

HOUSE BILL NO. 1280

Introduced by

Representatives Ertelt, Jones, Kasper, B. Koppelman, Magrum

Senator Heitkamp

1 A BILL for an Act to create and enact a new section to chapter 16.1-16 of the North Dakota
2 Century Code, relating to nullification of official actions; to amend and reenact subsection 1 of
3 section 16.1-01-01, section 16.1-01-07, subsection 5 of section 16.1-05-04, section 16.1-06-03,
4 subsection 1 of section 16.1-06-04, sections 16.1-06-10.1, 16.1-06-12, 16.1-06-15, 16.1-06-17,
5 16.1-06-20, 16.1-06-25, 16.1-06-26, 16.1-07-07, 16.1-11-27, 16.1-11-35, 16.1-13-25, and
6 16.1-13-29, subsection 1 of section 16.1-15-01, sections 16.1-15-02 and 16.1-15-04,
7 subsection 1 of section 16.1-15-08, and sections 16.1-15-09, 16.1-15-10, 16.1-15-13,
8 16.1-16-04, 16.1-16-07, and 40-21-09 of the North Dakota Century Code, relating to electronic
9 counting machines, ballots, election procedures, and election contests; to repeal sections
10 16.1-06-11, 16.1-06-14, 16.1-07-13, 16.1-13-24, and 16.1-13-33 of the North Dakota Century
11 Code, relating to electronic voting systems; to provide a penalty; and to provide for retroactive
12 application.

13 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

16 1. The secretary of state must be, ex officio, supervisor of elections and may employ
17 additional personnel to administer this title. The secretary of state shall supervise the
18 conduct of elections and in that supervisory capacity has, in addition to other powers
19 conferred by law, the power to examine upon the secretary of state's request or the
20 request of any election official, any election ballot or other material, ~~electronic voting-~~
21 ~~system~~ or counting machine authorized by chapter 16.1-06, or device used in
22 connection with any election, for the purpose of determining sufficient compliance with
23 the law and established criteria and standards adopted by the secretary of state
24 according to section 16.1-06-26. The secretary of state, upon determining that any

1 ballot or other material, electronic ~~voting system~~ or counting machine, or device is not
2 in sufficient compliance with the law or established criteria and standards, shall direct
3 the proper changes to be made, and in the case of electronic ~~voting systems and~~
4 counting machines, may decertify the electronic ~~voting systems and~~ counting
5 machines according to the rules adopted under section 16.1-06-26.

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

8 **16.1-01-07. Constitutional amendments and other questions to be advertised -**
9 **Notification by secretary of state - Manner of publishing.**

10 ~~Whenever~~

11 1. If a proposed constitutional amendment or other question is to be submitted to the
12 people of the state for popular vote, the secretary of state shall, not less than fifty-five
13 days before the election, certify the amendment or other question to each county
14 auditor and each auditor shall cause notice thereof to be included in the notice
15 required by section 16.1-13-05. Questions to be submitted to the people of a particular
16 county must be advertised in the same manner.

17 2. ~~The secretary of state shall, at~~At the same time the secretary of state certifies notice to
18 the county auditors of the submission of a constitutional amendment or other question,
19 the secretary of state shall certify the ballot form for such~~the~~ questions. The ballot form
20 must conform to the provisions of section 16.1-06-09 and must be used by all county
21 auditors in preparing ballots for submission to the electorate of each county and in the
22 preparation of sample ballots. ~~Any requirements in this title that a sample ballot be~~
23 ~~published will be met by the publication of either the paper ballot or the ballot as it will~~
24 ~~appear to persons using an electronic voting system device, depending upon the~~
25 ~~method of voting used in the area involved. Absentee voter ballots may not be~~
26 ~~considered in determining which method of voting is used in an area. If both paper~~
27 ~~ballots and electronic voting system ballots are used in an area, both forms must be~~
28 ~~published as sample ballots to meet publication and notice requirements. For two~~
29 consecutive weeks before the sample ballot is published, an analysis of any
30 constitutional amendment, initiated measure, or referred measure, written by the
31 secretary of state after consultation with the attorney general, must be published in

1 columns to enable the electors to become familiar with the effect of the proposed
2 constitutional amendment or initiated or referred measure.

