

HOUSE BILL NO. 1239

Introduced by

Representatives M. Nelson, P. Anderson, M. Ruby

Senator Heitkamp

1 A BILL for an Act to create and enact a new section to chapter 16.1-06 of the North Dakota
2 Century Code, relating to making scanned images of ballots available to the public; to amend
3 and reenact subsection 1 of section 16.1-01-01, section 16.1-01-07, subsection 5 of section
4 16.1-05-04, section 16.1-06-03, subsection 1 of section 16.1-06-04, sections 16.1-06-12,
5 16.1-06-15, 16.1-06-26, 16.1-11-27, 16.1-11-35, 16.1-13-25, and 16.1-13-29, subsection 1 of
6 section 16.1-15-01, sections 16.1-15-02 and 16.1-15-04, subsection 1 of section 16.1-15-08,
7 and sections 16.1-15-10 and 16.1-16-07 of the North Dakota Century Code, relating to
8 elimination of electronic voting and requiring paper ballots; to repeal sections 16.1-06-11,
9 16.1-06-14, 16.1-06-17, 16.1-06-20, 16.1-06-25, 16.1-07-13, 16.1-13-24, 16.1-13-33, and
10 16.1-15-09 of the North Dakota Century Code, relating to electronic voting; and to provide a
11 penalty.

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

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

15 1. The secretary of state must be, ex officio, supervisor of elections and may employ
16 additional personnel to administer this title. The secretary of state shall supervise the
17 conduct of elections and in that supervisory capacity has, in addition to other powers
18 conferred by law, the power to examine upon the secretary of state's request or the
19 request of any election official, any election ballot or other material, ~~electronic voting-~~
20 ~~system or~~ counting machine authorized by chapter 16.1-06, or device used in
21 connection with any election, for the purpose of determining sufficient compliance with
22 the law and established criteria and standards adopted by the secretary of state
23 according to section 16.1-06-26. The secretary of state, upon determining that any
24 ballot or other material, ~~electronic voting system or~~ counting machine, or device is not

1 in sufficient compliance with the law or established criteria and standards, shall direct
2 the proper changes to be made, and in the case of electronic voting systems and
3 counting machines, may decertify the electronic voting systems and counting
4 machines according to the rules adopted under section 16.1-06-26.

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

7 **16.1-01-07. Constitutional amendments and other questions to be advertised -**
8 **Notification by secretary of state - Manner of publishing.**

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

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

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

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

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

7 **16.1-06-03. Official ballots only to be used.**

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

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

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

20 **SECTION 6. AMENDMENT.** Section 16.1-06-12 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **16.1-06-12. Definitions.**

23 ~~As used in this title with regard to electronic voting systems~~For purposes of this title, unless
24 the context otherwise requires:

25 1. "Automatic tabulating equipment" means an apparatus which automatically tabulates
26 and counts votes recorded on ballots or entered directly into a computer or other
27 electronic device by means of a touchscreen or other data entry device and data
28 processing machines which can be used for counting votes and tabulating results.
29 2. "Ballot" means a handcount paper ballot ~~or for an electronic voting system includes a~~
30 ~~tabulating paper ballot~~, recorded by optical scan reader, containing the names of
31 offices and candidates and the questions to be voted on, ~~which is used in conjunction~~

1 with the marking device and on which votes may be recorded. For direct recording-
2 electronic voting systems, ballot means the ballot display provided by electro-optical-
3 devices showing the names and candidates and the questions to be voted on that
4 allows a voter to directly enter choices into electronic storage with the use of a
5 touchscreen or other data entry device.

6 3. "Counting center" means the location or locations designated by the county auditor for
7 the automatic tabulating and counting of ballots.

8 4. "Direct recording electronic voting system" means a voting system that records votes
9 by means of a ballot display provided by electro-optical devices that allows a voter to
10 directly enter choices into electronic storage with the use of a touchscreen or other
11 data entry device. An alphabetic keyboard may be employed as an entry device to
12 facilitate voting for write-in candidates. A voter's choices are stored in the
13 direct recording electronic voting system's internal memory devices and added to the
14 choices of all other voters.

15 5. "Electronic voting system" means a system, or the combination of electronic voting
16 systems and devices authorized under this chapter, that may employ a marking device
17 in conjunction with ballots or the use of a touchscreen or other data entry device and
18 automatic tabulating equipment for the recording, tabulating, and counting of votes in
19 an election.

