

Introduced by

Representative Magrum

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to amend and reenact subsection 1 of section 16.1-01-01 and sections  
2 16.1-15-02, 16.1-15-04, and 16.1-16-01 of the North Dakota Century Code, relating to  
3 decertification of election equipment, manual ballot recounts, and county election officials'  
4 responsibilities; and to provide an effective date.

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

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

8 1. The secretary of state is, ex officio, supervisor of elections and may employ additional  
9 personnel to administer this title. The secretary of state shall supervise the conduct of  
10 elections by political subdivisions and in that supervisory capacity has, in addition to  
11 other powers conferred by law, the power to examine upon the secretary of state's  
12 request or the request of any election official, any election ballot or other material,  
13 voting system authorized by chapter 16.1-06, or device used in connection with any  
14 election, for the purpose of determining sufficient compliance with the law and  
15 established criteria and standards adopted by the secretary of state according to  
16 section 16.1-06-26. ~~The secretary of state, upon determining~~ Upon a determination by  
17 a state or county election official that any ballot or other material, voting system, or  
18 device is not in sufficient compliance with the law or established criteria and  
19 standards, the secretary of state shall direct the proper changes to be made, and in  
20 the case of voting systems, ~~may~~ shall decertify the voting systems according to the  
21 rules adopted under section 16.1-06-26.

22 **SECTION 2. AMENDMENT.** Section 16.1-15-02 of the North Dakota Century Code is  
23 amended and reenacted as follows:

1           **16.1-15-02. Board of election to generate canvass reports - Location - Public may**  
2 **attend.**

3           After the polls are closed, the inspector of elections and the judges immediately shall  
4 generate the canvass report from the electronic voting system. The ballots counted by the  
5 machine must be equal in number with the names of those who voted in the election being  
6 canvassed on the poll clerks' lists and with the number of ballots as counted manually. If the  
7 numbers are not equal, the pollbooks ~~are to,~~ electronic voting system canvass report, and  
8 manual count must be rechecked or performed again to find the discrepancy. The canvass must  
9 continue without adjournment until completed and must be open to the public. Ballots may not  
10 be removed to another location before the canvass report ~~is~~ and abstract are generated after the  
11 ballot boxes have been opened. Except in unusual and compelling circumstances, the canvass  
12 ~~shall~~ must occur at the polling place. If good and substantial reasons, as defined by the  
13 secretary of state and posted on the official website for the secretary of state before the election  
14 commences, exist for the removal of the ballots and election records to another location for  
15 canvass, the removal must be to another location within the same precinct and approved by the  
16 election board. Upon approval of a change of location by the election board as provided in this  
17 section, the ~~approximate~~ time and location of the canvass must be ~~prominently~~ posted  
18 prominently on the main entrance to the polling place, ~~the~~ and posted on the official websites of  
19 the county and secretary of state before the canvassing board meeting. The ballots and records  
20 must be moved in the presence of the election board, ~~and the.~~ Each relocation of ballots must  
21 be recorded with proper chain of custody documentation signed by all county election officials  
22 present during the relocation and by representatives of each political party represented by a  
23 candidate on the ballot. The canvass as provided in this chapter must proceed immediately  
24 upon arrival at the alternate location and may not adjourn until complete.

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

27           **16.1-15-04. Canvass report prepared by election board for county auditor.**

28           The election board shall generate at least one canvass report from the electronic voting  
29 system. The ballots may not be sealed, nor may the canvass report be signed, by the election  
30 board or poll clerk until the counts in the poll clerks' books ~~and in,~~ the canvass report ~~shows,~~  
31 and the manual count by county election officials show the same totals for ballots cast.

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

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

16 **16.1-16-01. Election recounts.**

17 A recount of any primary, special, or general election for nomination or election to a  
18 presidential, congressional, state, judicial district, multicounty district, legislative, county, or city  
19 office, or for the approval or disapproval of any measure, question, or bond issue submitted to  
20 the qualified electors of this state or one of its political subdivisions must be conducted  
21 according to guidelines established by the secretary of state and as follows:

- 22 1. A recount must be conducted when:
- 23 a. Any individual failed to be nominated by the individual's party or to a no-party  
24 office in a primary election by one percent or less of the highest vote cast for a  
25 candidate seeking nomination from the political party for the office sought or for a  
26 candidate for the no-party office sought.
  - 27 b. Any individual failed to be elected in a general or special election by one-half of  
28 one percent or less of the highest vote cast for a candidate for that office.
  - 29 c. A question, measure, or bond issue submitted to the qualified electors has been  
30 decided by a margin not exceeding one-fourth of one percent of the total vote  
31 cast for and against the question at any election.