3 **SECTION 3. AMENDMENT.** Subsection 5 of section 16.1-05-04 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 5. All members of the election board shall distribute ballots and other election materials
6 to electors. An election judge from each party represented on the election board shall
7 give any assistance requested by electors in marking ballots or operating electronic
8 ~~voting system devices~~counting machines.

9 **SECTION 4. AMENDMENT.** Section 16.1-06-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **16.1-06-03. Official ballots only to be used.**

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

19 **SECTION 5. AMENDMENT.** Subsection 1 of section 16.1-06-04 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 1. Be printed on uniform quality and color of paper in an ink color suitable to make the
22 ballot clearly legible and compatible with the electronic ~~voting system~~counting machine
23 requirements necessary to tabulate the votes.

24 **SECTION 6. AMENDMENT.** Section 16.1-06-10.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **16.1-06-10.1. Electronic counting machines authorized - Sharing of machines.**

27 1. The use of electronic counting machines that are compliant with this section is
28 authorized in any election precinct upon finding and declaration by resolution of the
29 city governing body, and ~~also~~ of the board of county commissioners of the county in
30 which the election precinct is located, ~~that~~ the use is advisable or necessary in that
31 precinct. ~~Thereafter~~After the required resolutions are made, electronic counting

1 machines may be procured, on a temporary or permanent basis, under terms and
2 conditions, including assumption and division of cost of acquisition and maintenance
3 by the city and county, agreed upon by the respective governing bodies, provided the
4 machines being procured have been certified for procurement and use in the state by
5 the secretary of state according to section 16.1-06-26. Two or more counties may
6 enter an agreement concerning the shared use and transport between counties of
7 electronic counting machines and apportioning of expenses.

8 2. Any electronic counting machine used in an election must be so constructed ~~that~~so the
9 machine:

10 a. Is unable to connect to the internet;

11 b. Registers or records correctly and accurately every vote cast when properly
12 ~~operated it registers or records correctly and accurately every vote cast;~~

13 c. Is unable to change or manipulate any vote after the vote is cast; and

14 d. Is unable to change or manipulate any vote tally after the properly cast votes are
15 counted.

16 **SECTION 7. AMENDMENT.** Section 16.1-06-12 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **16.1-06-12. Definitions.**

19 As used in this title with regard to electronic voting systems:

20 1. "Automatic tabulating equipment" means an apparatus which automatically tabulates
21 and counts votes recorded on ballots ~~or entered directly into a computer or other~~
22 ~~electronic device by means of a touchscreen or other data entry device~~ and data
23 processing machines which can be used for counting votes and tabulating results.

24 2. "Ballot" means a handcount paper ballot ~~or for an electronic voting system includes a~~
25 tabulating paper ballot, recorded by optical scan reader, containing the names of
26 offices and candidates and the questions to be voted on, which is used in conjunction
27 with the marking device and on which votes may be recorded. ~~For direct recording-~~
28 ~~electronic voting systems, ballot means the ballot display provided by electro-optical-~~
29 ~~devices showing the names and candidates and the questions to be voted on that~~
30 ~~allows a voter to directly enter choices into electronic storage with the use of a~~
31 ~~touchscreen or other data entry device.~~

