

**FIRST ENGROSSMENT with  
House Amendments - Majority Report**  
**ENGROSSED SENATE BILL NO. 2394**

Introduced by

Senators Krebsbach, J. Lee, Nelson, Traynor

Representatives Froelich, Koppelman

1 A BILL for an Act to create and enact chapter 16.1-02 and two new sections to chapter 16.1-05  
2 of the North Dakota Century Code, relating to providing a central voter file, verifying voter  
3 eligibility, and creating precinct maps and precinct locators; to amend and reenact sections  
4 16.1-01-04, 16.1-05-06, and 54-09-08 of the North Dakota Century Code, relating to  
5 qualifications of voters, challenging voters, and fees received by the secretary of state; and to  
6 provide a penalty.

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

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

10 **16.1-01-04. Qualifications of electors.**

- 11 1. Every citizen of the United States who is: eighteen years or older; a resident of  
12 this state; and has resided in the precinct at least thirty days next preceding any  
13 election, except as otherwise provided in regard to residency in chapter 16.1-14, is  
14 a qualified elector.
- 15 2. ~~Every~~ For the purposes of this title, every qualified elector ~~of the state~~ may have  
16 only one ~~voting~~ residence, shown by an actual fixed permanent dwelling,  
17 establishment, or any other abode.
- 18 3. ~~A person's voting~~ Except as otherwise provided in this section, an individual's  
19 residence must be determined in accordance with the rules for determining  
20 residency as provided in section 54-01-26.
- 21 4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by  
22 ~~persons~~ individuals convicted and sentenced for treason or felony must be limited  
23 according to chapter 12.1-33.

1       5.   For the purposes of this title, an individual may not be deemed to have gained or  
2       lost a residence solely by reason of the individual's presence or absence while  
3       enrolled as a student at a college, university, or other postsecondary institution of  
4       learning in this state.

5       6.   For the purposes of this title, a member of the armed forces of the United States  
6       may not be deemed to have gained or lost a residence in this state solely by  
7       reason of the member being stationed on duty in this state.

8       7.   For the purposes of this title, an individual may not be deemed to have lost  
9       residence in the individual's precinct or in the state by reason of the individual  
10      engaging in temporary government service or private employment outside the  
11      individual's precinct or outside the state.

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

14       **16.1-02-01. Permanent central voter file.** A permanent, centralized electronic data  
15 base of voters, to be known as the central voter file, is established with the offices of the  
16 secretary of state and county auditors linked together by a centralized statewide system. The  
17 county auditor is chief custodian of the central voter file records in each county. The secretary  
18 of state is responsible for maintaining the central voter file. The central voter file must be  
19 accessible by the secretary of state and all county auditors for purposes of preventing and  
20 determining voter fraud, making changes and updating the central voter file, and generating  
21 information, including pollbooks, reports, inquiries, forms, and voter lists.

22       **16.1-02-02. Costs of creating and maintaining a central voter file.** The creation of  
23 the central voter file and its maintenance through June 30, 2009, must be paid for with funds  
24 from the state's election fund, provided the election fund contains adequate funding to create  
25 and maintain the central voter file. The creation of the central voter file and its maintenance  
26 through June 30, 2009, may not be paid for from funds in the secretary of state's budget, the  
27 state's general fund, or from county funds. Beginning July 1, 2009, the offices required to  
28 perform the functions and duties of this chapter shall bear the costs incurred in performing  
29 those duties and the secretary of state shall pay the costs of operating and maintaining the  
30 central voter file.

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

1. Not later than the primary election in 2006, 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 the two previous election years and any reasonably reliable updates made by the county auditor since the general elections in the two previous election years. Any individual contained in the initial central voter file who voted at either of the general elections in the two previous election years 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 of the general elections in the two previous election years 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 the two previous election years. 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 the two previous election years, the secretary of state and county auditors shall attempt to correct address errors and misspellings of names.