20 6. "Electronic voting system device" means a single unit of an electronic voting system.

21 7. "Marking device" means a device for marking ballots with ink or other substance, or
22 any other method for recording votes on ballots in a manner that the votes may be
23 tabulated and counted by automatic tabulating equipment.

24 8.5. "Optical scan" means a procedure in which votes cast on a paper ballot are tabulated
25 by means of examining marks made in voting response locations on the ballot with an
26 optical reader.

27 **SECTION 7. AMENDMENT.** Section 16.1-06-15 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **16.1-06-15. Mandatory testing of electronic votingcounting systems before each**
2 **election and after tabulation of ballots.**

3 1. All electronic votingcounting systems used in this state must be tested according to
4 guidelines established by the secretary of state and as follows to ascertain whether
5 the automatic tabulating equipment will accurately count the votes cast for all offices
6 and measures. The testing must be conducted prior to each election at which the
7 system will be used. The testing must be done by the county auditor or county
8 auditor's designee, and after each test, the testing materials and any preaudited
9 ballots used during the test must be sealed and retained in the same manner as
10 election materials after an election.

11 2. The test of an electronic votingcounting system ~~employing paper ballots~~ must be
12 conducted by processing a preaudited group of ballots on which are recorded a
13 predetermined number of valid votes for each candidate and measure and must
14 include for each office one or more ballots which have votes in excess of the number
15 allowed by law in order to test the ability of the automatic tabulating equipment to
16 reject such votes. During the test a different number of valid votes must be assigned to
17 each candidate for an office and for and against each measure. If an error is detected,
18 the cause of it must be ascertained and corrected, and an errorless count must be
19 secured and filed as provided in this section.

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

25 4. At the conclusion of the test, the programming for each electronic votingcounting
26 device must be sealed within the device with a unique numbered seal that must be
27 verified by the election inspector before the opening of the polls to make sure the
28 programming has not been removed from the device.

29 5. After each election, the secretary of state shall order a random testing of the
30 votingcounting system programming for one precinct in each county of the state
31 according to logic and accuracy testing procedures detailed in subsection 2 and as

1 may be further defined by the secretary of state in writing. This test is to be conducted
2 before the meeting of the county canvassing board.

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

5 **16.1-06-26. Secretary of state to adopt rules for the purpose of certifying and**
6 **decertifying electronic voting systems and electronic counting machines.**

7 1. The secretary of state may adopt rules according to subsection 3 of section
8 16.1-01-01 for certifying and decertifying electronic counting machines authorized in
9 section 16.1-06-10.1 ~~and electronic voting systems authorized in section 16.1-06-11,~~
10 including any software, hardware, and firmware components used as a part of an
11 ~~electronic voting system or~~ electronic counting machine for use and procurement in
12 the state. The rules may:

13 1. a. Establish criteria and standards with which all ~~electronic voting systems and~~
14 electronic counting machines must comply.

15 2. b. Describe the procedures for ~~electronic voting systems and~~ electronic counting
16 machines, any single device of an ~~electronic voting system and~~ electronic
17 counting machine, and any update and enhancement made to them, to be
18 certified and decertified for procurement and use in the state.

19 3. c. Define what constitutes a vote on each ~~electronic voting system and~~ electronic
20 counting machine ~~which has been~~ certified for procurement in the state.

21 4. d. Describe the procedures for the secretary of state to follow when defining what
22 constitutes a vote on any new ~~electronic voting system and~~ electronic counting
23 machine, any single device of an ~~electronic voting system and~~ electronic counting
24 machine, and any update and enhancement made to ~~them~~ an electronic counting
25 machine.

26 2. An ~~electronic voting system and~~ electronic counting machine, a single device of an
27 ~~electronic voting system and~~ electronic counting machine, and an update and
28 enhancement made to ~~them~~ an electronic counting machine, in use by a county ~~prior~~
29 ~~to~~ before August 1, 2003, must be reviewed by the secretary of state according to rules
30 adopted under this section ~~by April 1, 2004,~~ and must meet the requirements of the
31 rules, or must be replaced by another ~~electronic voting system and~~ electronic counting

1 machine, a single device of an ~~electronic voting system~~ and electronic counting
2 machine, and an update and enhancement made to ~~them~~ an electronic counting
3 machine, that meets meeting the requirements of the rules by ~~January 1, 2006~~.