- 1 3. "Counting center" means the location or locations designated by the county auditor for
2 the automatic tabulating and counting of ballots.
- 3 4. ~~"Direct-recording electronic voting system" means a voting system that records votes-~~
4 ~~by means of a ballot display provided by electro-optical devices that allows a voter to~~
5 ~~directly enter choices into electronic storage with the use of a touchscreen or other~~
6 ~~data entry device. An alphabetic keyboard may be employed as an entry device to~~
7 ~~facilitate voting for write-in candidates. A voter's choices are stored in the~~
8 ~~direct-recording electronic voting system's internal memory devices and added to the~~
9 ~~choices of all other voters.~~
- 10 5. ~~"Electronic voting system" means a system, or the combination of electronic voting-~~
11 ~~systems and devices authorized under this chapter, that may employ a marking device~~
12 ~~in conjunction with ballots or the use of a touchscreen or other data entry device and~~
13 ~~automatic tabulating equipment for the recording, tabulating, and counting of votes in~~
14 ~~an election.~~
- 15 6. ~~"Electronic voting system device" means a single unit of an electronic voting system.~~
- 16 7. "Electronic counting machine" means an electronic machine used to tabulate votes
17 cast on paper ballots.
- 18 5. "Marking device" means a device for marking ballots with ink or other substance, or
19 any other method for recording votes on ballots in a manner that so the votes may be
20 tabulated and counted by automatic tabulating equipment and or electronic counting
21 machine.
- 22 8-6. "Optical scan" means a procedure in which votes cast on a paper ballot are tabulated
23 by means of examining marks made in voting response locations on the ballot with an
24 optical reader.

25 **SECTION 8. AMENDMENT.** Section 16.1-06-15 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **16.1-06-15. Mandatory testing of electronic voting systems counting machines before**
28 **each election and after tabulation of ballots.**

- 29 1. All electronic voting systems counting machines used in this state must be tested
30 according to guidelines established by the secretary of state and as follows to
31 ascertain whether the automatic tabulating equipment will accurately count the votes

- 1 cast for all offices and measures accurately. The testing must be conducted ~~prior-~~
2 ~~to~~before each election at which the system will be used. The testing must be done by
3 the county auditor or county auditor's designee, and after each test, the testing
4 materials and any preaudited ballots used during the test must be sealed and retained
5 in the same manner as election materials after an election.
- 6 2. The test of an electronic ~~voting system employing paper ballots~~counting machine must
7 be conducted by processing a preaudited group of ballots on which are recorded a
8 predetermined number of valid votes for each candidate and measure and must
9 include for each office one or more ballots which have votes in excess of the number
10 allowed by law in order to test the ability of the automatic tabulating equipment to
11 reject ~~such~~the invalid votes. During the test a different number of valid votes must be
12 assigned to each candidate for an office and for and against each measure. If an error
13 is detected, the cause of ~~it~~the error must be ascertained and corrected, and an
14 errorless count must be secured and filed as provided in this section.
- 15 3. The test must be conducted at least one week before the election. One week before
16 the test is conducted, the county auditor must send the district chairman of each
17 political party having a candidate on the ballot a notice of the test. The notice must
18 state the time, place, and date of the test or tests and that the district chairman or
19 district chairman's designee may attend.
- 20 4. At the conclusion of the test, the programming for each electronic ~~voting-~~
21 ~~device~~counting machine must be sealed within the device with a unique numbered
22 seal that must be verified by the election inspector before the opening of the polls to
23 make sure the programming has not been removed from the device.
- 24 5. After each election, the secretary of state shall order a random testing of the ~~voting-~~
25 ~~system~~electronic counting machine programming for one precinct in each county of
26 the state according to logic and accuracy testing procedures detailed in subsection 2
27 and as may be further defined by the secretary of state in writing. This test is to be
28 conducted before the meeting of the county canvassing board.

29 **SECTION 9. AMENDMENT.** Section 16.1-06-17 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **16.1-06-17. County auditor to provide ballots and other electronic voting system**
2 **supplies.**

3 At the same time as other election supplies are provided and distributed, the county auditor
4 shall provide to each precinct in the county using an electronic ~~voting system~~counting machine:

5 1. ~~A sufficient number of electronic voting system devices and ballots if the electronic~~
6 ~~voting system employs ballots.~~

7 2. ~~One facsimile diagram of the entire face of the electronic voting system device as it~~
8 ~~will appear on election day.~~

9 3. ~~Appropriate instruction material for the use of the electronic voting system~~
10 ~~devices~~counting machine.

