

2023 SENATE STATE AND LOCAL GOVERNMENT

SB 2339

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2339
2/10/2023

Relating to random audits after the certification of an election.

10:12 AM Chair Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Secure process
- Restore confidence
- Human element

Sen Boehm, Dist 33, bill sponsor testified in support with amendment. #20476

Rep Donna Henderson, Dist 9B, testified in support #20477

Mike Blessum, Minot, ND testified in support #20424

Josh Gallion, State Auditor, testified neutral with no written testimony.

Michael Howe, Secretary of State, testified opposed with a power point. #20478

11:05 AM Chair Roers closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2339
2/10/2023

Relating to random audits after the certification of an election.

11:25 AM Chair Roers opened the meeting. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Committee action

Sen Estenson moved Amendment 23.1050.01004 #21023.
Sen Braunberger seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	N
Senator Sean Cleary	N
Senator Judy Estenson	Y
Senator Judy Lee	N

VOTE: YES – 3 NO – 3 Absent – 0

Motion FAILED

Sen Lee moved a DO NOT PASS.
Sen Braunberger seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	N
Senator Judy Lee	Y

VOTE: YES – 5 NO – 1 Absent – 0

Motion PASSED

Sen Braunberger will carry the bill.

11:33 AM Chair Roers adjourned the meeting.

Pam Dever, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2339: State and Local Government Committee (Sen. K. Roers, Chairman)
recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB
2339 was placed on the Eleventh order on the calendar. This bill does not affect
workforce development.

TESTIMONY

SB 2339

SB2339 Testimony – Senate State & Local Government Committee – 2/10/2023 10AM

Mike Blessum – District 5, Minot – mblessum@min.midco.net – 701-818-2000

Chairman Roers and State & Local Government Committee members, thank you for the opportunity to testify in support of SB2339. For the record my name is Mike Blessum. I am a small business owner, husband, and father from District 5 in Minot. I would like to thank Senator Keith Boehm and Representative Donna Henderson for sponsoring this bill.

In the 2021 session more than 40 election related bills made their way through the legislature. As of this yesterday there are 47 bills again this session. I believe the people of our state have concerns about our elections and have asked their representatives to tighten our laws.

SB2339 adds a section to chapter 16.1-01 of ND Century Code. The bill would require a special investigation of 2 counties within 90 days of the certification of each primary and general election. As amended, 1000 random ballots would be hand counted and then counted by 3 tabulation machines. The results of this investigation would be published to the public upon completion.

I served as an election judge in the 2022 primary and general elections at the State Fair Center in Minot. I'd like to paint a bit of a picture of what happened in our vote center during the last election cycle. For both elections we had approximately 12 election clerks, 6 judges, and 1 inspector that worked a 14-15 hour shift. It was a wonderful team of Republicans and Democrats united to do a great job for the voters of our county. Here are a few of the issues I personally witnessed at our voting center.

- Because all eligible electors in the county could vote at any of the polling places, we had more than 40 different ballot types in the June election and more than 20 in November. I know that I personally handed at least 2 incorrect ballots to electors in those elections because the voters brought them back to me.
- After the polls close we complete a series of steps to secure the ballots and tie out our various counts. In both elections our counts were off (1 vote in June and 5 votes in November). I believe this issue was due to internet communication errors between the electronic poll books and the central voter file.
- We had more than one issue related to the central voter file following redistricting. At least one street in Minot that was moved from district 3 to district 5 was not updated correctly, causing the incorrect ballot to be handed to voters. I also know of a couple that were allowed to vote using an old address that had not been updated.
- We had many ballots reject from the tabulation machines. Most were due to extraneous marks on the ballot or other mistakes by the voter. The sensitivity seemed to be much higher in the November election vs. June.
- Because of our setup in the entryway of the State Fair center we had numerous unauthorized people passing through the voting center throughout the day. We also dealt with overcrowding that led to long lines in the cold.
- We had one voter try to vote a second time and multiple voters that walked into the vote center with absentee ballots in their hands.

Why do these small issues matter? Isn't 99%+ accuracy enough? In the case of the June election the winner of the district 3 Republican primary led on election night by 1 vote. After canvassing the final difference was 8 votes. Regardless of the outcome every elector deserves to have their vote counted accurately.

