

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2308

Introduced by

Senators Meyer, Kannianen, K. Roers

Representatives Beadle, Grueneich, Vetter

1 A BILL for an Act to create and enact a new section to chapter 16.1-15 of the North Dakota
2 Century Code, relating to counting write-in votes; and to amend and reenact sections
3 16.1-11-12 and 16.1-12-02.2, subsection 1 of section 16.1-12-04, section 16.1-12-07, and
4 subsection 1 of section 16.1-15-08 of the North Dakota Century Code, relating to ballot formats,
5 write-in votes, and certificates of nomination.

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

7 **SECTION 1. AMENDMENT.** Section 16.1-11-12 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-11-12. ~~County auditor to place applicant's~~ Applicant's name placed on ballot.**

- 10 1. Upon receipt of the petition or certificate of endorsement provided for in section
11 16.1-11-06 by the secretary of state and when accompanied by an affidavit as
12 provided in section 16.1-11-10, the secretary of state shall place the name of the
13 applicant on the primary election ballot in the party or appropriate section.
- 14 2. Upon receipt of the petition or certificate of endorsement provided for in section
15 16.1-11-11 by the county auditor and when accompanied by an affidavit as provided in
16 section 16.1-11-10, the county auditor shall place the name of the applicant ~~upon~~
17 the appropriate section of the ~~no-party~~ primary election ballot in the ~~party or~~
18 appropriate column, as the case may be.
- 19 3. A candidate whose name was placed on the ballot under this section may have the
20 candidate's name removed from the ballot by submitting a written request to the
21 appropriate filing officer within forty-eight hours after the filing deadline under section
22 16.1-11-06.

23 **SECTION 2. AMENDMENT.** Section 16.1-12-02.2 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **16.1-12-02.2. Counting of write-in votes-- Certificate of candidacy by write-in**
2 **candidates.**

3 1. ~~An election board or canvassing board may not count or be required to officially report~~
4 ~~any write-in vote for any:~~

5 ~~a. Individual who is required to file a certificate of write-in candidacy under this section but who~~
6 ~~has not filed a certificate of candidacy and been certified as a write-in candidate.~~

7 ~~b. Fictitious person or individual clearly not eligible to qualify for the office for which~~
8 ~~the vote was cast.~~

9 ~~c. Statement concerning the candidates.~~

10 ~~d. Name written or printed by the voter for an office that did not also include the~~
11 ~~darkening of the oval next to the write-in line, except that a write-in candidate for~~
12 ~~a nonfederal office may make a timely written demand to a county canvassing~~
13 ~~board to identify and preserve any write-in vote cast for the office sought by the~~
14 ~~write-in candidate for canvass by the board. The candidate shall deliver the~~
15 ~~demand to the county auditor and a copy to the county recorder no later than~~
16 ~~thirty-six hours before the time the county canvassing board is scheduled to~~
17 ~~meet. A demand only may be made if the unofficial election results maintained by~~
18 ~~the county auditor demonstrate that the write-in candidate's known vote total is~~
19 ~~within the pertinent percentage limits provided in subsection 1 or 2 of section~~
20 ~~16.1-16-01 and a statement to that effect is included in the demand. After delivery~~
21 ~~of the ballots as provided by section 16.1-15-08, the canvassing board shall~~
22 ~~review the ballots to identify any ballot that contains a write-in vote. The county~~
23 ~~canvassing board shall tally and canvass any write-in vote in the same manner~~
24 ~~as lawful or qualifying write-in votes if the canvassing board is able to clearly~~
25 ~~ascertain the intent of the voter from examining the ballot because the write-in~~
26 ~~candidate's name has been written on the ballot opposite the office to be voted~~
27 ~~for or because of any other cogent evidence of intent.~~

28 ~~e. Write-in votes which constitute five percent or less of the votes cast by the voters~~
29 ~~for the candidate receiving the most votes for that office, except in the case of a~~
30 ~~primary election in which enough votes were cast as write-in votes to qualify a~~
31 ~~name for the general election ballot. This percentage is to be calculated~~

1 based on the total number of write-in votes tabulated by the voting equipment in
2 the precincts of the county in which that office was on the ballot.

3 f. ~~Candidate receiving fewer than three write-in votes unless the number of votes~~
4 ~~received qualifies the candidate to be nominated or elected.~~

5 2. ~~Write-in votes that do not need to be individually canvassed based on the~~
6 ~~requirements of subsection 1 must be listed on the official canvass report as~~
7 ~~"scattered write-ins".~~

8 3. An individual who intends to be a write-in candidate for president of the United
9 States or for statewide or judicial district office at any election shall file a certificate of
10 write-in candidacy with the secretary of state by four p.m. on the twenty-first day
11 before the election. The certificate must contain the name and address of the
12 candidate and be signed by the candidate. Before the thirteenth day before the
13 election, the secretary of state shall certify the names of the candidates to each county
14 auditor as write-in candidates.