11 4.2. All other materials required to carry out the election process through the use of
12 electronic voting systems.

13 **SECTION 10. AMENDMENT.** Section 16.1-06-20 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **16.1-06-20. Election inspector and judges to display material and provide instruction.**

16 In addition to other duties provided by law, the election inspector and judges shall provide
17 adequate instruction on the use of the electronic ~~voting device~~counting machine to each voter
18 ~~before the voter enters the voting booth~~requesting instruction or assistance with the electronic
19 counting machine.

20 **SECTION 11. AMENDMENT.** Section 16.1-06-25 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **16.1-06-25. Electronic voting systems - Violations - Penalty.**

23 Any person who violates any of the provisions of this chapter relating to electronic ~~voting~~
24 ~~systems~~counting machines, who tampers with or injures any electronic ~~voting system~~counting
25 machine or device to be used or being used in any election, or who prevents the correct
26 operation of any ~~such system~~machine or device to be used or being used in any election is
27 guilty of a class A misdemeanor, unless the violation is a knowing violation, in which case the
28 person is guilty of a class A felony.

29 **SECTION 12. AMENDMENT.** Section 16.1-06-26 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **16.1-06-26. Secretary of state to adopt rules for the purpose of certifying and**
2 **decertifying electronic voting systems and electronic counting machines.**

- 3 1. The secretary of state may adopt rules according to subsection 3 of section
4 16.1-01-01 for certifying and decertifying electronic counting machines authorized in
5 section 16.1-06-10.1 and ~~electronic voting systems authorized in section 16.1-06-11,~~
6 including any software, hardware, and firmware components used as a part of an
7 ~~electronic voting system or~~ electronic counting machine for use and procurement in
8 the state. The rules may:
- 9 ~~1.~~ a. Establish criteria and standards with which all ~~electronic voting systems and~~
10 electronic counting machines must comply.
- 11 ~~2.~~ b. Describe the procedures for ~~electronic voting systems and~~ electronic counting
12 machines, any single device of an ~~electronic voting system and~~ electronic
13 counting machine, and any update and enhancement made to ~~them~~the
14 machines, to be certified and decertified for procurement and use in the state.
- 15 ~~3.~~ c. Define what constitutes a vote on each ~~electronic voting system and~~ electronic
16 counting machine which has been certified for procurement in the state.
- 17 ~~4.~~ d. Describe the procedures for the secretary of state to follow when defining what
18 constitutes a vote on any new ~~electronic voting system and~~ electronic counting
19 machine, any single device of an ~~electronic voting system and~~ electronic counting
20 machine, and any update and enhancement made to ~~them~~the machines.
- 21 2. An ~~electronic voting system and~~ electronic counting machine, a single device of an
22 ~~electronic voting system and~~ electronic counting machine, and an update and
23 enhancement made to ~~them~~the machines, in use by a county prior to August 1, 2003,
24 must ~~behave been~~ reviewed by the secretary of state according to rules adopted
25 under this section by April 1, 2004, and must meet the requirements of the rules, or
26 ~~must be replaced by another electronic voting system and electronic counting~~
27 ~~machine, a single device of an electronic voting system and electronic counting~~
28 ~~machine, and an update and enhancement made to them, that meets the~~
29 ~~requirements of the rules by January 1, 2006~~have been replaced by a compliant
30 machine, device, update, or enhancement.

1 **SECTION 13. AMENDMENT.** Section 16.1-07-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **16.1-07-07. Delivering application form for ballot.**

4 ~~The~~Upon request, the officers specified in section 16.1-07-05, ~~upon request,~~ shall mail an
5 application form for an absent voter's ballot to the voter or may deliver the application form to
6 the voter upon a personal application made at the officer's office. The officers may ~~also~~not make
7 available or distribute the applications, ~~prescribed by the secretary of state, to the public without~~
8 ~~any~~a specific request being made for the ~~applications~~application.