- 1           2.   A demand for a recount may be made by any of the following:
- 2           a.   Any individual who failed to be nominated by the individual's party or to a
- 3                 no-party office in a primary election by more than one percent and less than
- 4                 two percent of the highest vote cast for a candidate seeking nomination from the
- 5                 political party for the office sought or for a candidate for the no-party office
- 6                 sought.
- 7           b.   Any individual who failed to be elected in a general or special election by more
- 8                 than one-half of one percent and less than two percent of the highest vote cast
- 9                 for a candidate for that office.
- 10          3.   A demand for a recount must be made within ~~three days~~one week after the canvass of
- 11             the votes by the county canvassing board in the case of county elections and city
- 12             elections that are combined with the county and by the state canvassing board in the
- 13             case of presidential, congressional, state, judicial district, multicounty district, or
- 14             legislative elections. The demand must be in writing, must recite one of the conditions
- 15             in subsection 2 as a basis for the recount, must contain a bond in an amount
- 16             previously established by the auditor or auditors doing the recount sufficient to pay the
- 17             cost of the lawfully authorized election officials' recount, and must be filed with:
- 18             a.   The secretary of state when the recount is for a congressional, state, district, or
- 19                 legislative office.
- 20             b.   The county auditor when the recount is for a county office or city office when a
- 21                 city election is combined with the county.
- 22          4.   Within four days after the canvass of the votes by the state canvassing board in the
- 23             case of presidential, congressional, state, judicial district, multicounty district, or
- 24             legislative elections, the secretary of state shall notify all the county auditors to
- 25             conduct recounts as required by subsection 1 and, when a timely recount demand is
- 26             received and it is in proper form, as required by subsection 2. The secretary of state
- 27             shall fix the date or dates of the recounts of legislative contests to be held within seven
- 28             days after giving notice to the affected auditors that recounts must be conducted. The
- 29             secretary of state shall fix the date or dates of the recounts of statewide races to be
- 30             held within fourteen days after giving notice to the auditors that recounts must be
- 31             conducted. Within four days after the canvass of votes by the county canvassing

1 board or other political subdivision canvassing board, the county auditor or other  
2 political subdivision election official shall fix the date for recounts limited to the county,  
3 those cities within the county which combined the election with the county, or other  
4 political subdivision. ~~The date must be within eight days after the canvass.~~ In all  
5 recount proceedings, the county auditor or other election official, as appropriate, shall  
6 send notice of the date, place, and time of the recount to all candidates and petitioners  
7 involved by certified mail and shall post the notice on the official websites of the county  
8 and the secretary of state.

- 9 5. For recounts conducted by counties of federal, state, district, and county offices,  
10 measures, and questions, the county auditor must conduct the recount and may  
11 employ up to ten qualified electors of the county to assist in the recount. ~~The county-~~  
12 ~~auditor~~All lawfully authorized election officials in each county involved in the recount  
13 shall review all properly cast ballots and all associated records. The recount must be  
14 conducted with high-definition digital imaging to verify the authenticity of all physical  
15 election records. All manual ballot and vote counts must match exactly the  
16 corresponding ballot and vote counts tabulated electronically. The entire recount must  
17 be recorded by video and audio and must be livestreamed for public viewing on the  
18 official websites of the county auditor and secretary of state. The county auditor shall  
19 check the precinct count and the count of the county canvassing board. If the county  
20 auditor is a candidate involved in the recount, the county auditor is disqualified from  
21 acting thereon, and the county recorder shall perform the duties required of the county  
22 auditor by this section. For recounts conducted by political subdivisions other than  
23 counties of local offices, measures, and questions, the election officer in a political  
24 subdivision shall administer a recount in the same manner as is required under this  
25 subsection for counties with respect to political subdivision offices, ballot measures,  
26 questions, or bond issues.

