

Introduced by

Senator Magrum

Representatives Christensen, Hoverson

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.

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 within this state and in that supervisory capacity has, in addition to other
11 powers conferred by law, the power to examine upon the secretary of state's request
12 or the request of any election official, any election ballot or other material, voting
13 system authorized by chapter 16.1-06, or device used in connection with any election,
14 for the purpose of determining sufficient compliance with the law and established
15 criteria and standards adopted by the secretary of state according to section
16 16.1-06-26. ~~The secretary of state, upon determining~~If an election official determines
17 any ballot or other material, voting system, or device is not in sufficient compliance
18 with the law or established criteria and standards, the secretary of state shall direct the
19 proper changes to be made, and in the case of voting systems, ~~may~~shall decertify the
20 voting systems according to the rules adopted under section 16.1-06-26. If a
21 decertified voting system becomes in sufficient compliance with the law or established
22 criteria and standards, the secretary of state shall recertify the decertified voting
23 systems according to the rules adopted under section 16.1-06-26.

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

3 **16.1-15-02. Board of election to generate canvass reports - Location - Public may**
4 **attend.**

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

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

29 **16.1-15-04. Canvass report prepared by election board for county auditor.**

30 1. The election board shall generate at least one canvass report from the electronic
31 voting system. The ballots may not be sealed, nor may the canvass report be signed,

1 by the election board or poll clerk until the counts in the poll clerks' books ~~and in~~ the
2 canvass report ~~shows~~, and the manual count by county election officials show the
3 same totals for ballots cast.

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

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

21 **16.1-16-01. Election recounts.**

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

- 27 1. A recount must be conducted when:
 - 28 a. Any individual failed to be nominated by the individual's party or to a no-party
29 office in a primary election by one percent or less of the highest vote cast for a
30 candidate seeking nomination from the political party for the office sought or for a
31 candidate for the no-party office sought.

- 1 b. Any individual failed to be elected in a general or special election by one-half of
2 one percent or less of the highest vote cast for a candidate for that office.
- 3 c. A question, measure, or bond issue submitted to the qualified electors has been
4 decided by a margin not exceeding one-fourth of one percent of the total vote
5 cast for and against the question at any election.
- 6 2. A demand for a recount may be made by any of the following:
 - 7 a. Any individual who failed to be nominated by the individual's party or to a
8 no-party office in a primary election by more than one percent and less than
9 two percent of the highest vote cast for a candidate seeking nomination from the
10 political party for the office sought or for a candidate for the no-party office
11 sought.
 - 12 b. Any individual who failed to be elected in a general or special election by more
13 than one-half of one percent and less than two percent of the highest vote cast
14 for a candidate for that office.
- 15 3. A demand for a recount must be made within three days after the canvass of the votes
16 by the county canvassing board in the case of county elections and city elections that
17 are combined with the county and by the state canvassing board in the case of
18 presidential, congressional, state, judicial district, multicounty district, or legislative
19 elections. The demand must be in writing, must recite one of the conditions in
20 subsection 2 as a basis for the recount, must contain a bond in an amount previously
21 established by the auditor or auditors doing the recount sufficient to pay the cost of the
22 lawfully authorized recount, and must be filed with:
 - 23 a. The secretary of state when the recount is for a congressional, state, district, or
24 legislative office.
 - 25 b. The county auditor when the recount is for a county office or city office when a
26 city election is combined with the county.
- 27 4. Within four days after the canvass of the votes by the state canvassing board in the
28 case of presidential, congressional, state, judicial district, multicounty district, or
29 legislative elections, the secretary of state shall notify all the county auditors to
30 conduct recounts as required by subsection 1 and, when a timely recount demand is
31 received and it is in proper form, as required by subsection 2. The secretary of state

1 shall fix the date or dates of the recounts of legislative contests to be held within seven
2 days after giving notice to the affected auditors that recounts must be conducted. The
3 secretary of state shall fix the date or dates of the recounts of statewide races to be
4 held within fourteen days after giving notice to the auditors that recounts must be
5 conducted. Within four days after the canvass of votes by the county canvassing
6 board or other political subdivision canvassing board, the county auditor or other
7 political subdivision election official shall fix the date for recounts limited to the county,
8 those cities within the county which combined the election with the county, or other
9 political subdivision. The date must be within eight days after the canvass. In all
10 recount proceedings, the county auditor or other election official, as appropriate, shall
11 send notice of the date, place, and time of the recount to all candidates and petitioners
12 involved by certified mail and shall post the notice on the official websites of the county
13 and secretary of state.