4 **SECTION 9.** A new section to chapter 16.1-06 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Election transparency.**

7 The secretary of state shall adopt rules providing for the preservation and scanning of all
8 ballots cast in an election. The rules must require, by January 1, 2024:

- 9 1. Each ballot cast in an election to be scanned electronically;
- 10 2. Each ballot cast in an election to be preserved at least until the ballot is scanned;
- 11 3. Electronic versions of the scanned ballots from any election to be made available on
12 the secretary of state's website; and
- 13 4. A paper copy of a scanned ballot from any election to be made available to any
14 individual upon request and payment of a nominal fee to be set by the secretary of
15 state.

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

18 **16.1-11-27. Arrangement of names on ballots.**

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

- 28 1. The ballot must first be arranged with all the names for each office on the ballot in an
29 order determined by lot by the county auditor and prepared by the county auditor for
30 all state, district, and county offices. The position of names that require alternating
31 under the provisions of this section must be alternated by an algorithm approved by

- 1 the secretary of state designed to ensure to the extent possible that each name on the
2 ballot for an office is listed in each position order on an equal number of precinct
3 ballots spread across the county. There must be a different alternation sequence for
4 each of the following, based on the geographical area by which the office is filled:
- 5 a. Offices to be filled by the electors of the state, the entire county, or any district
6 which includes the entire county.
 - 7 b. Offices to be filled by the electors of districts smaller than the county, with a
8 different rotation for each of those districts.
- 9 2. Although the names are to be alternated within the offices on the ballot, the name
10 order for an office is to be the same for all ballots within a precinct.

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

13 **16.1-11-35. Nominations by write-in.**

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

19 **SECTION 12. AMENDMENT.** Section 16.1-13-25 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **16.1-13-25. Elector may write name on ballot - Counting.**

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

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

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

30 The inspector of elections shall provide a sufficient number of voting booths or
31 compartments in the inspector's polling place, ~~which~~and the voting booths must be designed to

1 enable the elector to mark, ~~or in the case of direct recording electronic voting system devices,~~
2 enter by touchscreen or other data entry device, the elector's ballot screened from observation.
3 The number of booths or compartments in precincts may not be less than one for each one
4 hundred fifty electors or fraction thereof of one hundred fifty electors in the precinct. The
5 expense of providing the booths or compartments must be paid in the same manner as other
6 election expenses. ~~One electronic voting system device must be provided in each precinct.~~

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

- 9 1. In the canvass of the votes at any election, a ballot is void and may not be counted if:
- 10 a. It is not endorsed with the initials as provided in this title; or
- 11 b. It is impossible to determine the elector's choice from the ballot or parts of a
- 12 ballot, ~~and in the case of electronic voting systems, based upon the criteria~~
13 ~~established by the secretary of state for counting votes on each electronic voting~~
14 ~~system authorized for procurement and use in the state according to section~~
15 ~~16.1-06-26.~~

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

18 **16.1-15-02. Board of election to generate canvass reports - Location - Public may**
19 **attend.**

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

1 the ballots and records must be moved in the presence of the election board, and the canvass
2 as provided in this chapter must proceed immediately upon arrival at the alternate location.

3 **SECTION 16. AMENDMENT.** Section 16.1-15-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **16.1-15-04. Canvass report prepared by election board for county auditor.**

6 The election board shall generate at least one canvass report from the electronic
7 ~~voting~~counting system. The ballots may not be sealed, nor may the canvass report be signed,
8 by the election board or poll clerk until the counts in the poll clerks' books and in the canvass
9 report shows the same totals for ballots cast.

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

21 **SECTION 17. 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. Ballots ~~used with any~~
10 ~~electronic voting system or~~ counted by an electronic counting machine must be sealed
11 and returned as provided in this section.

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

14 **16.1-15-10. Failure of automatic tabulating or electronic counting equipment -**
15 **Counting by alternate method.**

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

19 **SECTION 19. AMENDMENT.** Section 16.1-16-07 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots.**

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

28 **SECTION 20. REPEAL.** Sections 16.1-06-11, 16.1-06-14, 16.1-06-17, 16.1-06-20,
29 16.1-06-25, 16.1-07-13, 16.1-13-24, 16.1-13-33, and 16.1-15-09 of the North Dakota Century
30 Code are repealed.