

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

13354

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1354

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1354

House Political Subdivisions Committee

Conference Committee

Hearing Date 2-1-01

Tape Number	Side A	Side B	Meter #
1		xx	100--1611
2	xx		3740-3900
Committee Clerk Signature <i>Ann Dever</i>			

Minutes: Chair Froseth opened the hearing on HB1354 relating to counting of absentee ballots.

Rep. Pat Galvin, Dist. 33, Hazen : I am prime sponsor for this bill and it came about mainly because what happened in Florida during this past general election. I don't want this to happen in ND. I was in the military a long time and it was a same to have the overseas ballots not counted. I don't want this to ever happen again. There are not post offices in some parts so military mail as an APO stamp instead of post mark. We need to make sure that these count.

Chair Froseth : (435) Does mail that comes through APO have any kind of mark?

Rep. Galvin : I have never been on the other end of the mail. Apparently not. That was one of the reasons Florida threw the ballots out.

Rep. Niemeier : The postmark is for reason of the date.

Rep. Galvin : I expect there is no mark until the mail gets to the APO center. Mail arrives in bulk to APO and the bags are opened.

Chair Froseth : We will see a process change in absentee ballots in the military, especially overseas, because of the technology of the Internet.

Rep. Betty Grande, Dist 41 : I'm here to support Rep. Galvin and this bill. It is a good tool.

Cory Fong, Sec. State's Office : (988) We support this bill and think it will clear up problems that may come up. (SEE ATTACHED TESTIMONY) This should clear up conflict with county canvassing boards and deciding when to count ballots.

Rep. N. Johnson : (1345) Can I bring in my ballot two days late and hand deliver it?

Cory : No, that is not allowed.

Rep. Delmore : This isn't something that is really new. We have talked about this before. We are just saying whether it has a dated postmark. Correct?

Cory : That's correct. The biggest part of this bill is to allow a system to clarify that county canvassing boards and recount boards have the authority to consider properly postmarked ballots that arrive two days after the election. Now, statute is unclear.

Chair Froseth : Any more testimony for or against? Hearing none, the hearing is closed.

TAPE 2, Side A (3740-3900) Chair Froseth : What are your wishes?

Rep. Maragos : I move a DO PASS.

Rep. Tieman : I second.

VOTE: 14 YES and 0 NO with 1 absent. BILL PASSES. Rep. Grosz will carry.

Date: 2-0-01
Roll Call Vote #: /

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1354

House POLITICAL SUBDIVISIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep. Maragos Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth			Rep. Wayne W. Tieman		
Vice-Chair Dale C. Severson					
Rep. Lois Delmore					
Rep. Rachael Disrud					
Rep. Bruce Eckre					
Rep. Mary Ekstrom					
Rep. April Fairfield					
Rep. Michael Grosz					
Rep. Jane Gunter					
Rep. Gil Herbel					
Rep. Nancy Johnson					
Rep. William E. Kretschmar					
Rep. Carol A. Niemeier					
Rep. Andrew G. Maragos					

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Grosz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 1, 2001 4:21 p.m.

Module No: HR-18-2165
Carrier: Grosz
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1354: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1354 was placed on the Eleventh order on the calendar.

2001 SENATE POLITICAL SUBDIVISIONS

HB 1354

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1354

Senate Political Subdivisions Committee

Conference Committee

Hearing Date March 15, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-16.4
Committee Clerk Signature <i>Nancy J. Walker</i>			

Minutes:

The hearing was opened on HB1354 which relates to the counting of absentee ballots. All of the senators were present except for Senator Lee, who was absent.