I understand the reluctance the legislature has shown over the last two sessions to make changes to our voting systems. Major investments have been made and our elected officials have a vested interest in public confidence in our processes. This bill allows you to reassure the public that the integrity of our election systems matter and that you are willing to back up the statements that everything is fine. I would ask that you show the voters of North Dakota that you care about how our elections are conducted and return a do pass recommendation on SB2339.

Thank you Chairman Roers and members of the committee. I am happy to stand for any questions you may have.

Madam Chairman Roers and committee members. I am Senator Keith Boehm from district 33 and here to testimony in support of an amended version of SB2339

The amended SB 2339 is a bill to improve the confidence of the voters in North Dakota elections. The bill will allow the Secretary of state office to select a local election randomly post-election canvassing and do an analysis to prove that there were no election irregularities. This legislation is being brought forth in order to show that our elections are safe and to prove they are. Where ever I go in North Dakota there is always the chatter that our elections are not safe. This legislation will go a long way to prove that they are. There is a fiscal note but the peace of mind for numerous North Dakotans would be more than worth it. I have also heard of citizens that don't vote because they don't trust the process. We as legislators can use this opportunity to help restore confidence in the process. The amended version tasks the SOS to do an analysis of an election post canvassing and to do it in a random selection process. To do it in one of the major county populations voting areas and to choose 1000 ballots, hand count and run through machines to verify machines. This can be done at primary or general election and that is also random. I believe this would help alleviate some of the rhetoric going on in voter circles. We need to everything we can to restore confidence in our election process. I am happy to answer any questions from the committee and there is a testifier coming after me that has experience on a local election board and would be able to answer the questions that are out of my arena.

I ask that the committee give this legislation a do pass recommendation

Thank you, Madam Chairman and committee members, for this opportunity. I stand for questions.

Good morning Chairwoman Roers and committee members-

For the record, I am Representative Donna Henderson from District 9B in North Eastern North Dakota- representing parts of Cavalier, Towner, and Rolette counties.

I'm here today in support of Senate Bill 2339.

This is bill that would allow for review of our ND election results.

As I was campaigning this last election cycle, I asked my constituents what concerns they had. And that if elected, what would they like to see me accomplish in Bismarck. Election integrity came up over and over again.

Unfortunately, issues in past elections across the nation, has left its mark.

I've heard from eligible voters that don't vote because they don't trust the system and that's the real travesty here. The voters who have lost faith in our election process to the point they don't want to participate any longer.

This bill is not meant to feed that fire of doubt but rather to put that fear to rest.

This bill is what we need for transparency and to prove to the citizens of ND that our elections are sound, and that our process is correct. We want to ensure that our election processes are working as intended. This bill would do just that.

I ask you adopt the proposed amendment, and give the amended bill a do pass to give reassurance to our voters that our elections in ND are accurate.

Thank you, Madam Chair and committee.

Representative Donna Henderson – District 9B

MICHAEL C. HOWE
SECRETARY OF STATE

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SENATE STATE & LOCAL
SENATOR KRISTIN ROERS, CHAIR

SENATE BILL 2339
FEBRUARY 10, 2023

TESTIMONY PRESENTED BY

MICHAEL HOWE, SECRETARY OF STATE

Madam Chair and members of the committee, for the record, Michael Howe, North Dakota Secretary of State.

Our office is not opposed to transparency. Our office is not opposed to ensuring our elections are run with accuracy and integrity. In fact, the many protocols and processes we already have in place do just that, which is why we are opposed to SB 2339.

Chapter 16.1-01-01 in North Dakota Century Code is clear. The Secretary of State is the supervisor of elections and may employ additional personnel to administer this title. The Secretary of State shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, voting system authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16.1-06-26. The secretary of state, upon determining any ballot or other material, voting system, or device is not in sufficient compliance with the law or established criteria and standards, shall direct the proper changes to be made, and in the case of voting systems, may decertify the voting systems according to the rules adopted under section 16.1-06-26.

As was shared with the committee in our election demonstration last week, we have many safeguards in place for our elections to ensure accuracy. There are logic and accuracy tests conducted on every machine prior to every election. There are logic and accuracy tests conducted after every election. These are ballots with expected voting outcomes that are run through the machines. The tabulation must match up 100 percent with the expected outcome before they are allowed to be used in an election.

In 2022, the state auditor did a review on the security of the election system. It was determined that it is exceptionally unlikely that the results of an election in North Dakota would be fraudulently influenced. In fact, to quote Auditor Gallion from his release, "The determination after extensive review from our contractor was that our election systems are incredibly secure across our state." Please note, that even though this audit was led by the state auditor, its accuracy was also questioned.

