

PROPOSED AMENDMENTS TO SENATE BILL NO. 2394

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 16.1-02 and two new sections to chapter 16.1-05 of the North Dakota Century Code, relating to providing a central voter file, verifying voter eligibility, and creating precinct maps and precinct locators; to amend and reenact sections 16.1-01-04, 16.1-05-06, and 54-09-08 of the North Dakota Century Code, relating to qualifications of voters, challenging voters, and fees received by the secretary of state; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 16.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-01-04. Qualifications of electors.**

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.
2. ~~Every~~ For the purposes of this title, every qualified elector ~~of the state~~ may have only one ~~voting~~ residence, shown by an actual fixed permanent dwelling or establishment.
3. ~~A person's voting~~ Except as otherwise provided in this section, an individual's residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by ~~persons~~ individuals convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.
5. For the purposes of this title, an individual may not be deemed to have gained or lost a residence solely by reason of the individual's presence or absence while enrolled as a student at a college, university, or other postsecondary institution of learning in this state.
6. For the purposes of this title, a member of the armed forces of the United States may not be deemed to have gained or lost a residence in this state solely by reason of the member being stationed on duty in this state.
7. For the purposes of this title, an individual may not be deemed to have lost residence in the individual's precinct or in the state by reason of the individual engaging in temporary government service or private employment outside the individual's precinct or outside the state.

**SECTION 2.** Chapter 16.1-02 of the North Dakota Century Code is created and enacted as follows:

**16.1-02-01. Permanent central voter file.** A permanent, centralized electronic data base of voters, to be known as the central voter file, is established with the offices of the secretary of state and county auditors linked together by a centralized statewide

system. The county auditor is chief custodian of the central voter file records in each county. The secretary of state is responsible for maintaining the central voter file. The central voter file must be accessible by the secretary of state and all county auditors for purposes of preventing and determining voter fraud, making changes and updating the central voter file, and generating information, including pollbooks, reports, inquiries, forms, and voter lists.

**16.1-02-02. Costs of creating and maintaining a central voter file.** The creation of the central voter file and its maintenance through June 30, 2009, must be paid for with funds from the state's election fund, provided the election fund contains adequate funding to create and maintain the central voter file. The creation of the central voter file and its maintenance through June 30, 2009, may not be paid for from funds in the secretary of state's budget, the state's general fund, or from county funds. Beginning July 1, 2009, the office required to perform the functions and duties of this chapter shall bear the costs incurred and the secretary of state shall pay the costs of operating and maintaining the central voter file.

**16.1-02-03. Secretary of state to establish the central voter file with department of transportation and county auditors.**

1. Before the primary election in 2004, the secretary of state shall establish the central voter file in cooperation with the department of transportation and county auditors.
2. The secretary of state shall establish the initial central voter file from records maintained by the department of transportation. Each county auditor shall compare the initial central voter file against all precinct pollbooks used in the auditor's county during and created from the general elections in 2000 and 2002 and any reasonably reliable updates made by the county auditor since the general elections in 2000 and 2002. Any individual contained in the initial central voter file who voted at either the general election in 2000 or 2002 must be designated as "active" in the initial central voter file. Any individual contained in the initial central voter file who did not vote at either the general election in 2000 or 2002 must be designated as "inactive" in the initial central voter file.
3. Each individual contained in the initial central voter file must be assigned a unique identifier. An individual's unique identifier must be created from unique information and data obtained from records maintained by the department of transportation and the pollbooks from the general elections in 2000 and 2002. If it is not possible to assign a unique identifier to an individual contained in the initial central voter file, a unique identifier must be randomly generated and assigned to the individual.
4. The secretary of state shall adopt rules for generating and assigning a unique identifier to each individual contained in the central voter file according to section 16.1-02-11 and subsection 3 of section 16.1-01-01.
5. When establishing the initial central voter file from the records maintained by the department of transportation and the pollbooks from the general elections in 2000 and 2002, the secretary of state and county auditors shall attempt to correct address errors and misspellings of names.

