

SENATE BILL NO. 2250

Introduced by

Senators W. Stenehjem, B. Stenehjem

Representative Stenehjem

1 A BILL for an Act to amend and reenact section 16.1-16-01 of the North Dakota Century Code,
2 relating to election recounts for political subdivision elections.

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

4 **SECTION 1. AMENDMENT.** Section 16.1-16-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **16.1-16-01. Election recounts.** A recount of any primary, special, or general election
7 for nomination or election to a congressional, state, district, legislative, or county office, or for
8 the approval or disapproval of any measure ~~or~~ question, or bond issue submitted to the
9 qualified electors of this state or one of its ~~counties~~ political subdivisions must be conducted as
10 follows:

- 11 1. A recount must be conducted when:
- 12 a. Any person failed to be nominated in a primary election by one percent or less
13 of the highest vote cast for a candidate for the office sought.
- 14 b. Any person failed to be elected in a general or special election by one-half of
15 one percent or less of the highest vote cast for a candidate for that office.
- 16 c. A question ~~or~~ measure, or bond issue submitted to the qualified electors has
17 been decided by a margin not exceeding one-fourth of one percent of the total
18 vote cast for and against the question at any election.
- 19 2. A demand for a recount may be made by any of the following:
- 20 a. Any person who failed to be nominated in a primary election by more than one
21 percent and less than two percent of the highest vote cast for a candidate for
22 the office sought.

- 1 b. Any person who failed to be elected in a general or special election by more
2 than one-half of one percent and less than two percent of the highest vote
3 cast for a candidate for that office.
- 4 3. A demand for a recount must be made within three days after the canvass of the
5 votes by the county canvassing board in the case of county elections, and by the
6 state canvassing board in the case of congressional, state, district, or legislative
7 elections. The demand must be in writing, must recite one of the conditions in
8 subsection 2 as a basis for the recount, must contain a bond in an amount
9 previously established by the auditor or auditors doing the recount sufficient to pay
10 the cost of the recount, and must be filed with:
- 11 a. The secretary of state when the recount is for a congressional, state, district,
12 or legislative office.
- 13 b. The county auditor when the recount is for a county office.
- 14 4. Within four days after the canvass of the votes by the state canvassing board in the
15 case of congressional, state, district, or legislative elections, the secretary of state
16 shall notify all the county auditors to conduct recounts as required by subsection 1
17 and, when a timely recount demand is received and it is in proper form, as required
18 by subsection 2. The secretary of state shall fix the date of the recounts within
19 seven days after giving notice that the auditor must conduct the recount. Within
20 four days after the canvass of votes by the county canvassing board or other
21 political subdivision canvassing board, the county auditor or other political
22 subdivision election official shall fix the date for recounts limited to ~~his~~ the county
23 or other political subdivision. The date must be within eight days after the canvass.
24 In all recount proceedings, the county auditor or other election official, as
25 appropriate, shall send notice of the date, place, and time of the recount to all
26 candidates and petitioners involved by certified mail.
- 27 5. ~~Recounts~~ Except for recounts conducted by political subdivisions other than
28 counties, recounts must be conducted by the county auditor who may employ up to
29 four qualified electors of the county to assist in the recount. The county auditor
30 shall review all paper, machine, electronic voting system, and absentee ballots,
31 whether ~~or not~~ the ballots were counted at the precinct or the county canvass, to

1 determine which ballots were cast and counted according to the law. The county
2 auditor shall check the precinct count and the count of the county canvassing
3 board. If the county auditor is a candidate involved in the recount, the county
4 auditor ~~shall be~~ is disqualified from acting thereon, and the clerk of the district court
5 of the county shall perform the duties required of the county auditor by this section.
6 The election officer in a political subdivision other than a county which is
7 conducting a recount shall administer a recount in the same manner as is required
8 under this subsection for counties with respect to political subdivision ballot
9 measures, questions, or bond issues.

10 6. The persons entitled to participate at the recount are:

- 11 a. Each candidate involved in the recount, either personally or by a
12 representative.
- 13 b. A qualified elector favoring each side of a question if the recount involves a
14 question or proposition submitted to a vote of the electorate.

15 The persons allowed to participate may challenge the acceptance or exclusion of
16 any ballot. The person challenging a ballot must state the reason for the challenge
17 based upon the law, and the county auditor or other political subdivision election
18 official shall count the challenged ballot as ~~he~~ the auditor or election official deems
19 proper and shall then set the ballot aside with a notation that it was challenged and
20 how it was counted. At the conclusion of the recount, the county auditor or other
21 election official shall submit all challenged ballots to the recount board for decision.
22 ~~The~~ Except for political subdivision recounts other than counties, the recount board
23 must be composed of the state's attorney of the county, the chairman of the board
24 of county commissioners, and the clerk of the district court of the county. Unless
25 otherwise specified by law, for a political subdivision other than a county, the
26 governing body of the political subdivision shall appoint the recount board. No
27 person may serve on the recount board if ~~he~~ the person would not be qualified to
28 serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any
29 of the members of the recount board are disqualified or cannot serve for any other
30 reason, the members of the board of county commissioners or other political
31 subdivision governing body who would be qualified to serve on the board shall

1 appoint disinterested qualified electors of the county or other political subdivision to
2 serve as alternates. The recount board shall review all challenged ballots, and on
3 majority vote shall decide how ~~they shall be~~ those ballots are counted. The
4 decision of the recount board is final, subject to the right to contest the election as
5 provided in this chapter. If during the recount a recess is called, the county auditor
6 or other political subdivision election official shall take appropriate steps to
7 safeguard the ballots.

8 7. The county auditor or other election official shall certify the results of the recount
9 no later than three days after the recount. The recount result ~~shall become~~ is the
10 official result of the election in the county or other political subdivision. The county
11 auditor or other election official shall prepare a corrected abstract of the votes. In a
12 recount limited to the county or other political subdivision, if the corrected abstract
13 shows no change in the outcome of the election, no further action ~~shall~~ may be
14 taken. If the corrected abstract changes the outcome of the election, the county
15 auditor or other election official shall issue certificates of nomination or election
16 accordingly, and shall certify the new result of a question submitted to the qualified
17 electors.

18 8. In congressional, statewide, district, or legislative recounts, the county auditor
19 shall, no later than three days after the recount, send by certified mail a certified
20 copy of the corrected abstract to the secretary of state. The secretary of state shall
21 immediately assemble the state canvassing board, who shall canvass the
22 corrected abstracts and certify the election results. The secretary of state shall
23 issue certificates of election or nomination or record the approval or disapproval of
24 a question submitted to the qualified electors accordingly.

25 9. The expenses incurred in a recount of a county election must be paid by the county
26 on a warrant by the county auditor. The expenses incurred in a recount of a
27 political subdivision other than a county election must be paid by that political
28 subdivision. The expenses incurred in a recount of a congressional, state, or
29 legislative election must be paid by the state from the general fund, upon approval
30 by the secretary of state of a statement of expenses received from the county
31 auditors. The expenses incurred in a recount demanded under subsection 2 of

- 1 section 16.1-16-01 must be paid by the secretary of state or county auditor from
- 2 the bond submitted by the person requesting the recount.