The bill requires a full manual recount for all ballots within the county. A hand recount of every race is sure to have some human error, especially when there may be up to 20 different ballot types in a large county. The amount of time, money, and people required to accomplish that would be large. For example, in Cass County there will be at least 15 to 20 different races on each ballot, and there could be upwards of 60-80 different ballot types. Our elections are accurate, and the effort spelled out in this bill costs the taxpayers to have the same outcomes.

Madam Chair, as you saw in the election demonstration last week. As has been pointed out in this testimony. As has been stated by bill sponsors and the State Auditor. Our elections are secure, fair, and honest. The numerous pre-election and post-election examinations have proven to show that we can trust our results. And to back that up, the recounts that have been conducted is proof our systems are accurate.

As an office, we no doubt have a duty to show our election process to the public and display all the safeguards and checks and balances that go in to conducting our elections. That is my commitment to you, to work alongside our county partners to educate the public on our secure and accurate processes.

I urge a Do Not Pass on SB 2339.

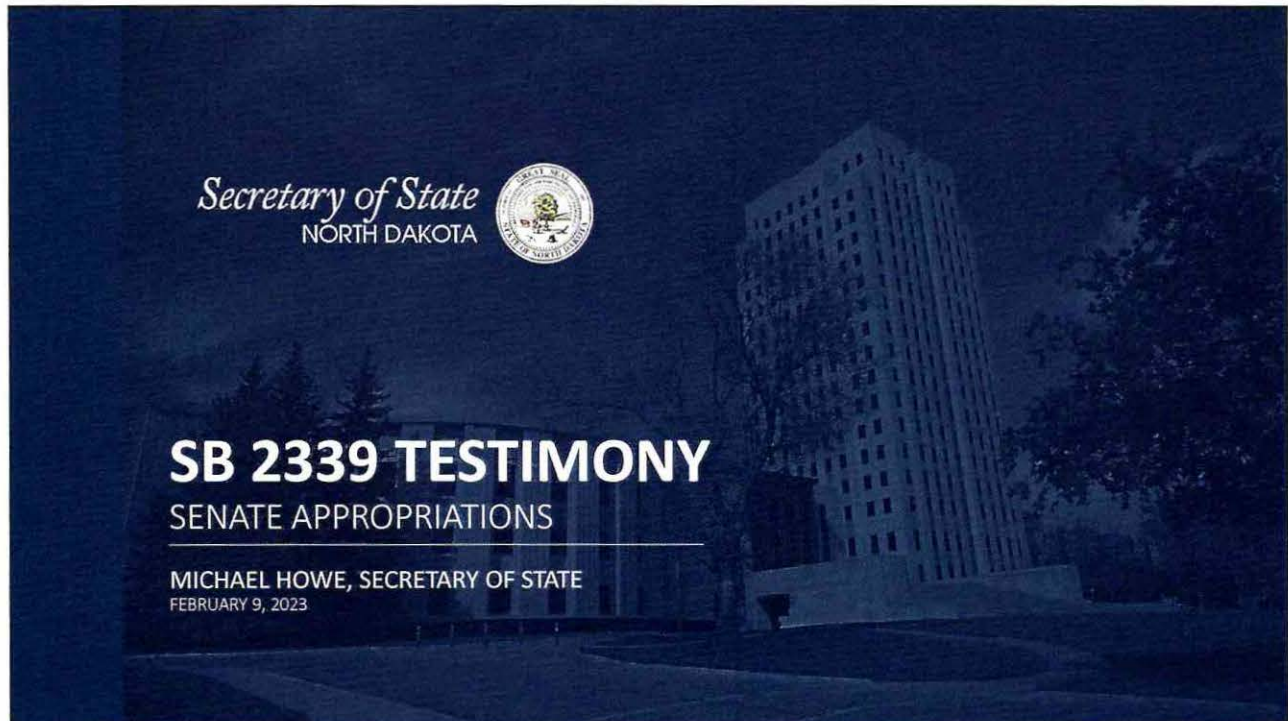
SB 2339 – SENATE STATE & LOCAL
FEBRUARY 10, 2023**16.1-01-01. Secretary of state to supervise election procedures - County administrator of elections.**