**16.1-02-04. Precinct boundaries changed - Change to the central voter file.** When the boundaries of a precinct are changed, the county auditor shall immediately update the voter records for that precinct in the central voter file to accurately reflect those changes.

**16.1-02-05. Entry of new voters into the central voter file - Query of the central voter file for double voting - Verification by mail - Challenges - Post election verification.**

1. Within sixty days following an election, the county auditor shall enter the name and required information of each individual who voted at the last election who is not already contained in the central voter file and update any required information requested and obtained at the last election for any individual contained in the central voter file.
2. The secretary of state, with the assistance of the county auditors, within seventy days following an election, shall query the central voter file to determine if any individual voted more than once during the preceding election. The secretary of state shall immediately notify the county auditor and state's attorney in each affected county for further investigation.
3. The county auditor shall mail to a random sampling of individuals contained in the central voter file a notice stating the individual's name and address as the name and address appear in the central voter file. The random sampling must be determined in the manner established by the secretary of state. The notice must request the individual to notify the county auditor if there is any mistake in the information.
4. Upon return of any nonforwardable mail from an election official, the county auditor shall ascertain the name and address of that individual. If the individual is no longer at the address recorded in the central voter file, the county auditor shall designate the individual as "challenged" in the central voter file. An individual designated as "challenged" shall comply with section 16.1-05-06 before being allowed to vote at the next election in that precinct. If a notice mailed at least sixty days after the return of the first nonforwardable mail is also returned by the postal service, the county auditor shall designate the individual as "inactive" in the central voter file.
5. Within ninety days after an election, the county auditor shall send the notice provided for under subsection 3 to each individual who was challenged on election day according to section 16.1-05-06. If a notice is returned as not deliverable, the county auditor shall attempt to determine the reason for the return. A county auditor who does not receive or obtain satisfactory proof of an individual's eligibility to vote shall immediately notify the state's attorney to conduct an investigation of the individual's eligibility to vote in that election.

**16.1-02-06. Reporting deceased individuals and changes of names - Changes to records in the central voter file.**

1. The state health officer shall provide for the regular reporting to the secretary of state the name, city, date of birth, and county of residence, if available, of each individual eighteen years of age or older who has died while maintaining residence in this state since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "deceased" in the central voter file. The secretary of state shall prepare and distribute a list of individuals designated as "deceased" to each county auditor.
2. The state health officer shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older whose name was changed by marriage since the last report. Within sixty days after receiving a report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose

name was changed that the individual's name has been changed accordingly in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.

3. After receiving notice of death of an individual who has died outside the county, the county auditor shall designate that individual as "deceased" in the central voter file. Notice must be in the form of a printed obituary or a written statement signed by an individual having knowledge of the death of the individual.

**16.1-02-07. Reporting individuals placed under guardianship and changes of names - Changes to records in the central voter file.**

1. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older who has been placed under a guardianship and as a result has been deprived of the legal right to vote since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "ineligible" in the central voter file. The secretary of state shall prepare and distribute a list of individuals designated as "ineligible" to each county auditor.
2. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, and date of birth, if available, of each individual eighteen years of age or older whose legal right to vote has been restored by the court since the last report. Within thirty days after receiving a report, the secretary of state shall remove the "ineligible" designation of the individual in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
3. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, date of birth, and county of residence, if available, of each individual eighteen years of age or older whose name was changed by divorce or any order or decree of the court since the last report. Within sixty days after receiving the report, the secretary of state shall make the name changes in the central voter file and notify by mail each individual whose name was changed that the individual's name has been changed accordingly in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.

