

Introduced by

Representative Froseth

Senator Krebsbach

1 A BILL for an Act to amend and reenact sections 15.1-09-16, 16.1-11-38, 16.1-14-01,
2 16.1-15-01, 16.1-15-02, 16.1-15-04, 16.1-15-05, 16.1-15-06, and 16.1-15-08, subsections 1
3 and 2 of section 16.1-15-09, sections 16.1-15-12, 16.1-15-13, 16.1-15-15, 16.1-15-16,
4 16.1-15-19, 16.1-15-21, 16.1-15-22, 16.1-15-24, 16.1-15-25, 16.1-15-29, 16.1-15-30,
5 16.1-15-33, 16.1-15-34, 16.1-15-35, 16.1-15-43, 40-21-17, and 58-04-15 of the North Dakota
6 Century Code, relating to tie votes and the canvassing of votes; and to repeal sections
7 16.1-15-02.1 and 16.1-15-03 of the North Dakota Century Code, relating to canvassing of
8 votes.

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

10 **SECTION 1. AMENDMENT.** Section 15.1-09-16 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **15.1-09-16. School district election - Tie breaker.** If the election results in a tie, the
13 business manager of the district shall notify, in writing, the candidates between whom the tie
14 exists. Within three days after the election, at a time agreed upon by the candidates, the
15 election must be decided in the presence of the judges and clerks of the election, ~~in a manner~~
16 ~~agreed upon by the candidates~~ by a drawing of names. A candidate involved in a tie vote may
17 withdraw the candidate's name from consideration if the candidate is willing to sign a statement
18 to that effect in the presence of and witnessed by the filing officer of the election. If no
19 candidates remain, the office is to be filled according to the rules of filling an office when a
20 vacancy exists. The school district business manager shall make and keep a record of the
21 proceedings.

22 **SECTION 2. AMENDMENT.** Section 16.1-11-38 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **16.1-11-38. Tie vote determination.** In case of a tie vote the nominee or nominees
2 must be determined by a ~~coin flip~~, drawing of names in the presence of the candidates upon at
3 least five days' notice to each candidate, by the canvassing board or boards concerned, at a
4 time and place designated by the board. A candidate involved in a tie vote may withdraw the
5 candidate's name from consideration if the candidate is willing to sign a statement to that effect
6 in the presence of and witnessed by the filing officer of the election. If no candidates remain,
7 the office is to be filled according to the rules of filling an office when a vacancy exists.

8 **SECTION 3. AMENDMENT.** Section 16.1-14-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **16.1-14-01. Canvassing votes for presidential electors - Tie vote.** The state
11 canvassing board in examining and making a statement of the votes for, and in determining
12 and certifying the persons chosen as, presidential electors shall proceed in the manner
13 prescribed in this title for the canvass of votes for state officers. The secretary of state likewise
14 shall file and record such statement and determination. In canvassing the returns for
15 presidential electors, the group of electors having the greatest number of votes is to be
16 declared elected. If two or more groups of electors are found to have an equal and the greatest
17 number of votes, the election of one group must be determined by a ~~coin flip~~ drawing of names,
18 with the governor ~~flipping~~ drawing the coin names in the presence of the other members of the
19 state canvassing board.

20 **SECTION 4. AMENDMENT.** Section 16.1-15-01 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **16.1-15-01. Ballots void and not counted - Part of ballot may be counted.**

- 23 1. In the canvass of the votes at any election, a ballot is void and may not be counted
24 if:
- 25 a. It is not endorsed with the ~~official stamp and~~ initials as provided in this title; or
 - 26 b. It is impossible to determine the elector's choice from the ballot or parts of a
27 ballot, and in the case of electronic voting systems, based upon the criteria
28 established by the secretary of state for counting votes on each electronic
29 voting system authorized for procurement and use in the state according to
30 section 16.1-06-26.

2. If With the exception that a voter must, for paper ballots, darken the oval next to the preprinted name of a candidate or the name of a write-in candidate written on the ballot, if a ballot is marked so only a part of the voter's intention can be determined, the election judges shall count such part. If an elector votes for more than the number of persons to be elected to any office, the elector's ballot may be invalidated only insofar as the elector's vote for such office is concerned, and the balance of the elector's ballot, if otherwise proper, may not be invalidated. However, at primary elections only, a party ballot is void if the elector votes for candidates of more than one party.