REPRESENTATIVE GALVIN: District 33. This is really a simple bill. As you've probably guessed this bill was triggered by the Florida vote count where some of the military ballots were thrown out. The last thing I would want you to think is that I would want bills included that were improperly filled out, because I am one of the people that believes that if your not smart enough to fill out the ballot you shouldn't be voting in the first place. The military ballots, and I have had a lot of experience with this. I spend eight years in the Air Force and three years in the National Guard, and a lot of that was overseas. Now the Air Force took great pains to make sure that everybody voted. Before election time they would call us all into the big hall and give us all a lecture. They had literature there from every state in the union so that everybody knew how to vote, how they knew to get their absentee ballots and my Dad was still living all the time I was in

the service, he made sure that I got my ballot every year and I am sure that if any of those people thought that their vote wouldn't be counted they would've, they are properly filled out ballots were not counted these people did everything right on their ballot, except they didn't have a postmark and that is what this bill addresses. When you're overseas as I was, I spent three years on the Hawaiian Islands, I fought the battle of Wakkiki Beach. Anyone at the time, Hawaii still wasn't a state, so I was technically overseas. So our mail went to a APO number in San Francisco, at the Army Post Office. We were not required to have a postmark. They are not even required to have a stamp, we just wrote "free" up there. So, that all this bill addresses and there is only one little change in here where it says, "otherwise officially marked", that takes care of the post mark and that is all this bill does. There are some other references in here to other sections of the law, but this is the only substantive change in the law and I guess that is self-explanatory. SENATOR MATHERN: Rep. Galvin, what would be some of the official markings, notarized, certified, what? REP. GALVIN: I am not sure. They would have to have some kind of markings. I would imagine that the APO number would suffice. To be honest with you, this has not been a problem in North Dakota but with such a simple change as this, and it never would be a problem had not the election been very close. That is the only time. But this could happen again and this is an insurance that would prevent it from happening and I can't imagine how there would be any fiscal note on this bill. SENATOR POLOVITZ: What I would like to know, would you say that the "free" then, would be as you stated that the letter went to a APO and it said free would you consider that then as an official document? REP. GALVIN: I wouldn't say that. We have a man here from the Secretary of States' office that could probably answer that question. REPRESENTATIVE GRANDE: I just came down actually in support of HB1354. This is a bill that he took very seriously and right to heart. After having watched the election for president like

everyone else on television and the days went by and when they started talking about these ballots of our servicemen not being counted, even though it may not be a great issue in North Dakota at this time, if there ever was a time that one of our servicemen ballot couldn't be counted because of a technicality, I think that is a great disservice to persons offering his life/ or her life for us and take away that right for them. It seems to me to be an injustice. If this bill helps in any way to solve that would be the perfect solution. CORY FONG: Secretary of States' Office. Rep. Galvin talked a lot about military voters being the prompting for this bill. I think it is for Rep. Galvin, however, this would apply to all absentee ballots that come in and don't have a postmark. Right now what we're finding in statute is that it says that your supposed to accept absentee ballots without a postmark that arrive late and there are supposed to be forwarded on to the canvassing board, but then in this section it talks about what the canvassing board responsibilities are or recount board responsibilities because you can only consider properly postmarked absentee ballots which this totally conflicts. I think what Rep. Galvin is suggesting is that we need to make sure that ballots without postmarks are considered and as you well know, many of the military voters because of the way they process their mail, they don't have any endorsement. I think the term "or otherwise officially marked", we have run into instances that have some kind of a foreign kind of designation or endorsement on them. I think that is what we are getting at. SENATOR COOK: Cory, how about ballots that come in after the canvassing board that are probably marked "post marked". CORY FONG: If a ballot come in after the canvassing board, they are not counted. However, they can be considered for a recount, and I think that is what really is important. You could never, you'd never have a cut off date if you said that they could be counted. However, in the crucial time of a recount as we saw during the Florida situation, every ballot does count. We would hate for those to be not considered not for

recount setting if indeed they should come in after the canvassing board was to meet. SENATOR

COOK: When is the deadline Cory for a recount that eventually there is a time where we no longer can count a ballot? Is it and who sets the date for the recount, what flexibility is there?