**16.1-02-08. Reporting incarcerations - Changes to records in the central voter file.**

1. The director of the department of corrections and rehabilitation shall provide for the regular reporting to the secretary of state the name, address, date of birth, date of sentence, effective date of the sentence, and county in which the conviction occurred, if available, of each individual who has been convicted of a felony and incarcerated under the legal and physical custody of the department of corrections and rehabilitation since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual in the report as "ineligible" in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
2. The director of the department of corrections and rehabilitation shall provide for the regular reporting to the secretary of state the name, address, and date of birth, if available, of each individual previously convicted of and incarcerated for a felony whose civil rights have been

restored as provided in chapter 12.1-33 since the last report. Within thirty days after receiving a report, the secretary of state shall remove the "ineligible" designation of the individual in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.

**16.1-02-09. Department of transportation to report updates to the secretary of state - Changes to records in the central voter file.**

1. The department of transportation shall report regularly to the secretary of state any relevant changes and updates to records maintained by the department of transportation which may require changes and updates to be made to records of individuals contained in the central voter file.
2. The county auditor may change the designation of individuals contained in the central voter file whose change of address can be confirmed by the United States postal service. The secretary of state may provide each county auditor with periodic reports on any individual whose change of address can be confirmed by the United States postal service.
3. If an individual makes a written request to the county auditor for removal of the individual's record from the central voter file, the county auditor shall change the designation of the individual contained in the central voter file to "inactive".
4. If a qualified elector makes a written request to the county auditor for inclusion in the central voter file, the county auditor shall collect the required information from the individual and add the individual's name to the central voter file with the designation of "inactive".

**16.1-02-10. Posting voting history - Failure to vote - Individuals designated "inactive".** Within ninety days after each election, each county auditor shall post the voting history for each individual who voted in the election. After the close of the 2008 calendar year, the secretary of state shall determine if any individual has not voted during the preceding four years and shall change the status of each such individual to "inactive" in the central voter file. The secretary of state shall prepare a report to each county auditor which contains the name of each individual who has been designated as "inactive" in the central voter file. Although not counted in an election, a late absentee ballot from an individual may not be used to designate an individual as "inactive" in the central voter file.

**16.1-02-11. Secretary of state to adopt rules for the purpose of maintaining the central voter file.** The secretary of state shall adopt rules and procedures according to subsection 3 of section 16.1-01-01 for the purpose of implementing this chapter and for updating and maintaining the central voter file. The rules must:

1. Provide for the establishment and maintenance of a central voter file.
2. Provide for the generation and assignment of a unique identifier to each individual contained in the central voter file.
3. Provide procedures for entering data into the central voter file.
4. Provide for any additional information to be requested of and obtained from an individual which is to be maintained in the central voter file, not already provided by law, but necessary for the proper administration of the central voter file.

5. Provide for the exchange of records maintained by the appropriate state and county agencies and officials for receiving regular reports regarding individuals and records of individuals contained in the central voter file.
6. Allow each county auditor and the secretary of state to add, modify, and delete information from the central voter file to ensure accurate and up-to-date records.
7. Allow each county auditor and the secretary of state to have access to the central voter file for review, search, and inquiry capabilities.
8. Provide security and protection of all information contained in the central voter file and to ensure that unauthorized access and entry is prohibited.
9. Provide a system for each county to identify the precinct to which an individual should be assigned for voting purposes.

**16.1-02-12. Information contained and maintained in the central voter file.**

The central voter file must contain the following information for each individual included in the file:

1. The complete name of the individual.
2. The complete residential address of the individual.
3. The complete mailing address of the individual, if different from the individual's residential address.
4. The unique identifier generated and assigned to the individual.
5. A designation showing whether the individual's ability to vote in a precinct has been inactivated as a result of death, incarceration, or because of a change in guardianship status, or because the individual is no longer a resident of the precinct according to section 16.1-01-04.
6. A designation showing whether the individual must be challenged according to section 16.1-05-06.
7. The county, legislative district, precinct name, and precinct number in which the individual resides.
8. Beginning in 2008, four years of an individual's voting history, if applicable.
9. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper maintenance of the central voter file.