15 4.2. An individual who intends to be a write-in candidate at the general election for
16 president of the United States shall file a certificate of write-in candidacy with the
17 secretary of state by four p.m. on the twenty-first day before the general election. The
18 certificate must contain the names and addresses of the candidates for presidential
19 electors for that presidential candidate and a certification of acceptance signed by
20 each candidate for elector. The candidate shall sign the certificate. The certificate may
21 also include the name and address of a candidate for vice president of the United
22 States and a certification of acceptance signed by that candidate. The secretary of
23 state shall prescribe the form of the certificate of write-in candidacy and the
24 certification of acceptance. Before the thirteenth day before the election, the secretary
25 of state shall certify the names of the presidential candidates and the presidential
26 electors to each county auditor as write-in candidates.

27 5.3. An individual who intends to be a write-in candidate for any legislative district office
28 shall file a certificate of write-in candidacy with the secretary of state. The certificate
29 must contain the name, address, and signature of the candidate. Certificates must be
30 filed by four p.m. on the fourth day before the election.

31 6.4. A certificate under this section is not required when:

- 1 a. No names will appear on the ballot for an office;
 - 2 b. The number of candidates appearing on the ballot for an office is less than the
 - 3 number to be elected; or
 - 4 c. The number of candidates appearing on the ballot for a party office is less than
 - 5 the number of nominations a party is entitled to make.
- 6 ~~7.5.~~ An individual required to file a certificate of write-in candidacy may not seek more than
- 7 one office appearing on the primary and general election ballots.

8 **SECTION 3. AMENDMENT.** Subsection 1 of section 16.1-12-04 of the North Dakota

9 Century Code is amended and reenacted as follows:

- 10 1. Certificates of nomination for nominees for offices to be filled by the qualified electors
- 11 of the entire state must be filed with the secretary of state. Not less than fifty-five days
- 12 before any general or special election to fill any statewide office, the secretary of state
- 13 shall electronically transmit a certified list to each county auditor the names and
- 14 addresses of the persons individuals nominated for statewide office according to this
- 15 chapter as shown on the certificates of nomination filed in the secretary of state's
- 16 office.

17 **SECTION 4. AMENDMENT.** Section 16.1-12-07 of the North Dakota Century Code is

18 amended and reenacted as follows:

19 **16.1-12-07. If nominee declines - Certificate void.**

20 Any person intending to decline a nomination shall do so by filing written notice of that

21 intention with the officer with whom the certificate nominating the person is filed. If the written

22 notice is filed with the appropriate officer ~~before~~ within forty-eight hours after four p.m. on the

23 sixty-fourth day before the election, the nomination is void. If written notice is mailed, it must be

24 in the physical possession of the appropriate officer ~~before~~ within forty-eight hours after four p.m.

25 on the sixty-fourth day before the election.

26 **SECTION 5.** A new section to chapter 16.1-15 of the North Dakota Century Code is created

27 and enacted as follows:

28 **Counting write-in votes.**

- 29 1. An election board or canvassing board may not count or be required to report officially:

- 1 a. The number of write-in votes for an individual required to file a certificate of
2 write-in candidacy under section 16.1-12-02.2 but who has not filed a certificate
3 of candidacy and been certified as a write-in candidate;
- 4 b. The number of write-in votes for a fictitious person or individual clearly not eligible
5 to qualify for the office for which the vote was cast;
- 6 c. A statement concerning a candidate under this subsection;
- 7 d. The number of write-in votes for a candidate for office if the number constitutes
8 ten percent or less of the votes cast by the voters for the candidate receiving the
9 most votes for the office or political party's nomination of a candidate for the
10 office, except in the case of a primary election in which enough votes were cast
11 as write-in votes to qualify a name for the general election ballot; and
- 12 e. The number of write-in votes for a candidate receiving fewer than three write-in
13 votes unless the number of votes received qualifies the candidate to be
14 nominated or elected.
- 15 2. A write-in vote for a candidate whose name is printed on the ballot will be tallied as a
16 vote for the candidate if the voter has not voted for more candidates than allowed for
17 the contest or voted for the same candidate more than once in that contest.
- 18 3. A write-in vote that does not need to be canvassed individually based on the
19 requirements of subsection 1 must be listed on the official canvass report as
20 "scattered write-ins".

21 **SECTION 6. AMENDMENT.** Subsection 1 of section 16.1-15-08 of the North Dakota
22 Century Code is amended and reenacted as follows:

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

1 names or numbers of the precincts and the date on which the election was held. The
2 wrappers must be sealed securely in a manner prescribed by the county auditor so the
3 wrappers cannot be opened without an obvious and permanent breaking of the seal.
4 The ballots, together with those found void or spoiled, and the opened envelopes from
5 voted absentee ballots and the unopened envelopes of absentee ballots rejected as
6 defective, must be returned in person to the county recorder. At the meeting of the
7 county canvassing board, the county recorder shall deliver the ballots containing lawful
8 write-in votes from all the precincts within the county if these votes were not
9 canvassed by the polling place election board on election night ~~according to section~~
10 ~~16.1-12-02.2. At the meeting of the county canvassing board, the county recorder shall~~
11 ~~deliver each ballot that may contain a write-in vote referenced in a demand made~~
12 ~~under subsection 1 of section 16.1-12-02.2.~~ Ballots used with any electronic voting
13 system or counted by an electronic counting machine must be sealed and returned as
14 provided in this section.