CORY FONG: A recount, unlike the Florida situation in North Dakota happened after the state canvassing board had met. And at that point, then the notification is made to the candidates that they have the ability to request a recount, if it is demand recount or the election officials are made known that they have an automatic recount. I believe they have three days after the state canvassing board to make request. SENATOR COOK: So, Cory, then, the deadline is then the

date of the recount? The ultimate deadline in which they have to be counted? CORY FONG:

That's correct. If ballots came in after the county canvassing board and they had a proper postmark on them, they ultimate deadline for those ballots to be counted would be whenever that recount was. SENATOR MATHERN: You mentioned that it wasn't necessarily for military?

You mentioned there would be other situation? What other ones would there be where there is no postmark? CORY FONG: There may be instances where a person may use another foreign kind

of mail service that could prompt it to have no postmark or a legible postmark. It would be very

rare. CORY FONG: Mr. Chairman, I have failed to lead you in the right direction on your last question, and I apologize. I hope that this clarifies it. There is a an absolute cutoff and I don't

want you to confuse you. Anything that doesn't have a legible postmark has to arrive within 48

hours after the date of the election for it to be counted. Okay. It has to arrive within that time, so

they wouldn't be allowed to just keep coming in with a legible postmark or without a postmark and still be counted. So there is a cutoff. It would not be the date of the recount. SENATOR

COOK: Well, Cory. CORY FONG: However, they could, they still have to take and count and

consider ballots that didn't have a proper postmark on them or a legible postmark or any

postmark. SENATOR COOK: Okay. CORY FONG: And our statute provides that a county canvassing board cannot meet earlier than the Friday following the election. Nor can they meet later than the Monday following the election. So its between the third and the six day after the election. And the cutoff for ballots to come in, that don't have a postmark and yet still arrive within that forty-eight hours is obviously two days after the election. SENATOR COOK: If I wake up the day after the election, and there I see on my kitchen table the absentee ballot that I meant to mail in, but I forgot, can I carry it in? CORY FONG: You cannot. SENATOR COOK: Okay. SENATOR FLAKOLL: What would happen if a box was received that in it contained thirty absentee ballots in German? CORY FONG: If they don't have a postmark, they arrived to the election official which is unlikely, based on this statute, they would have to counted I think. SENATOR FLAKOLL: They would have to be counted. CORY FONG: They would have to be counted. If they arrived within forty-eight hours after the election, did not carry a postmark, did not have a legible postmark, but the exterior box. I mean obviously that could have a postmark, but, yes I believe that those ballots would have to be counted. SENATOR FLAKOLL: Because its the container that has the postmark and not the ballot, correct? CORY FONG: Correct. But, Mr. Chairman, nor do the ballots have any postmark and that's what we're getting at. Ballots don't have postmark, the container may not have a postmark. Mr. Chairman, Senator Flakoll, with the way the military handles these kinds of things, I don't think a box would come in. I know that I would get a call immediately from the county election official about what to do. SENATOR POLOVITZ: I was a judge when I won the election the first time. I don't what I did, I picked that call up, but an elderly person came in and she had her absentee ballot which she gave to me which I couldn't accept, because I didn't know what to do with it. And what she had intended to do was not be in town that day, but she had already voted with the absentee and she

brought the absentee ballot in and gave it to me. What should I have done? SENATOR COOK:

Ripped it up and told her to vote. CORY FONG: That happens quite often and the ballots that come in on election day, they cannot be counted. The person in some cases can, they could've tried to vote, I mean they could've been prompted to vote, then you would have had a ballot in the ballot box and this which would be considered by the canvassing board and not been counted obviously. That probably would have been the best solution. I know that some county auditors have graciously accepted the ballot and counted them. SENATOR POLOVITZ: That's

what I did tell her to take the ballot home and destroy it and get in line to vote, because your here. CORY FONG: Our laws specify that you cannot accept absentee ballots on the day of an

election. SENATOR LYSON: Cory, so you know how many ballots were set aside, that should be counted but weren't because they didn't have postmarks? CORY FONG: I do not have that statistic. It would be very minimal. I can try to find that out for you. SENATOR LYSON: Mr.

