepancies, errors, or omissions on the statement are discovered by the secretary of state, the candidate, political party, or political committee filing the statement, or by any interested party reciting a lawful reason for requesting clarification and an amendment be made. When requesting an amended statement, the secretary of state shall establish a reasonable period of time, agreed to by the candidate, political party, or political committee, for filing the amended statement with the secretary of state.

- b. Preserved by the secretary of state for a period of four years from the date of filing. The statement is to be considered a part of the public records of the secretary of state's office and must be open to public inspection.
2. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the statement must be filed on the next available day on which the office of the secretary of state is open. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated to report an overall total contribution for the purposes of the statements required by this chapter. Aggregate contributions must reference the date of the most recent contribution. Contributions made separately by different persons from joint accounts are considered separate contributions for reporting purposes.
3. Unless otherwise provided by law, any candidate, political party, committee, or person may not be charged a fee for filing any statement with the secretary of state under this chapter.

SECTION 13. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Contribution statements of other candidates or candidate committees for elected office in the state except as otherwise defined.

1. Except a candidate otherwise defined in section 16.1-01-01, a candidate committee for a judicial district candidate and a candidate for a county or city office, in cities with a resident population of five thousand or more as determined by the last federal decennial census, shall make and file a statement in accordance with this section. The candidate or candidate committee shall include in the statement:
 - a. The name and mailing address of all contributors who made contributions in excess of two hundred dollars in the aggregate for the purpose of influencing the nomination for election, or election, of the candidate;
 - b. The amount of each reportable contribution; and
 - c. The date each reportable contribution was received.

2. A candidate committee for a judicial district candidate shall file a statement with the secretary of state no later than the thirtieth day following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write-in votes. Any other candidate required to file a statement under this section shall file the statement in the office of the county auditor in the candidate's county of residence no later than the thirtieth day following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write-in votes. Even if the candidate or candidate committee has not received any contributions in excess of two hundred dollars during the reporting period, the candidate or candidate committee shall file a statement as required by this section.
3. A statement required by this section to be filed with the appropriate filing officer must be:
 - a. Deemed properly filed when deposited with or delivered to the appropriate filing officer within the prescribed time. A statement that is mailed is deemed properly filed when it is postmarked and directed to the appropriate filing officer within the prescribed time. If the filing officer does not receive a statement, a duplicate of the statement must be promptly filed upon notice by the filing officer of its nonreceipt.
 - b. Preserved by the filing officer for a period of four years from the date of filing. The statement is to be considered a part of the public records of the filing officer and must be open to public inspection.

SECTION 14. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to charge and collect fees for late filing. Except for a statement required to be filed under section 13 of this Act, any other statement, registration, or report required to be filed according to this chapter, or any amended statement, registration, or report requested by the secretary of state, which is not filed within the prescribed time, the secretary of state shall charge and collect a late fee as follows:

1. Within six days after the prescribed time, twenty-five dollars;
2. Within eleven days after the prescribed time, fifty dollars; and
3. Thereafter, one hundred dollars.

The secretary of state may collect any payment obligation arising out of this section by civil action or by assignment to a collection agency, with any costs of collection to be added to the amount owed and to be paid by the delinquent filer.

SECTION 15. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to provide instructions and conduct training. The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 177

SENATE BILL NO. 2063

(Judiciary Committee)

(At the request of the Secretary of State and Attorney General)

CAMPAIGN CONTRIBUTION DEFINITIONS

AN ACT to amend and reenact subsections 2 and 3 of section 16.1-08.1-01 of the North Dakota Century Code, relating to campaign contributions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁰ **SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 16.1-08.1-01 of the North Dakota Century Code are amended and reenacted as follows:

2. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
 - a. A person holding public office;
 - b. A person who has publicly declared that person's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
 - c. A person who has formed a campaign or other committee for that person's candidacy for public office;
 - d. A person who has circulated a nominating petition to have that person's name placed on the ballot; and
 - e. A person who has, in any manner, solicited or received a contribution for that person's candidacy for public office, whether before or after the election for that office.
3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, or deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source except as provided in subdivision d. The term "anything of value" includes any good or service of more than a nominal value. The

⁸⁰ Section 16.1-08.1-01 was also amended by section 1 of Senate Bill No. 2403, chapter 176.

term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
- b. Time spent by volunteer campaign or political party workers.
- c. Money spent by a candidate on the candidate's own behalf.
- d. Any money received by a candidate for legislative office which is immediately transferred or signed over to a district committee of a political party within thirty days of the candidate receiving the money. The district committee of the political party shall report a transfer of this kind as a contribution according to section 16.1-08.1-03 and shall show the origin of the contribution to the legislative candidate.
- e. Money or anything of value received by a candidate in that person's personal capacity, including pursuant to a contract or agreement made for personal or private employment purposes, and not received for a political purpose or to influence the performance of that person's official duty.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 178

SENATE BILL NO. 2405

(Senators Dever, Krebsbach)
(Representatives Devlin, Meier)

VACANCIES IN NOMINATIONS AND LEGISLATIVE OFFICE

AN ACT to amend and reenact sections 16.1-11-18 and 16.1-13-10 of the North Dakota Century Code, relating to filling vacancies occurring in nominations for party office and filling legislative vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-18 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-18. Party committees to fill vacancy occurring in nomination for party office.