1       **16.1-02-04. Precinct boundaries changed - Change to the central voter file.** When  
2 the boundaries of a precinct are changed, the county auditor shall immediately update the voter  
3 records for that precinct in the central voter file to accurately reflect those changes.

4       **16.1-02-05. Entry of new voters into the central voter file - Query of the central**  
5 **voter file for double voting - Verification by mail - Challenges - Post election verification.**

- 6       1. Within sixty days following an election, the county auditor shall enter the name and  
7 required information of each individual who voted at the last election who is not  
8 already contained in the central voter file and update any required information  
9 requested and obtained at the last election for any individual contained in the  
10 central voter file.
- 11       2. The secretary of state, with the assistance of the county auditors, within seventy  
12 days following an election, shall query the central voter file to determine if any  
13 individual voted more than once during the preceding election. The secretary of  
14 state shall immediately notify the county auditor and state's attorney in each  
15 affected county for further investigation.
- 16       3. The county auditor shall mail to a random sampling of individuals contained in the  
17 central voter file a notice stating the individual's name and address as the name  
18 and address appear in the central voter file. The random sampling must be  
19 determined in the manner established by the secretary of state. The notice must  
20 request the individual to notify the county auditor if there is any mistake in the  
21 information.
- 22       4. Upon return of any nonforwardable mail from an election official, the county auditor  
23 shall ascertain the name and address of that individual. If the individual is no  
24 longer at the address recorded in the central voter file, the county auditor shall  
25 designate the individual as "challenged" in the central voter file. An individual  
26 designated as "challenged" shall comply with section 16.1-05-06 before being  
27 allowed to vote at the next election in that precinct. If a notice mailed at least sixty  
28 days after the return of the first nonforwardable mail is also returned by the postal  
29 service, the county auditor shall designate the individual as "inactive" in the central  
30 voter file.

- 1           5. Within ninety days after an election, the county auditor shall send the notice  
2           provided for under subsection 3 to each individual who was challenged on election  
3           day according to section 16.1-05-06. If a notice is returned as not deliverable, the  
4           county auditor shall attempt to determine the reason for the return. A county  
5           auditor who does not receive or obtain satisfactory proof of an individual's eligibility  
6           to vote shall immediately notify the state's attorney to conduct an investigation of  
7           the individual's eligibility to vote in that election.

8           **16.1-02-06. Reporting deceased individuals and changes of names - Changes to**  
9           **records in the central voter file.**

- 10          1. The state health officer shall provide for the regular reporting to the secretary of  
11          state the name, address, date of birth, and county of residence, if available, of  
12          each individual eighteen years of age or older who has died while maintaining  
13          residence in this state since the last report. Within thirty days after receiving a  
14          report, the secretary of state shall designate each individual included in the report  
15          as "deceased" in the central voter file. The secretary of state shall prepare and  
16          distribute a list of individuals designated as "deceased" to each county auditor.  
17          2. The state health officer shall provide for the regular reporting to the secretary of  
18          state the name, address, date of birth, and county of residence, if available, of  
19          each individual eighteen years of age or older whose name was changed by  
20          marriage since the last report. Within sixty days after receiving a report, the  
21          secretary of state shall make the name changes in the central voter file and notify  
22          by mail each individual whose name was changed that the individual's name has  
23          been changed accordingly in the central voter file. The secretary of state shall  
24          prepare and distribute a list of those individuals to each county auditor.  
25          3. After receiving notice of death of an individual who has died outside the county, the  
26          county auditor shall designate that individual as "deceased" in the central voter file.  
27          Notice must be in the form of a printed obituary or a written statement signed by an  
28          individual having knowledge of the death of the individual.

29          **16.1-02-07. Reporting individuals placed under guardianship and changes of**  
30          **names - Changes to records in the central voter file.**

1       1.   The state court administrator shall provide for the regular reporting to the secretary  
2       of state the name, address, date of birth, and county of residence, if available, of  
3       each individual eighteen years of age or older who has been placed under a  
4       guardianship and as a result has been deprived of the legal right to vote since the  
5       last report. Within thirty days after receiving a report, the secretary of state shall  
6       designate each individual included in the report as "ineligible" in the central voter  
7       file. The secretary of state shall prepare and distribute a list of individuals  
8       designated as "ineligible" to each county auditor.