- 27 6. a. The individuals entitled to participate at the recount are:  
28 (1) Each candidate involved in the recount, either personally or by a  
29 representative.  
30 (2) A qualified elector favoring each side of a question if the recount involves a  
31 question or proposition submitted to a vote of the electorate.

1           b. The individuals allowed to participate may challenge the acceptance or exclusion  
2           of any ballot. The individual challenging a ballot must state the reason for the  
3           challenge based upon the law, and the county auditor or other political  
4           subdivision election official shall count the challenged ballot as the auditor or  
5           election official determines proper and then shall set the ballot aside with a  
6           notation that it was challenged and how it was counted.

7           7. At the conclusion of the recount, the county auditor or other election official shall  
8           submit all challenged ballots to the recount board for decision. Except for political  
9           subdivision recounts other than counties, the recount board must be composed of the  
10          state's attorney of the county, the chairman of the board of county commissioners, and  
11          the county recorder. Unless otherwise specified by law, for a political subdivision other  
12          than a county, the governing body of the political subdivision shall appoint the recount  
13          board. An individual may not serve on the recount board if the individual has anything  
14          of value bet or wagered on the result of the election, is a candidate for the office being  
15          recounted, or is the ~~husband, wife, father, mother, father-in-law, mother-in-law, son,~~  
16          ~~daughter, son-in-law, daughter-in-law, brother, or sister~~relative, whether by birth or  
17          marriage, ~~of the whole or the half-blood~~, of any candidate involved in the recount. If  
18          any of the members of the recount board are disqualified or cannot serve for any other  
19          reason, the members of the board of county commissioners or other political  
20          subdivision governing body who would be qualified to serve on the board shall appoint  
21          disinterested qualified electors of the county or other political subdivision to serve as  
22          alternates. The recount board shall review all challenged ballots and on majority vote  
23          shall decide how those ballots are counted. The decision of the recount board is final,  
24          subject to the right to contest the election as provided in this chapter. If during the  
25          recount a recess is called, the county auditor or other political subdivision election  
26          official shall take appropriate steps to safeguard the ballots.

27          8. The county auditor or other election official shall certify the results of the recount  
28          immediately after the recount. The recount result is the official result of the election in  
29          the county or other political subdivision. The county auditor or other election official  
30          shall prepare a corrected abstract of the votes. In a recount limited to the county, city,  
31          or other political subdivision, if the corrected abstract shows no change in the outcome

1 of the election, no further action may be taken. If the corrected abstract changes the  
2 outcome of the election, the county auditor or other election official shall issue  
3 certificates of nomination or election accordingly and shall certify the new result of a  
4 question submitted to the qualified electors. In the case of a city election that is  
5 combined with a county election, the county auditor shall certify the new results of the  
6 election to the city auditor who is responsible for issuing new certificates of election if  
7 applicable.

8 9. In presidential, congressional, statewide, judicial district, multicounty district, or  
9 legislative recounts, the county auditor, immediately after the recount, shall submit  
10 electronically the corrected abstract to the secretary of state according to the  
11 instructions provided by the secretary of state. The secretary of state immediately shall  
12 assemble the state canvassing board, who shall canvass the corrected abstracts and  
13 certify the election results. The secretary of state shall issue certificates of election or  
14 nomination or record the approval or disapproval of a question submitted to the  
15 qualified electors accordingly.

16 10. The expenses incurred in a recount of a county election under subsection 1 must be  
17 paid by the county on a warrant by the county auditor. The expenses incurred in a  
18 recount of a political subdivision other than a county election must be paid by that  
19 political subdivision. The expenses incurred in a recount of a city election must be paid  
20 by the city on a warrant by the city auditor. The expenses incurred in a recount of a  
21 presidential, congressional, state, judicial district, multicounty district, or legislative  
22 election must be paid by the state from the general fund upon approval by the  
23 secretary of state of a statement of expenses received from the county auditors. The  
24 expenses incurred in a recount demanded under subsection 2 of section ~~16.1-16-01~~  
25 must be paid ~~by~~to the secretary of state or county auditor from the bond submitted by  
26 the individual requesting the recount.

27 11. This section also applies to city elections that are not combined with the county except  
28 the city auditor, to the extent applicable, shall perform the duties of the county auditor.

29 **SECTION 5. EFFECTIVE DATE.** This Act becomes effective upon its filing with the  
30 secretary of state.