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

- 1 6. a. The individuals entitled to participate at the recount are:
- 2 (1) Each candidate involved in the recount, either personally or by a
- 3 representative.
- 4 (2) A qualified elector favoring each side of a question if the recount involves a
- 5 question or proposition submitted to a vote of the electorate.
- 6 b. The individuals allowed to participate may challenge the acceptance or exclusion
- 7 of any ballot. The individual challenging a ballot must state the reason for the
- 8 challenge based upon the law, and the county auditor or other political
- 9 subdivision election official shall count the challenged ballot as the auditor or
- 10 election official determines proper and then shall set the ballot aside with a
- 11 notation that it was challenged and how it was counted.
- 12 7. At the conclusion of the recount, the county auditor or other election official shall
- 13 submit all challenged ballots to the recount board for decision. Except for political
- 14 subdivision recounts other than counties, the recount board must be composed of the
- 15 state's attorney of the county, the chairman of the board of county commissioners, and
- 16 the county recorder. Unless otherwise specified by law, for a political subdivision other
- 17 than a county, the governing body of the political subdivision shall appoint the recount
- 18 board. An individual may not serve on the recount board if the individual has anything
- 19 of value bet or wagered on the result of the election, is a candidate for the office being
- 20 recounted, or is ~~the husband, wife, father, mother, father-in-law, mother-in-law, son,~~
- 21 ~~daughter, son-in-law, daughter-in-law, brother, or sister~~ a relative, whether by birth or
- 22 marriage, ~~of the whole or the half blood~~, of any candidate involved in the recount. If
- 23 any of the members of the recount board are disqualified or cannot serve for any other
- 24 reason, the members of the board of county commissioners or other political
- 25 subdivision governing body who would be qualified to serve on the board shall appoint
- 26 disinterested qualified electors of the county or other political subdivision to serve as
- 27 alternates. The recount board shall review all challenged ballots and on majority vote
- 28 shall decide how those ballots are counted. The decision of the recount board is final,
- 29 subject to the right to contest the election as provided in this chapter. If during the
- 30 recount a recess is called, the county auditor or other political subdivision election
- 31 official shall take appropriate steps to safeguard the ballots.

- 1 8. The county auditor or other election official shall certify the results of the recount
2 immediately after the recount. The recount result is the official result of the election in
3 the county or other political subdivision. The county auditor or other election official
4 shall prepare a corrected abstract of the votes. In a recount limited to the county, city,
5 or other political subdivision, if the corrected abstract shows no change in the outcome
6 of the election, no further action may be taken. If the corrected abstract changes the
7 outcome of the election, the county auditor or other election official shall issue
8 certificates of nomination or election accordingly and shall certify the new result of a
9 question submitted to the qualified electors. In the case of a city election that is
10 combined with a county election, the county auditor shall certify the new results of the
11 election to the city auditor who is responsible for issuing new certificates of election if
12 applicable.
- 13 9. In presidential, congressional, statewide, judicial district, multicounty district, or
14 legislative recounts, the county auditor, immediately after the recount, shall submit
15 electronically the corrected abstract to the secretary of state according to the
16 instructions provided by the secretary of state. The secretary of state immediately shall
17 assemble the state canvassing board, who shall canvass the corrected abstracts and
18 certify the election results. The secretary of state shall issue certificates of election or
19 nomination or record the approval or disapproval of a question submitted to the
20 qualified electors accordingly.
- 21 10. The expenses incurred in a recount of a county election under subsection 1 must be
22 paid by the county on a warrant by the county auditor. The expenses incurred in a
23 recount of a political subdivision other than a county election must be paid by that
24 political subdivision. The expenses incurred in a recount of a city election must be paid
25 by the city on a warrant by the city auditor. The expenses incurred in a recount of a
26 presidential, congressional, state, judicial district, multicounty district, or legislative
27 election must be paid by the state from the general fund upon approval by the
28 secretary of state of a statement of expenses received from the county auditors. The
29 expenses incurred in a recount demanded under subsection 2 ~~of section 16.1-16-01~~
30 must be paid ~~by~~to the secretary of state or county auditor from the bond submitted by
31 the individual requesting the recount.

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