9       2.   The state court administrator shall provide for the regular reporting to the secretary  
10      of state the name, address, and date of birth, if available, of each individual  
11      eighteen years of age or older whose legal right to vote has been restored by the  
12      court since the last report. Within thirty days after receiving a report, the secretary  
13      of state shall remove the "ineligible" designation of the individual in the central  
14      voter file. The secretary of state shall prepare and distribute a list of those  
15      individuals to each county auditor.

16      3.   The state court administrator shall provide for the regular reporting to the secretary  
17      of state the name, address, date of birth, and county of residence, if available, of  
18      each individual eighteen years of age or older whose name was changed by  
19      divorce or any order or decree of the court since the last report. Within sixty days  
20      after receiving the report, the secretary of state shall make the name changes in  
21      the central voter file and notify by mail each individual whose name was changed  
22      that the individual's name has been changed accordingly in the central voter file.  
23      The secretary of state shall prepare and distribute a list of those individuals to each  
24      county auditor.

25      **16.1-02-08. Reporting incarcerations - Changes to records in the central voter**  
26      **file.**

27      1.   The director of the department of corrections and rehabilitation shall provide for the  
28      regular reporting to the secretary of state the name, address, date of birth, date of  
29      sentence, effective date of the sentence, and county in which the conviction  
30      occurred, if available, of each individual who has been convicted of a felony and  
31      incarcerated under the legal and physical custody of the department of corrections

1           and rehabilitation since the last report. Within thirty days after receiving a report,  
2           the secretary of state shall designate each individual in the report as "ineligible" in  
3           the central voter file. The secretary of state shall prepare and distribute a list of  
4           those individuals to each county auditor.

- 5           2. The director of the department of corrections and rehabilitation shall provide for the  
6           regular reporting to the secretary of state the name, address, and date of birth, if  
7           available, of each individual previously convicted of and incarcerated for a felony  
8           whose civil rights have been restored as provided in chapter 12.1-33 since the last  
9           report. Within thirty days after receiving a report, the secretary of state shall  
10          remove the "ineligible" designation of the individual in the central voter file. The  
11          secretary of state shall prepare and distribute a list of those individuals to each  
12          county auditor.

13           **16.1-02-09. Department of transportation to report updates to the secretary of**  
14   **state - Changes to records in the central voter file.**

- 15          1. The department of transportation shall report regularly to the secretary of state any  
16          relevant changes and updates to records maintained by the department of  
17          transportation which may require changes and updates to be made to records of  
18          individuals contained in the central voter file.
- 19          2. The county auditor may change the designation of individuals contained in the  
20          central voter file whose change of address can be confirmed by the United States  
21          postal service. The secretary of state may provide each county auditor with  
22          periodic reports on any individual whose change of address can be confirmed by  
23          the United States postal service.
- 24          3. If an individual makes a written request to the county auditor for removal of the  
25          individual's record from the central voter file, the county auditor shall change the  
26          designation of the individual contained in the central voter file to "inactive".
- 27          4. If a qualified elector makes a written request to the county auditor for inclusion in  
28          the central voter file, the county auditor shall collect the required information from  
29          the individual and add the individual's name to the central voter file with the  
30          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.