9 **SECTION 14. AMENDMENT.** Section 16.1-11-27 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **16.1-11-27. Arrangement of names on ballots.**

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

- 21 1. The ballot must first be arranged with all the names for each office on the ballot in an
22 order determined by lot by the county auditor and prepared by the county auditor for
23 all state, district, and county offices. The position of names that require alternating
24 under the provisions of this section must be alternated by an algorithm approved by
25 the secretary of state designed to ensure to the extent possible that each name on the
26 ballot for an office is listed in each position order on an equal number of precinct
27 ballots spread across the county. There must be a different alternation sequence for
28 each of the following, based on the geographical area by which the office is filled:
- 29 a. Offices to be filled by the electors of the state, the entire county, or any district
30 which includes the entire county.

1 b. Offices to be filled by the electors of districts smaller than the county, with a
2 different rotation for each of those districts.

3 2. Although the names are to be alternated within the offices on the ballot, the name
4 order for an office is to be the same for all ballots within a precinct.

5 **SECTION 15. AMENDMENT.** Section 16.1-11-35 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **16.1-11-35. Nominations by write-in.**

8 The provisions of this title do not prevent any elector from writing on the ~~paper ballot, or in~~
9 ~~the case of direct recording electronic voting system devices, entering by touchscreen or other~~
10 ~~data entry device,~~ the name of any person for whom the elector desires to vote, and ~~such~~the
11 vote must be counted according to the provisions for the counting of write-in votes found in
12 section 16.1-12-02.2.

13 **SECTION 16. AMENDMENT.** Section 16.1-13-25 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **16.1-13-25. Elector may write name on ballot - Counting.**

16 The provisions of this title do not prevent any elector from writing on the ~~paper ballot, or in~~
17 ~~the case of direct recording electronic voting system devices, entering by touchscreen or other~~
18 ~~data entry device,~~ the name of any person for whom the elector desires to vote, and ~~such~~the
19 vote must be counted according to the provisions for the counting of write-in votes found in
20 section 16.1-12-02.2.

21 **SECTION 17. AMENDMENT.** Section 16.1-13-29 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **16.1-13-29. Election booths or compartments - Number required - Expense.**

24 The inspector of elections shall provide a sufficient number of voting booths or
25 compartments in the inspector's polling place, ~~which~~and the booths or compartments must be
26 designed to enable the elector to mark, ~~or in the case of direct recording electronic voting~~
27 ~~system devices, enter by touchscreen or other data entry device,~~ the elector's ballot screened
28 from observation. The number of booths or compartments in precincts may not be less than one
29 for each one hundred fifty electors or fraction thereof in the precinct. The expense of providing
30 the booths or compartments must be paid in the same manner as other election expenses. ~~One~~
31 ~~electronic voting system device must be provided in each precinct.~~

1 **SECTION 18. AMENDMENT.** Subsection 1 of section 16.1-15-01 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 1. In the canvass of the votes at any election, a ballot is void and may not be counted if:
4 a. It is not endorsed with the initials as provided in this title; or
5 b. It is impossible to determine the elector's choice from the ballot or parts of a
6 ballot, ~~and in the case of electronic voting systems, based upon the criteria~~
7 ~~established by the secretary of state for counting votes on each electronic voting~~
8 ~~system authorized for procurement and use in the state according to section~~
9 ~~16.1-06-26.~~

10 **SECTION 19. AMENDMENT.** Section 16.1-15-02 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **16.1-15-02. Board of election to generate canvass reports - Location - Public may**
13 **attend.**

14 After the polls are closed, the inspector of elections and the judges immediately shall
15 immediately generate the canvass report from the electronic voting system counting machine.
16 The ballots counted by the machine must be equal in number with the names on the poll clerks'
17 lists. If the numbers are not equal, the pollbooks are to be rechecked to find the discrepancy.
18 The canvass shall continue without adjournment until completed and must be open to the
19 public. Except in unusual and compelling circumstances, the canvass shall occur at the polling
20 place. If good and substantial reasons exist for the removal of the ballots and election records
21 to another location for canvass, the other location must be in the same precinct and the removal
22 must be approved by the election board. In no case may the ballots be removed to another
23 location prior to generating the canvass report after the ballot boxes have been opened. Upon
24 approval of a change of location by the election board as provided in this section, the
25 approximate time and location of the canvass must be posted prominently ~~posted~~ on the main
26 entrance to the polling place, the ballots and records must be moved in the presence of the
27 election board, and the canvass as provided in this chapter must proceed immediately upon
28 arrival at the alternate location.