**16.1-02-13. Information contained in pollbooks generated from the central voter file.** The county auditor shall generate a pollbook for each precinct in the county from the central voter file by the fifteenth day before an election. Between the fifteenth day before the election and the day of the election, no changes or updates to records of individuals contained in the central voter file or a pollbook generated from the central voter file may be made, other than changes related to the status of an individual voting early or an individual requesting and returning an absent voter's ballot. The secretary of state shall prescribe procedures for generating pollbooks and for transporting the pollbooks to the election judges for use on election day. Pollbooks generated from the central voter file must contain the following information for each individual contained therein:

1. The complete name of the individual.

2. The complete residential address of the individual.
3. The unique identifier generated and assigned to the individual.
4. A designation showing whether the individual's ability to vote in a precinct has been inactivated as a result of death, incarceration, or because of a change in guardianship status, or because the individual is no longer a resident of the precinct according to section 16.1-01-04.
5. A designation showing whether the individual must be challenged according to section 16.1-05-06.
6. The county, legislative district, precinct name, and precinct number in which the individual resides.
7. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper maintenance of the pollbook.

**16.1-02-14. Voter lists and reports to be made available for jury management.** By February first of each year, the secretary of state shall transmit information from the central voter file to the state court administrator for the purpose of compiling the master list of jurors under chapter 27-09.

**16.1-02-15. Voter lists and reports may be made available for election related purposes - Funds received.** Except as otherwise provided by law, a voter list or a report generated from the central voter file may be made available to a candidate, political party, or a political committee for election-related purposes. Any information obtained by a candidate, political party, or political committee for election-related purposes from a list or report generated from the central voter file may not be sold or distributed for a purpose that is not election-related. Except for information identified in the central voter file under subsections 1, 2, 3, 5, 7, and 8 of section 16.1-02-12, which may be made available to a candidate, political party, or political committee for election-related purposes, information in the central voter file is an exempt record. Any funds received by the secretary of state to pay the cost of producing a report or list of voters contained in the central voter file must be deposited in the secretary of state's general services operating fund.

**16.1-02-16. Violations - Penalties.**

1. An individual may not intentionally:
  - a. Remove an individual from the central voter file or change a record of an individual contained in the central voter file in a manner or for a purpose not authorized by law; or
  - b. Add a name of an individual to the central voter file or add a record of an individual contained in the central voter file in a manner or for a purpose not authorized by law.
2. A deputy, clerk, employee, or other subordinate of a county auditor who has knowledge or reason to believe that a violation of this chapter has occurred shall immediately transmit a report of the knowledge or belief to the county auditor, together with any evidence of the violation. A county auditor who has knowledge or reason to believe that a violation of this chapter has occurred shall immediately transmit a report of the knowledge or belief to the state's attorney of the county where the violation is believed to have occurred, together with any evidence of the violation. The county auditor shall also immediately send a copy of the report to the secretary of state.

3. An individual who intentionally violates any provision of this chapter is guilty of a class A misdemeanor, unless a different penalty is specifically provided by law.

**SECTION 3. AMENDMENT.** Section 16.1-05-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-06. Challenging right of person to vote - Identification or affidavit required - Penalty for false swearing - Optional poll checkers.**