SECTION 5. 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 votes reports - Location - Public may attend. After the polls are closed, the inspector of elections and the judges shall immediately ~~place the stamp and inkpad in the manila wrapper provided by the county auditor and seal it with the seal provided by the county auditor and then they shall open the ballot boxes and count and compare the ballots with the poll clerks' lists. If the~~ generate the canvass report from the electronic voting system. The ballots compare and are counted by the machine must be equal in number with the names on the poll clerks' lists, the election board shall proceed immediately to canvass the votes. If the numbers are not equal, the pollbooks are to be rechecked to find the discrepancy. The canvass shall continue without adjournment until completed and must be open to the public. Except in unusual and compelling circumstances, the ~~vote~~ 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 other location must be in the same precinct and the removal must be approved by the election board. In no case may the ballots be removed to another location ~~for tally~~ prior to generating the canvass report after the ballot boxes have been opened. 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 6. AMENDMENT. Section 16.1-15-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-04. ~~Duplicate Three canvass reports prepared by election board - Tally of votes separate~~ One for county auditor and one for each political party. The election board shall ~~prepare duplicate~~ generate at least three canvass reports ~~of the total votes cast for each candidate or measure from the electronic voting system. The figures must agree with the poll clerks' books and the number of ballots.~~ The ballots may not be sealed, nor may the election tally books or the duplicate three canvass reports be signed, by the election board or poll clerk until the figures and counts in the poll clerks' books and in the duplicate canvass reports and the number of ballots cast all show the same totals for ballots cast. ~~The tally of the votes must be separate for each political designation or principle and must be returned as such by the judges and inspector of elections, who shall give the full vote for each candidate. A signed canvass report is to be given to each judge so that the political parties have a record of the votes cast.~~

SECTION 7. AMENDMENT. Section 16.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-05. Oath required of members of election board upon completion of canvass - Contents. At the conclusion of the canvass of the votes, each member of the election board shall sign an affidavit to the effect that the ballots have been counted and the votes canvassed as provided in this chapter and that the returns as disclosed by the ~~tally books of election kept by the poll clerks, and the duplicate canvass reports;~~ agree with the number of ballots cast and are true and correct of the member's own knowledge.

SECTION 8. AMENDMENT. Section 16.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-06. Reports and pollbooks sent to county auditor - Compensation for making returns ~~–County auditor to forward pollbook to clerk of United States district court and to the clerk of the North Dakota district court.~~ By twelve noon of the day Immediately following an election the canvass, except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by the inspector of elections, personally shall deliver one of the duplicate signed canvass reports provided for in section 16.1-15-04 to the county auditor. The reports, carefully sealed under cover, accompanied by

both of the pollbooks provided for in ~~section~~ sections 16.1-02-13 and 16.1-06-21, ~~and the~~
~~wrapped and sealed stamp and inkpad~~, with the oaths of the inspector and poll clerks affixed
thereto, must be delivered properly to the county auditor. The person making the return shall
receive compensation therefor in accordance with section 16.1-05-05. ~~However, no~~
~~compensation and no mileage may be paid if delivery of the ballots is not made by twelve noon~~
~~on the day following the election~~. The compensation and mileage must be paid out of the
county treasury on a warrant of the county auditor and is full compensation for returning all
used or voided ballots ~~and for delivering the ballot boxes to the proper official~~. ~~Within thirty~~
~~days after receipt thereof following each presidential election, each county auditor shall forward~~
~~one of the pollbooks to the clerk of the United States district court for the district encompassing~~
~~that county for the clerk's official use~~. The county auditor shall request return of the pollbook
~~thirty days after receipt thereof by the clerk of the United States district court~~. The county
auditor shall provide the clerk of the North Dakota district court of said county with a pollbook to
be used by the clerk for jury selection.

SECTION 9. AMENDMENT. Section 16.1-15-08 of the North Dakota Century Code is
amended and reenacted as follows:

16.1-15-08. Wrapping and returning of ballots to clerk of the district court. After
~~having prepared~~ generating the reports and poll lists provided for in section 16.1-15-06 for
delivery to the county auditor, the election board shall cause the ballots ~~of each kind~~ containing
lawful write-in votes cast at the election to be placed in a suitable wrapper to form a complete
wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar manner.
The ballots and wrappers must then be tightly secured at the outer end to completely envelop
and hold the ballots together. Ballots that are void must be secured in a separate wrapper and
must be marked "void". Ballots that are spoiled must be separately secured and marked
"spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each
wrapper must be endorsed with the ~~name~~ names or ~~number~~ numbers of the ~~precinct~~ precincts
and the date on which the election was held. The wrappers must be sealed securely in a
manner prescribed by the secretary of state so the wrappers cannot be opened without an
obvious and permanent breaking of the seal. The ballots, together with those found void or
spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes
of absentee ballots rejected as defective, must be returned in person to the clerk of the district

1 court. At the meeting of the county canvassing board, the clerk of the district court shall deliver
2 the ballots containing lawful write-in votes from all the precincts within the county. Ballots used
3 with any electronic voting system or counted by an electronic counting machine must be sealed
4 and returned as provided in this section.