29 **SECTION 20. AMENDMENT.** Section 16.1-15-04 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **16.1-15-04. Canvass report prepared by election board for county auditor.**

2 1. The election board shall generate at least one canvass report ~~from the electronic-~~
3 ~~voting system~~. The ballots may not be sealed, nor may the canvass report be signed,
4 by the election board or poll clerk until the counts in the poll clerks' books and in the
5 canvass report shows the same totals for ballots cast.

6 2. In the case of the absentee ballot precinct as authorized in section 16.1-07-12.1, early
7 voting precincts as authorized in section 16.1-07-15, and mail ballot precinct as
8 authorized in section 16.1-11.1-06, if the work of the election board is completed ~~prior-~~
9 ~~to~~before the close of the polls on election day, the election board shall create and sign
10 a statement consisting of a reconciliation of the number of voters recorded in the
11 pollbook and the number of ballots processed through the ~~tabulators~~electronic
12 counting machines. The ~~voting system~~electronic counting machines must be secured
13 in a manner prescribed by the county auditor ~~that~~which will protect the ~~system~~machine
14 and ballots from tampering. ~~Prior to~~Before generating the canvass report from one of
15 these three types of precincts, an election judge representing each political party, or
16 two election judges in the case of an election that does not include a political party
17 contest, shall verify that the ~~system~~machines and ballots remain secure and the
18 statement created by the election board is still accurate.

19 **SECTION 21. AMENDMENT.** Subsection 1 of section 16.1-15-08 of the North Dakota
20 Century Code is amended and reenacted as follows:

21 1. After generating the reports and poll lists provided for in section 16.1-15-06 for delivery
22 to the county auditor, the election board shall cause the ballots containing lawful
23 write-in votes cast at the election to be placed in a suitable wrapper to form a complete
24 wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar
25 manner. The ballots and wrappers must then be tightly secured at the outer end to
26 completely envelop and hold the ballots together. Ballots that are void must be
27 secured in a separate wrapper and must be marked "void". Ballots that are spoiled
28 must be separately secured and marked "spoiled". In sealing ballots, the various
29 classes of ballots must be kept separate. Each wrapper must be endorsed with the
30 names or numbers of the precincts and the date on which the election was held. The
31 wrappers must be sealed securely in a manner prescribed by the county auditor so the

1 wrappers cannot be opened without an obvious and permanent breaking of the seal.
2 The ballots, together with those found void or spoiled, and the opened envelopes from
3 voted absentee ballots and the unopened envelopes of absentee ballots rejected as
4 defective, must be returned in person to the county recorder. At the meeting of the
5 county canvassing board, the county recorder shall deliver the ballots containing lawful
6 write-in votes from all the precincts within the county if these votes were not
7 canvassed by the polling place election board on election night. Ballots ~~used with any~~
8 ~~electronic voting system or~~ counted by an electronic counting machine must be sealed
9 and returned as provided in this section.

