

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1192
(Representatives Louser, Cory, Karls, Kasper, Satrom, Schauer, Steiner, Vetter)
(Senators Meyer, K. Roers, Vedaa)

AN ACT to amend and reenact subsection 5 of section 16.1-05-04, section 16.1-06-03, subsection 8 of section 16.1-06-14, sections 16.1-06-15 and 16.1-06-20, subsection 1 of section 16.1-07-13.1, and sections 16.1-11.1-06, 16.1-14-04, 16.1-15-02, 16.1-15-22, 16.1-15-25, and 40-21-09 of the North Dakota Century Code, relating to electronic voting systems, electronic voting devices, absentee voting, meeting of presidential electors, and canvassing boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Section 16.1-06-03 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 3. AMENDMENT. Subsection 8 of section 16.1-06-14 of the North Dakota Century Code is amended and reenacted as follows:

8. Permit voting by ballot or by entering directly into a computer or other electronic device by means of a touchscreen or other data entry device.

SECTION 4. AMENDMENT. Section 16.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 5. AMENDMENT. Section 16.1-06-20 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-20. Election inspector and judges to display material and provide instruction.

In addition to other duties provided by law, the election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before the voter enters the voting booth.

SECTION 6. AMENDMENT. Subsection 1 of section 16.1-07-13.1 of the North Dakota Century Code is amended and reenacted as follows:

1. If an election official, absentee ballot precinct election board, or the canvassing board has reason to suspect the absent voter's signatures on the application and the affidavit on the returned ballot envelope do not match, the election official shall notify the absent voter the signatures do not appear to match. The notification must include instructions by which the absent voter may confirm the validity of the signatures, a statement that verification is required before the ballot can be counted, the date and time of the canvassing board meeting, and a statement that verification must be completed by the absent voter before close of the meeting of the canvassing board occurring ~~six~~thirteen days after the election.

SECTION 7. AMENDMENT. Section 16.1-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11.1-06. Canvass of votes - Mail ballot precinct.

The county auditor shall appoint a mail ballot precinct election board for the purpose of counting mail ballots in the same manner as prescribed in section 16.1-07-12.1. The board may begin scanning the ballots at any time beginning ~~on the day~~three business days before election day and the closing of the polls on election day. Results from the mail ballot precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12 as applicable. A county conducting a mail ballot election constitutes one voting area, and

ballots need not be sorted according to precinct or ward unless necessary for the administration of the election.

SECTION 8. AMENDMENT. Section 16.1-14-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-04. Meeting of presidential electors.

Presidential electors shall meet at one p.m. in the office of the governor in the state capitol on the first ~~Monday~~Tuesday after the second Wednesday in December next following their appointments by election for the purpose of casting their ballots as members of the electoral college. The secretary of state shall notify the electors of the date of the meeting.

SECTION 9. AMENDMENT. Section 16.1-15-02 of the North Dakota Century Code is amended and reenacted as follows:

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

After the polls are closed, the inspector of elections and the judges immediately shall generate the canvass report from the electronic voting system. The ballots counted by the machine must be equal in number with the names on the poll clerks' lists. If the numbers are not equal, the pollbooks are to be rechecked to find the discrepancy. The canvass must continue without adjournment until completed and must be open to the public. Ballots may not be removed to another location before the canvass report is generated after the ballot boxes have been opened. Except in unusual and compelling circumstances, the canvass shall occur at the polling place. If good and substantial reasons exist for the removal of the ballots and election records to another location for canvass, the removal must be approved by the election board. Upon approval of a change of location by the election board as provided in this section, the approximate time and location of the canvass must be prominently posted on the main entrance to the polling place, the ballots and records must be moved in the presence of the election board, and the canvass as provided in this chapter must proceed immediately upon arrival at the alternate location.

SECTION 10. AMENDMENT. Section 16.1-15-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-22. County auditor to transmit abstract of votes to secretary of state after primary election.

The county auditor of each county shall provide to the secretary of state the certified abstract detailed in section 16.1-15-21, under separate political designation or principle, or no-party designation, as the case may be, of the total number of votes cast in the auditor's county and the votes cast for every candidate for nomination according to reporting instructions specified by the secretary of state. The abstract must also include the total number of votes cast for initiated or referred measures and constitutional amendments. The certified abstract must be in the possession of the secretary of state before four p.m. on the ~~eighth~~thirteenth day after the primary election.

SECTION 11. AMENDMENT. Section 16.1-15-25 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-25. County auditor to forward abstract of votes of general election to secretary of state - Contents - Abstract for presidential electors.

Before four p.m. on the ~~eighth~~thirteenth day following any general election, the county auditor of each county shall provide to the secretary of state a certified abstract of the votes cast in the county at the election according to the reporting instructions specified by the secretary of state.

SECTION 12. AMENDMENT. Section 40-21-09 of the North Dakota Century Code is amended and reenacted as follows:

40-21-09. Election districts in council cities - Division and consolidation by ordinance - Ballots to be kept separate by wards.

Each city operating under the council form of government in which council members are elected at large constitutes an election district or voting precinct, and in all other cities each ward constitutes an election district or voting precinct. Whenever the number of electors in any two or more contiguous wards does not exceed one hundred as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate those two or more wards into one precinct for voting purposes. In any city containing less than four hundred electors as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate all the wards of the city into one precinct for voting purposes. An ordinance dividing or consolidating wards must be passed and takes effect before the time of giving notice of the election. Wards and precincts established under this section constitute election districts for all state, county, and city elections. In city elections, separate ballot boxes and pollbooks must be provided and kept for each precinct. The terms "wards", "precincts", and "election districts" have the same meaning except where two or more wards are consolidated into one precinct for voting purposes or where one ward is divided into more than one precinct for voting purposes. This section does not prohibit the use of one building as the election polling place for more than one ward or the installation of electronic voting systems from separate wards in one building.

Dennis Johnson
Speaker of the House

Tammie Miller
President of the Senate

Bull J. Reich
Chief Clerk of the House

Sharon Lynn
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1192.

House Vote: Yeas 87 Nays 4 Absent 3

Senate Vote: Yeas 45 Nays 1 Absent 1

Bull J. Reich
Chief Clerk of the House

Received by the Governor at 9:53 AM on March 22, 2023.

Approved at 10:59 AM on March 27, 2023.

Doug Burgum
Governor

Filed in this office this 28th day of March, 2023,
at 2:40 o'clock P M.

Michael Howe
Secretary of State