1. If a vacancy occurs in any party certificate of endorsement at the primary election for any state or legislative district office, the proper state or district executive committee of the political party may fill the vacancy by filing another certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
2. If no party endorsement has been made by certificate and a vacancy occurs in a slate of candidates seeking party nomination by petition at the primary election, the proper state or district executive committee may fill the vacancy by filing a certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
3. If party endorsements by certificate have been made for any state or district office and a vacancy occurs in the slate of persons seeking nomination at the primary election because of the unavailability of the person who is seeking nomination by petition, that vacancy may not be filled except by petition.
4. If a vacancy occurs in a slate of statewide candidates after the candidates have been nominated at the primary election, the proper state executive committee may fill any vacancy by filing a certificate of nomination with the secretary of state. The chairman and secretary of the committee shall make and file with the secretary of state a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When such a certificate is filed, the secretary of state shall certify the new nomination and the name of the person who has been nominated to fill the vacancy in place of the original nominee to the various auditors. If the secretary of state already has forwarded the certificate, the secretary of state forthwith shall certify to the auditors the name and address of

the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.

5. If a vacancy occurs in a slate of legislative candidates after the candidates have been nominated at the primary election, the proper district executive committee may fill the vacancy by filing a certificate of nomination with the county auditor of the new nominee's county of residence. The chairman and secretary of the committee shall make and file with the county auditor of the new nominee's county of residence a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When the certificate is filed, the county auditor of the new nominee's county of residence shall certify the new nomination to the various auditors affected by the change and to the secretary of state by forwarding to them the name of the person who has been nominated to fill the vacancy in place of the original nominee. The certification must include the name and address of the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.
6. A vacancy in a nomination following a primary election may not be filled according to subsections 4 or 5 unless the nominated candidate:
 - a. Dies;
 - b. Would be unable to serve, if elected, as a result of a debilitating illness;
 - c. Ceases to be a resident of the state or an individual nominated for legislative office will not be a resident of the legislative district at the time of the election; or
 - d. Ceases to be qualified to serve, if elected, as otherwise provided by law.

Vacancies to be filled according to the provisions of this section may be filled not later than sixty days prior to the election.

SECTION 2. AMENDMENT. Section 16.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-10. Vacancy existing in office of member of legislative assembly.

1. If a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which the former member resides or resided shall notify the chairman of the legislative council of the vacancy. The county auditor need not notify the chairman of the legislative council of the resignation of a member of the legislative assembly when the resignation was made under section 44-02-02.

Upon receiving notification of a vacancy, the chairman of the legislative council shall notify the district committee of the political party that the former member represented in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy. If the former member was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative council, the chairman of the legislative council shall appoint a resident of the district to fill the vacancy. # Except as provided in subsection 2, if eight hundred twenty-eight days or more remain until the expiration of the term of office for that office, the individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election or special election called by the governor according to subsection 2 to serve for the remainder of the term of office for that office.

2. The qualified electors of a legislative district in which a vacancy in the legislative assembly occurs may petition for a special election to be called by the governor to fill the vacancy. The petition must include the signatures of qualified electors equal in number to four percent of the resident population of the legislative district as determined by the last federal decennial census and must be presented to the secretary of state within thirty days following an appointment being made according to subsection 1. If the secretary of state determines the petition contains the required number of signatures of qualified electors of the affected legislative district, the secretary of state shall notify the governor that a special election is required to be called to fill the vacancy. Upon receiving such notice, the governor shall issue a writ of election directed to the county auditor of each affected county commanding the county auditor to hold a special election to fill the vacancy at a time designated by the governor. A special election under this section must conform to the applicable election deadlines found in this title and may be called to coincide with a regularly scheduled primary or general election provided the special election is called by the fifteenth day before the deadline for candidates to file for office before a regularly scheduled primary or general election. A special election under this section may not be scheduled to occur during the time from a general election through eighty days following the adjournment of the next ensuing regular session of the legislative assembly.
3. The secretary of state must be notified of an appointment made by a district committee or the chairman of the legislative council according to this section. Upon notification, the secretary of state shall issue the appointee a certificate of appointment and an oath of office for the appointee to complete and file with the secretary of state.

Approved April 11, 2003

Filed April 14, 2003