1. The secretary of state is, ex officio, supervisor of elections and may employ additional personnel to administer this title. The secretary of state shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, voting system authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16.1-06-26. The secretary of state, upon determining any ballot or other material, voting system, or device is not in sufficient compliance with the law or established criteria and standards, shall direct the proper changes to be made, and in the case of voting systems, may decertify the voting systems according to the rules adopted under section 16.1-06-26.
2. In addition to other duties provided elsewhere by law, the secretary of state shall:
 - a. Develop and implement uniform training programs for all election officials in the state.
 - b. Prepare information for voters on voting procedures.
 - c. Publish and distribute an election calendar, a manual on election procedures, and a map of all legislative districts.
 - d. Convene a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state to discuss uniform implementation of state election policies.
 - e. Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments.
 - f. Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
 - g. Require such reports from county auditors on election matters as deemed necessary.
 - h. Certify results of statewide elections.
 - i. Prepare and publish reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.
 - j. Establish standards for voting precincts and polling places, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including but not limited to, ballots, pollbooks, and reports.
 - k. Prescribe the order in which each political subdivision will appear on an election ballot.
 - l. Develop and conduct a test election for the state's voting system prior to each statewide election utilizing the votes cast within each county according to the logic and accuracy testing required in section 16.1-06-15.

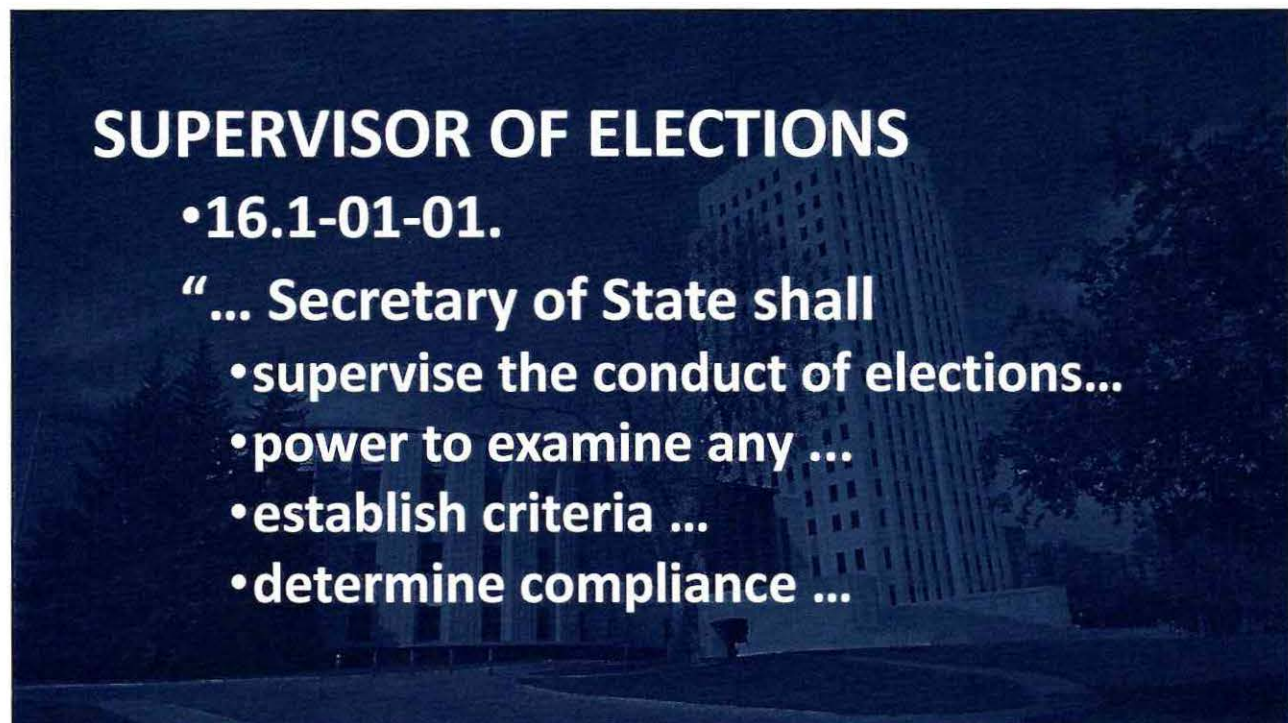


16.1-06-15. Mandatory testing of electronic voting systems before each election and after tabulation of ballots.