5 **SECTION 10. AMENDMENT.** Subsections 1 and 2 of section 16.1-15-09 of the North
6 Dakota Century Code are amended and reenacted as follows:

- 7 1. Election officers shall ~~make returns~~ generate reports of votes cast upon electronic
8 voting systems and counted on electronic counting machines for all candidates
9 and for any measures or questions in the same manner as now or hereafter
10 provided by law or rule insofar as such provisions of law or rule are applicable.
- 11 2. Within the ability of an electronic counting machine to accurately do so, all ~~ballots~~
12 ~~not containing write-in votes may are to~~ be counted by the machine ~~prior to the~~
13 ~~counting and recording of the ballots containing write-in votes.~~ After the election
14 results have been accumulated centrally in the county auditor's office, if the
15 number or percentage of write-in votes for an office meet the criteria established in
16 section 16.1-12-02.2, the county canvassing board shall canvass the votes for the
17 write-in names for that office to determine final election results.

18 **SECTION 11. AMENDMENT.** Section 16.1-15-12 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **16.1-15-12. ~~Ballot boxes delivered to officers for custody~~ Care and custody of**
21 **ballot boxes and voting machines.** ~~In organized townships or in cities, the inspector of~~
22 ~~elections, if the inspector is not the officer in question, shall deliver the ballot boxes to the~~
23 ~~chairman of the board of supervisors of the township or to the executive officer of the city in~~
24 ~~which the election precinct is situated, as the case may be. The officer shall keep the boxes in~~
25 ~~safe custody until the next election or hand them over to the officer's successor in office to be~~
26 ~~kept safely by the successor until such time. At the following general or primary election, the~~
27 ~~officers shall hand the ballot boxes over to the inspector of elections. In unorganized~~
28 ~~townships, the inspector of elections shall cause the ballot boxes to be delivered to the county~~
29 ~~auditor at the same time the ballots are returned to the county auditor. Ballot boxes and voting~~
30 machines are to be under the care and custody of the county auditor and assigned staff
31 members.

1 **SECTION 12. AMENDMENT.** Section 16.1-15-13 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **16.1-15-13. District judge or clerk of district court to keep ballots ~~forty-five days -~~**
4 **Exception - Use of ballots as evidence.** Immediately upon receiving the ballots as provided
5 in section 16.1-15-08, the district judge or the clerk of district court shall give a receipt therefor
6 to the election judges and shall place the ballots properly arranged in the order of the precinct
7 number in boxes that shall be securely locked. The boxes must be placed in a fireproof vault
8 and must be kept securely for forty-five days. ~~They~~ if the ballots do not contain federal offices
9 and twenty-two months if the ballots contain federal offices. With the exception of the ballots
10 containing lawful write-in votes that may be counted at the meeting of the county canvassing
11 board, the ballots may not be opened nor inspected, except upon court order in a contested
12 election, when it is necessary to produce them at a trial for any offense committed at an
13 election, or to permit election officials to complete their duties. ~~Forty-five~~ Either forty-five days
14 or twenty-two months after the election dependant upon the retention schedule outlined in this
15 section, upon determination by the district judge or the clerk of district court that no contest is
16 pending, the ballots must be destroyed. If any contest of the election of any officer voted for at
17 the election or a prosecution under the provisions of this title is pending at the expiration of
18 such time, the ballots may not be destroyed until the contest or prosecution is finally
19 determined. The ballots returned to the district judge or clerk of district court as provided in this
20 section must be received in evidence without introducing further foundation.

21 **SECTION 13. AMENDMENT.** Section 16.1-15-15 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **16.1-15-15. County canvassing board - Composition.** The county canvassing board
24 must be composed of the clerk of the district court, county auditor, and chairman of the board of
25 county commissioners, and may include a representative of the district committee of all
26 legislative districts which wholly or partly fall within the boundaries of the county as appointed
27 by the district chairmen of the two political parties ~~which~~ that received the highest number of
28 votes cast for governor at the most recent general election at which a governor was elected. A
29 representative of the district committee may participate in the county canvassing board if the
30 district chairman gives notice to the county auditor of the intent to participate before the
31 meeting of the county canvassing board. For any special county election when the county is

1 composed of more than one legislative district and the election does not involve any legislative
2 or statewide office, the county canvassing board must be composed of the clerk of the district
3 court, county auditor, chairman of the board of county commissioners, and one representative
4 as appointed by the state chairman for each of the two political parties that received the highest
5 number of votes cast for governor at the most recent general election at which a governor was
6 elected.