10 **SECTION 22. AMENDMENT.** Section 16.1-15-09 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **16.1-15-09. ~~Electronic voting systems--~~ Electronic counting machines - Returns.**

- 13 1. Election officers shall generate reports of votes ~~cast upon electronic voting systems~~
14 and counted on electronic counting machines for all candidates and for any measures
15 or questions in the same manner as ~~now or hereafter~~ provided by law or rule ~~insofar~~
16 ~~as such~~ to the extent the provisions of law or rule are applicable.
- 17 2. Within the ability of an electronic counting machine to ~~accurately~~ do so accurately, all
18 votes are to be counted by the machine. After the election results have been
19 accumulated centrally in the county auditor's office, if the number or percentage of
20 write-in votes for an office meet the criteria established in section 16.1-12-02.2, the
21 county canvassing board shall canvass the votes for the write-in names for that office
22 to determine final election results.
- 23 3. ~~Votes cast upon a direct recording electronic voting system must be tabulated from the~~
24 ~~voter's choices stored in the system's internal memory devices that are added to the~~
25 ~~choices of all other voters.~~
- 26 4. The county auditor shall designate the public place ~~or places~~ where electronic voting
27 ~~system ballots and~~ ballots to be counted on electronic counting machines must be
28 delivered by the election inspector and the two election judges to be counted in the
29 presence of the election inspector and the two election judges. ~~The county auditor~~
30 ~~shall designate the public place or places where votes cast upon direct recording~~
31 ~~electronic voting systems are to be counted.~~

1 5. All counting centers used for counting votes cast upon electronic voting systems shall
2 have tabulating equipment that has an element that generates a printed record at the
3 beginning of its operation which verifies that the tabulating elements for each
4 candidate position and each question and the public counter are all set at zero. The
5 tabulating equipment must also be equipped with an element that generates a printed
6 record at the end of its operation of the total number of voters whose ballots have
7 been tabulated, the total number of votes cast for each candidate on the ballot, and
8 the total number of votes cast for or against any measure appearing on the ballot. The
9 election inspector and the two election judges must certify both printed records.

10 6.4. If any electronic voting system ballot or a ballot counted by an electronic counting
11 machine is damaged or defective so that it cannot is unable to be properly counted
12 properly by the automatic tabulating or electronic counting equipment machine, a true
13 duplicate copy must be made by election officials of opposed interests and substituted
14 for the damaged or defective ballot. All duplicate ballots must be clearly labeled clearly
15 as duplicate, must bear a serial number that must be recorded on the damaged or
16 defective ballot, and must be wrapped and delivered with other ballots to the county
17 recorder.

18 **SECTION 23. AMENDMENT.** Section 16.1-15-10 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **16.1-15-10. Failure of ~~automatic tabulating or electronic counting equipment -~~**
21 **Counting by alternate method.**

22 If the ~~automatic tabulating or electronic counting equipment used as part of any electronic~~
23 ~~voting system, any electronic voting system device, machine~~ or any other electronic machine
24 fails to operate during the ballot count at any election, the ballots must be counted by an
25 alternate method.

26 **SECTION 24. AMENDMENT.** Section 16.1-15-13 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **16.1-15-13. County recorder to keep ballots - Exception - Use of ballots as evidence.**

29 Immediately upon receiving the ballots as provided in section 16.1-15-08, the county
30 recorder shall give a receipt to the election judges and shall place the ballots properly arranged
31 in the order of the precinct number in boxes that ~~shall~~ must be securely locked. The boxes must

1 be placed in a fireproof vault and must be kept securely for ~~forty-five days if the ballots do not~~
2 ~~contain federal offices and twenty-two months if the ballots contain federal offices~~until the next
3 election for each of the offices on the ballot has occurred. With the exception of the ballots
4 containing lawful write-in votes that may be counted at the meeting of the county canvassing
5 board, the ballots may not be opened ~~nor~~or inspected, except upon court order in a contested
6 election, ~~when it is necessary to produce them~~ if the ballots must be produced at a trial for any
7 offense committed at an election, or to permit election officials to complete ~~their~~the officials'
8 duties. ~~Either forty-five days or twenty-two months after the election dependent upon the~~
9 ~~retention schedule outlined in this section, upon determination by the county recorder that no~~
10 ~~contest is pending~~After the retention period required in this section, the ballots must be
11 destroyed. ~~If~~However, if any contest of the election of any officer voted for at the election or a
12 prosecution under the provisions of this title is pending at the expiration of ~~such time~~the
13 required retention period, the ballots may not be destroyed until the contest or prosecution is
14 finally determined. The ballots returned to the county recorder as provided in this section must
15 be received in evidence without introducing further foundation.