Chairman, one of the reasons I asked is because after the election, we started to check our mail as it came in, and we've got over one-third of the mail that we received at our home that don't have postmarks. You can see they had tried to stamped/ canceled but going through some kind of container that you might see some of the blue strip or something and that's all your seeing.

CORY FONG: And that is exactly why we're suggesting that this needs to go through, to get those ballots that may have that same fate, that didn't have the postmark adequately adhered to it will be accepted. SENATOR COOK: Stan, its all yours, I have got to go to another hearing and I

may not be back for a half an hour or so. SENATOR FLAKOLL: You mean, what Senator Lyson talked about was important, remember when we talked about the illegible or smudged postmark or something to that extent, really the only thing that we need to be legible for sure is the date, is that correct? Or I mean it could be smeared where the city or county of origin comes,

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Senate Political Subdivisions Committee
Bill/Resolution Number HB1354
Hearing Date March 15, 2001

but it is really the date that we need to have legible. Is that correct, the only thing? CORY

FONG: That's correct. We did run into a ballot that came overseas that because of the way they date we couldn't decipher what the numbers, the order of numbers were at all. And we used the Federal Voting Assistance Program which states that an agency with the Dept of Defense in the Embassy system to find out, that indeed the date, according to that particular countries dating system was proper and we accepted the ballot. During the recount, there was a recount here in Bismarck, but so illegible I think it refers to something being smudged versus indecipherable, you know.

Hearing Closed on HB 1354.

Senator Watne moved Do Pass

Senator Christenson- 2nd

Roll call vote: 7 Yeas, 0 Nays, 1 Absent

Carrier: Senator Watne

REPORT OF STANDING COMMITTEE (410)
March 15, 2001 3:14 p.m.

Module No: SR-45-5755
Carrier: Watne
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1354: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1354 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1354

ALVIN A. JAEGER
SECRETARY OF STATE



PHONE (701) 328-2900

FAX (701) 328-2992

E MAIL sos@state.nd.us

HOME PAGE <http://www.state.nd.us/soc>

SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 1, 2001

TO: Representative Glen Froseth & Members of the House Political Subs Committee
FR: Al Jaeger, Secretary of State (presented on his behalf by Cory Fong)
RE: **HB 1354 – Counting Absent Voter's Ballots**

House Bill 1354 is intended to clarify and eliminate conflicting provisions governing the counting of absent voter's ballots by county canvassing boards and recount boards.

According to section 16.1-07-09, properly postmarked absent voter's ballots and absent voter's ballots without postmarks are to be considered by election boards on Election Day. This is also true of absent voter's ballots that don't arrive in time to be counted at the precinct level but arrive within 2 days after the election and are forwarded onto the county canvassing board for consideration.

However, section 16.1-15-19 conflicts with this provision and only authorizes county canvassing boards to consider properly postmarked absent voter's ballots that were not considered or counted at the precinct level. This section does not indicate that county canvassing boards are authorized to consider late arriving absent voter's ballots without postmarks. The same conflict is true in section 16.1-16-01 that authorizes recount boards to consider absent voter's ballots.

House Bill 1354 ensures that all absent voter's ballots that arrive too late to be counted at the precinct level but arrive within two days after the election, whether or not the absent voter's ballots are postmarked, are to be considered by county canvassing boards and recount boards.

For these reasons, the Secretary of State's office urges a due pass on HB 1354.

ALVIN A. JAEGER
SECRETARY OF STATE



PHONE (701) 328-2900
FAX (701) 328-2992

HOME PAGE <http://www.state.nd.us/soc>

E-MAIL sonj@state.nd.us

SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 15, 2001

TO: Senator Dwight Cook & Members of the Senate Political Subs Committee
FR: Cory Fong, Secretary of State's office
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