1           **16.1-02-12. Information contained and maintained in the central voter file.** The  
2 central voter file must contain the following information for each individual included in the file:

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

21           **16.1-02-13. Information contained in pollbooks generated from the central voter**  
22 **file.** The county auditor shall generate a pollbook for each precinct in the county from the  
23 central voter file by the fifteenth day before an election. Between the fifteenth day before the  
24 election and the day of the election, no changes or updates to records of individuals contained  
25 in the central voter file or a pollbook generated from the central voter file may be made, other  
26 than changes related to the status of an individual voting early or an individual requesting and  
27 returning an absent voter's ballot. The secretary of state shall prescribe procedures for  
28 generating pollbooks and for transporting the pollbooks to the election judges for use on  
29 election day. Pollbooks generated from the central voter file must contain the following  
30 information for each individual contained therein:

- 31           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 must be challenged according to section 16.1-05-06.
6. The county, legislative district, city or township, school district, county commissioner district, if applicable, 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 administration 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:

1           a. Remove an individual from the central voter file or change a record of an  
2           individual contained in the central voter file in a manner or for a purpose not  
3           authorized by law; or

4           b. Add a name of an individual to the central voter file or add a record of an  
5           individual contained in the central voter file in a manner or for a purpose not  
6           authorized by law.

7       2. A deputy, clerk, employee, or other subordinate of a county auditor who has  
8       knowledge or reason to believe that a violation of this chapter has occurred shall  
9       immediately transmit a report of the knowledge or belief to the county auditor,  
10       except if the suspected violation may have been committed by the county auditor,  
11       in which case the report must be immediately transmitted to the state's attorney,  
12       together with any evidence of the violation. A county auditor who has knowledge  
13       or reason to believe that a violation of this chapter has occurred shall immediately  
14       transmit a report of the knowledge or belief to the state's attorney of the county  
15       where the violation is believed to have occurred, together with any evidence of the  
16       violation. The county auditor shall also immediately send a copy of the report to  
17       the secretary of state.

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

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

22       **16.1-05-06. Challenging right of person to vote - Identification or affidavit**  
23       **required - Penalty for false swearing - Optional poll checkers.**

24       1. One poll challenger appointed by the district chairman of each political party  
25       represented on the election board is entitled to be in attendance at each polling  
26       place. Individual poll challengers may be replaced at any time during the hours of  
27       voting, but no more than one poll challenger from each political party is entitled to  
28       be in attendance at each polling place at any one time.

29       2. ~~The members~~ Any member of the election board ~~and poll challengers~~ may  
30       challenge the right of ~~anyone~~ an individual to vote ~~whom they know or have if the~~  
31       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.
- e. The individual offering to vote fails or refuses to provide an appropriate form of identification as requested under subsection 3.

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 is not provided or 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,

1           another form of identification displaying a photograph of the individual and the  
2           individual's date of birth, or another appropriate form of identification prescribed by  
3           the secretary of state. If an individual offering to vote fails or refuses to show an  
4           appropriate form of identification, the individual may be allowed to vote without  
5           being challenged according to section 16.1-05-06 if the individual provides to the  
6           election board the individual's date of birth and if a member of the election board or  
7           a clerk knows the individual and can personally vouch that the individual is a  
8           qualified elector of the precinct. After verifying that the individual's name is  
9           contained in the pollbook generated from the central voter file, poll clerks shall  
10           verify the individual's residential address and mailing address, if different from the  
11           individual's residential address.

12           2. If the individual's name is not contained in the pollbook generated from the central  
13           voter file, the individual may be challenged according to section 16.1-05-06 and  
14           the individual's name must be recorded in the pollbook. The poll clerks shall  
15           request and obtain any additional information for the individual required to be  
16           included in the pollbook.

17           3. When verifying an individual's eligibility or when entering the name of an individual  
18           into the pollbook, poll clerks shall request, correct, and update any incorrect or  
19           incomplete information about an individual that is required to be contained in the  
20           pollbook generated from the central voter file.

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

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

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

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

1           **54-09-08. Secretary of state's general services operating fund.** The secretary of  
2 state's general services operating fund is a special fund in the state treasury. Moneys in the  
3 fund are to be used pursuant to legislative appropriations for the provision of services under  
4 section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and  
5 sections 54-09-10 and 54-09-11. At the close of each fiscal year, the secretary of state shall  
6 transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars  
7 to the general fund.