16 **SECTION 25. AMENDMENT.** Section 16.1-16-04 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **16.1-16-04. Time for commencement of action.**

19 Any

- 20 1. Except as provided in subsections 2 and 3, any action to contest an election must be
21 commenced and the complaint must be filed in the district court of the contestee's
22 county of residence within five days after final certification of a recount by the
23 appropriate canvassing board or within fourteen days after the final certification by the
24 appropriate canvassing board if no recount is to be conducted. ~~However, if~~
25 2. If the grounds for the action to contest an election are the illegal payment of money or
26 other valuable thing subsequent to the filing of any statement of expenses required by
27 this title or if the contestee does not or cannot meet the qualifications to hold the office
28 as required by law, the action may be commenced at any time. The contestee shall
29 serve and file an answer within fourteen days after service of the contest summons
30 and complaint.

1 3. If the grounds for the action to contest the election are the use of ballots other than
2 paper ballots, improper retention of ballots, use of electronic counting machines that
3 do not comply with all applicable requirements in this title, or distribution of
4 applications for absentee ballots without proper requests for the applications, the
5 election at which the alleged violation occurred may be contested until the date on
6 which the ballots for the next general election are printed, unless the election at which
7 the alleged violation occurred was a primary election in which case the election may
8 be contested until the date on which the ballots for the next primary election are
9 printed.

10 **SECTION 26. AMENDMENT.** Section 16.1-16-07 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots.**

13 Either the contestant or the contestee, within the time provided by this title for the
14 preservation of ballots, may give notice by certified mail to the county recorder of any county
15 where the contestant or the contestee desires the ballots preserved, that an election contest is
16 pending in a designated court. ~~Thereupon, it is the duty of~~Upon receipt of the notice, the county
17 recorder ~~to shall~~ preserve all the ~~paper ballots and electronic voting system ballots and~~
18 associated records until the contest has been finally determined.

19 **SECTION 27.** A new section to chapter 16.1-16 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Nullification of official actions.**

22 If a public official is removed from office as the result of a judgment issued by a court in an
23 election contest under this chapter, all actions taken by the public official before being removed
24 must be vacated or nullified.

25 **SECTION 28. AMENDMENT.** Section 40-21-09 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **40-21-09. Election districts in council cities - Division and consolidation by ordinance**
28 **- Ballots to be kept separate by wards.**

29 Each city operating under the council form of government in which council members are
30 elected at large constitutes an election district or voting precinct, and in all other cities each
31 ward constitutes an election district or voting precinct. Whenever the number of electors in any

1 two or more contiguous wards does not exceed one hundred as determined by the number of
2 votes cast at the last city election, the council, by ordinance, may consolidate those two or more
3 wards into one precinct for voting purposes. In any city containing less than four hundred
4 electors as determined by the number of votes cast at the last city election, the council, by
5 ordinance, may consolidate all the wards of the city into one precinct for voting purposes. An
6 ordinance dividing or consolidating wards must be passed and takes effect before the time of
7 giving notice of the election. Wards and precincts established under this section constitute
8 election districts for all state, county, and city elections. In city elections, separate ballot boxes
9 and pollbooks must be provided and kept for each precinct. The terms "wards", "precincts", and
10 "election districts" have the same meaning except where two or more wards are consolidated
11 into one precinct for voting purposes or where one ward is divided into more than one precinct
12 for voting purposes. This section does not prohibit the use of one building as the election polling
13 place for more than one ward or the installation of electronic voting systems counting machines
14 from separate wards in one building.

15 **SECTION 29. REPEAL.** Sections 16.1-06-11, 16.1-06-14, 16.1-07-13, 16.1-13-24, and
16 16.1-13-33 of the North Dakota Century Code are repealed.

17 **SECTION 30. RETROACTIVE APPLICATION.** Section 25 of this Act applies retroactively to
18 the primary election and general election held in 2020.