1. One poll challenger appointed by the district chairman of each political party represented on the election board is entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger from each political party is entitled to be in attendance at each polling place at any one time.
2. ~~The members~~ Any member of the election board ~~and poll challengers~~ may challenge the right of ~~anyone~~ an individual to vote ~~whom they know or have~~ if the election board member has knowledge or has reason to believe the individual is not a qualified elector. ~~Members~~ A poll challenger may request members of the election board ~~or poll challengers may to~~ challenge ~~a voter if they know or have~~ the right of an individual to vote if the poll challenger has knowledge or has reason to believe the individual is not a qualified elector of the precinct. A challenge may be based upon any one of the following:
  - a. ~~The person~~ individual offering to vote does not meet the age or citizenship requirements.
  - b. ~~The person~~ individual offering to vote has never voted in the precinct before, the name of the individual offering to vote does not appear in the pollbook generated from the central voter file, and the individual fails to provide reasonable evidence of residency in the precinct.
  - c. Except as provided in section 16.1-01-05, the ~~person~~ individual offering to vote physically resides outside of the precinct.
  - d. The ~~person~~ individual offering to vote does not meet the residency requirements provided in section ~~16.1-01-05~~ 16.1-01-04.
3. ~~A poll challenger or~~ If after an election board member ~~may request has requested~~ that the ~~person~~ individual offering to vote provide an appropriate form of identification to address any of the voting eligibility concerns listed in subsection 2. ~~If and~~ the identification provided does not adequately ~~resolve~~ confirm the voter eligibility ~~concerns of the poll challenger or election board member of the challenged individual,~~ the challenged ~~person~~ individual may not vote unless the challenged ~~person~~ individual executes an affidavit, acknowledged before the election inspector, that the challenged ~~person~~ individual is a legally qualified elector of the precinct.
4. The affidavit must include:
  - a. The name and present address of the affiant and the address of the affiant at the time the affiant last voted.
  - b. The previous last name of the affiant if it was different when the affiant last voted.

- c. A recitation of the qualifications for voting as set forth in section 16.1-01-04 and the rules for determining residence.
  - d. Notice of the penalty for making a false affidavit and that the county auditor may verify the affidavit.
  - e. A place for the affiant to sign and swear to the affiant's qualifications as a voter.
5. Written notice of the penalty for making a false affidavit and that the county auditor may verify the affidavits must also be prominently displayed at the polling place in a form prescribed by the secretary of state. ~~Any person~~ An individual who falsely swears in order to vote is guilty of a class A misdemeanor and must be punished pursuant to chapter 16.1-01.
  6. ~~The county auditor shall verify randomly at least ten percent of the affidavits signed in the county and shall report all known or suspected violations to the state's attorney for investigation and possible prosecution.~~
  7. In addition to the poll challenger, not more than two poll checkers appointed by the district chairman of each political party represented on the election board may be in attendance at each polling place, provided ~~such~~ the poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. The poll challengers and poll checkers must be qualified electors of the district in which they are assigned.
  - 8- 7. No poll challenger or checker may be a member of the election board.
  8. The district chairman shall notify the county auditor of each county contained in the legislative district before the third day before the day of the election of the names of individuals whom the district chairman has appointed to serve as poll challengers and poll checkers in the precincts in the legislative district.

**SECTION 4.** A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

**Poll clerks to check identification and verify eligibility - Poll clerks to request, correct, and update incorrect information contained in the pollbook.**

1. Before delivering a ballot to an individual according to section 16.1-13-22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state which displays the individual's date of birth. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.
2. If the individual's name is not contained in the pollbook generated from the central voter file, the individual may be challenged according to section 16.1-05-06 and the individual's name must be recorded in the pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook.
3. When verifying an individual's eligibility or when entering the name of an individual into the pollbook, poll clerks shall request, correct, and update

any incorrect or incomplete information about an individual that is required to be contained in the pollbook generated from the central voter file.

4. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct to the proper precinct and voting location.

**SECTION 5.** A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

**County auditor to provide election board members with precinct maps or precinct finder.** The county auditor shall provide each precinct election board with an accurate precinct map or precinct finder to assist the election board member in determining whether an address is located in that precinct and for determining which precinct and polling location to which to direct an individual who may be attempting to vote incorrectly in that precinct.

**SECTION 6. AMENDMENT.** Section 54-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-08. Secretary of state's general services operating fund.** The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and sections 54-09-10 and 54-09-11. At the close of each fiscal year, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund."

Renumber accordingly