1. All electronic voting systems used in this state must be tested according to guidelines established by the secretary of state and as follows to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.
2. The test of an electronic voting system employing paper ballots must be conducted by processing a preaudited group of ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.
3. The test must be conducted at least one week before the election. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot a notice of the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.
4. At the conclusion of the test, the programming for each electronic voting device must be sealed within the device with a unique numbered seal that must be verified by the election inspector before the opening of the polls to make sure the programming has not been removed from the device.
5. After each election, the secretary of state shall order a random testing of the voting system programming for one precinct in each county of the state according to logic and accuracy testing procedures detailed in subsection 2 and as may be further defined by the secretary of state in writing. This test is to be conducted before the meeting of the county canvassing board.



1



2

MANDATORY TESTING

•16.1-06-15.

“...testing according to the guidelines of the secretary of state ... whether automatic tabulation equipment will accurately count the votes cast ...”

3

MANDATORY TESTING

**1 WEEK PRIOR
TO ELECTION**

**TEST CONDUCTED IN
All Counties - All Scanners**

LOGIC & ACCURACY TESTING

- Scanners Tested
- Pre-audited paper ballots
- Determine accuracy
- Counts must be exact

District chairman for each party notified if district race on ballot and may attend or send representative.

4

MANDATORY TESTING

ELECTION NIGHT TESTING - RANDOM

TEST CONDUCTED IN All Counties – One Precinct

LOGIC & ACCURACY TESTING

- Random precinct chosen
- All ballots scanned
- Counts must be exact

TO DATE – NO ERRORS DETECTED.

5

SECURITY AUDIT – STATE AUDITOR

2022 ELECTION SECURITY AUDIT

“The determination after extensive review from our contractor was that our election systems are incredibly secure across our state.”

- State Auditor Josh Gallion

10/27/2022

Press Release

6.1 KEY FINDINGS

#	Finding	Overall Risk
6.1.1	The Ability for a Voter to Cast Multiple Ballots	LOW
6.1.2	Identity Theft of Deceased Voters	LOW
6.1.3	Stuffing / Discarding Valid Absentee Ballots	LOW
6.1.4	Equipment Tampering (Tabulation Machine)	LOW
6.1.5	Equipment Tampering (USB Drive)	LOW
6.1.6	Absentee Ballot Fraud	LOW

6

RECOUNTS HAND COUNT COMPARED TO SCANNED BALLOTS

2022 GENERAL ELECTION – State Representative District 43

	Ethan Harsell	Eric Murphy	Mary Adams	Zachary Ista
ELECTION	1582	1759	1714	1717
RECOUNT	1580	1756	1712	1716

2020 GENERAL ELECTION – McKenzie County Commission

	Joel Brown	Craig Hystad	Thomas McCabe	H. Wayne Olson	Jeremy Olson	Clint Wold
ELECTION	2080	1938	1934	1551	1815	2108
RECOUNT	2077	1941	1932	1549	1814	2105

7

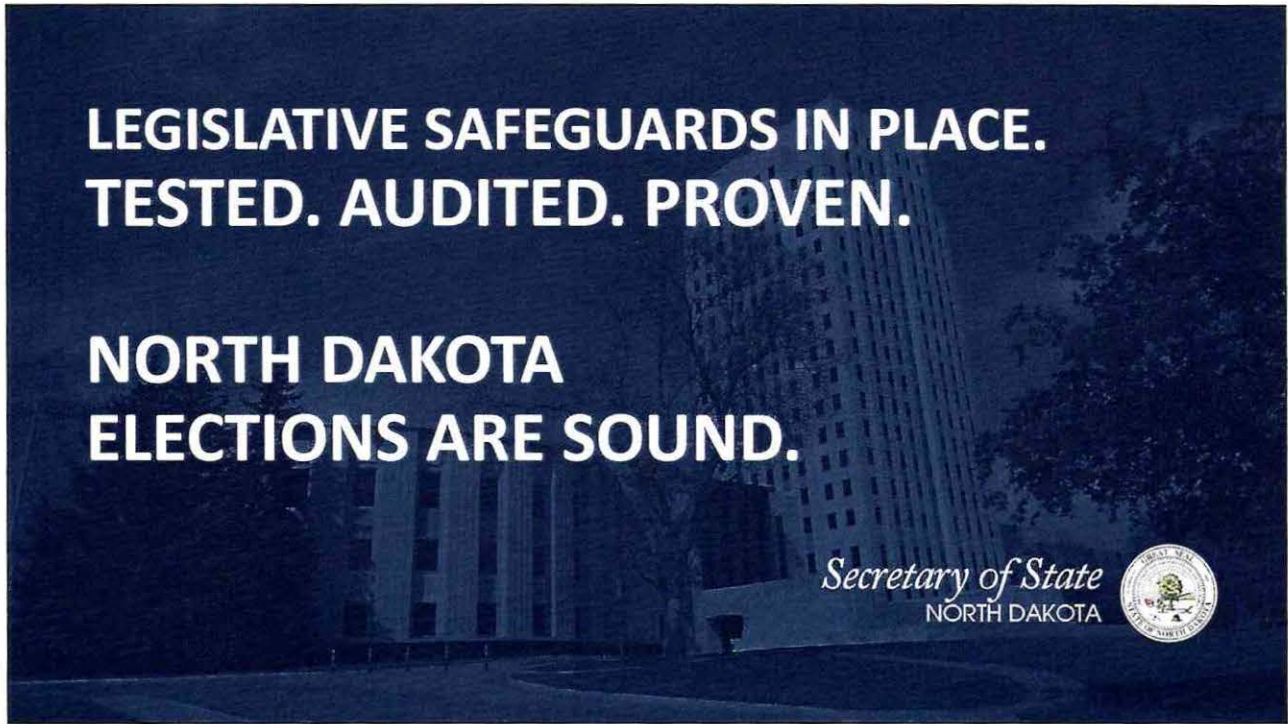
RECOUNTS DEMAND RECOUNT OPTION

DEMAND RECOUNT
2020 - 2022
Election Cycle

80 Demand Recounts Available
NONE REQUESTED

**RECOUNT HAS NEVER
OVERTURNED RACE DUE
TO SCANNER MIS-READING
VOTER INTENT**

8



9

23.1050.01004

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2339

Introduced by

Senators Boehm, Hogue, Kessel, Kreun, Magrum

Representative Henderson

1 A BILL for an Act to create and enact a new section to chapter 16.1-01 of the North Dakota
2 Century Code, relating to a random ~~audits~~special analysis after the certification of an election.

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

4 **SECTION 1.** A new section to chapter 16.1-01 of the North Dakota Century Code is created
5 and enacted as follows:

6 ~~Audit~~Special analysis conducted by ~~state auditor~~third party selected by the secretary
7 of state after each primary and general election.

8 1. Following the certification of the results of each primary and general election, the ~~office-~~
9 ~~of the state auditor~~secretary of state shall appoint a third party to conduct an ~~audit~~a
10 special analysis to review the accuracy of an election. The ~~state auditor~~secretary of
11 state shall randomly select one county from:

- 12 a. Burleigh, Cass, Grand Forks, Morton, Stark, Ward, and Williams Counties; and
- 13 b. The remaining counties within this state.

14 2. For the two selected counties in subsection 1, the ~~office of the state auditor~~third party
15 selected by the secretary of state shall conduct a ~~full,~~ manual recount for ~~all~~one
16 thousand randomly selected ballots cast within the county. The ~~audit shall~~special
17 analysis must review ~~all~~ municipal, county, statewide, and national races listed on a
18 ballot. The ~~audit shall~~special analysis must commence immediately after the state
19 canvassing board issues the statement under section 16.1-15-42. The results of the
20 ~~audit shall~~special analysis must be made public within ninety days of the
21 commencement of the ~~audit~~special analysis.

22 3. The officers and employees of all departments, institutions, boards, commissions, and
23 political subdivisions, subject to examination by the third party selected by the
24 secretary of state under this section, shall afford all reasonable facilities for the

1 analysis and shall make returns and exhibits to the third party selected by the
2 secretary of state under oath in the form and manner prescribed by the secretary of
3 state. The third party selected by the secretary of state may analyze any books,
4 papers, accounts, bills, vouchers, and other documents or property of any
5 departments, boards, commissions, political subdivisions, and financial institutions
6 subject to the third party's special analysis. The third party selected by the secretary of
7 state may analyze under oath any trustees, managers, officers, employees, or agents
8 of the departments, boards, commissions, or political subdivisions.
9 4. The ~~state auditor~~secretary of state shall adopt rules necessary to administer the duties
10 provided in this section.