7 **SECTION 14. AMENDMENT.** Section 16.1-15-16 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **16.1-15-16. Qualifications of members of canvassing board - Replacements -**
10 **Quorum.** No member of the county canvassing board who would not be eligible to serve as a
11 member of the election board pursuant to subsection 2 of section 16.1-05-02 may serve on the
12 county canvassing board. If any of the members of the board other than the representatives of
13 the two political parties are disqualified or cannot serve for any other reason, the county
14 commissioners who would be qualified to serve on the board shall appoint alternates to serve in
15 the place of those members of the board who are disqualified. If any of the representatives of
16 the district committees of the two parties are disqualified or cannot serve for any other reason
17 and if the party wishes to have representation, the district chairmen shall appoint an alternate
18 from their respective district committees to act as a member of the county canvassing board. A
19 majority of the confirmed members of the board or their duly appointed alternates constitute a
20 quorum and may make the canvass provided for in this chapter and certify the results thereof.

21 **SECTION 15. AMENDMENT.** Section 16.1-15-19 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **16.1-15-19. County canvassing board to disregard technicalities, misspelling,**
24 **and abbreviations - Write-in votes canvassed - Votes from unestablished precincts**
25 **disregarded.** In canvassing the election returns, the county canvassing board shall disregard
26 technicalities, misspelling, and the use of initial letters or abbreviations of the name of any
27 candidate for office if it can be ascertained for whom the vote was intended. Pursuant to
28 section 16.1-12-02.2, the board shall canvass all qualifying write-in votes. The board may not
29 count votes polled in any place except at established precincts. The county canvassing board
30 is authorized to ~~stamp and~~ initial all absentee ballots cast pursuant to section 16.1-07-09 that

were not considered or counted or were rejected at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12.

SECTION 16. AMENDMENT. Section 16.1-15-21 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-21. Primary election statement prepared by county canvassing board -

Contents. The county canvassing board, upon canvassing the returns of a primary election, shall prepare a statement signed by the members of the board and filed in the office of the county auditor. The statement must contain all of the following:

1. The names of all candidates voted for at the primary election with the number of votes received by each and for what office. The statement must be made separately for each political party or principle.
2. The names of the persons or candidates of each political party or principle who receive the highest number of votes for the respective offices. If more than one person is required to be elected to a given office at the next ensuing general election, there must be included in the statement the names of so many of the candidates of the party receiving the next highest number of votes for that office as there are persons to be elected to the office at said ensuing general election. The statement must be made separately for each political party.
3. The total number of ballots cast at the primary election.

A separate statement of the votes cast for ~~United States senator, United States representative, state officers, judges of the supreme court, judges of the district courts, and members of the legislative assembly~~ must be transmitted to the secretary of state ~~as provided in this chapter~~ according to reporting instructions specified by the secretary of state.

SECTION 17. 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, under the auditor's official seal, shall return to the secretary of state by registered or certified mail within ten days after the day of any primary election, a certified abstract, 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 ~~for United States senator, United~~

~~States representative, state officers, judges of the supreme court, judges of the district courts,~~
~~and members of the legislative assembly~~ 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 to be mailed under
this section must be in the possession of the secretary of state before four p.m. on the tenth
day after the primary election.

SECTION 18. AMENDMENT. Section 16.1-15-24 of the North Dakota Century Code is
amended and reenacted as follows:

**16.1-15-24. Abstracts of votes of general election made by county canvassing
board - Contents.** The county canvassing board, when canvassing the returns of a general
election, shall make abstracts of votes from the certified reports of the inspectors of elections ~~in~~
~~the following manner:~~ according to the reporting instructions specified by the secretary of state.

- ~~1. The abstract of votes for United States senator and United States representative~~
~~and for all state officers, judges of the district courts, initiated or referred measures,~~
~~and constitutional amendments must be on one sheet.~~
- ~~2. The abstract of votes for members of the legislative assembly must be on one~~
~~sheet.~~
- ~~3. The abstract of votes for county officers must be on one sheet.~~

SECTION 19. 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.** Within ten days and
before four p.m. on the tenth day following any general election, the county auditor of each
county, under official seal, shall return to the secretary of state a certified abstract of the votes
cast in the county at the election ~~for each candidate for state and congressional offices, judges~~
~~of the district courts, candidates for the legislative assembly, and for amendments to the~~
~~constitution and other measures. In presidential years, the county auditor shall make a~~
~~separate certified abstract of the votes cast for electors for president and vice president of the~~
~~United States. The separate abstract for presidential electors must be sealed, endorsed~~
~~"presidential election returns", and~~ according to the reporting instructions specified by the

1 secretary of state. All certified abstract of votes must be transmitted by registered or certified
2 mail to the secretary of state.

3 **SECTION 20. AMENDMENT.** Section 16.1-15-29 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **16.1-15-29. Determining tie vote in county offices.** If the requisite number of county
6 officers are not elected because two or more persons have equal and the highest number of
7 votes for one and the same office, a recount must be done pursuant to section 16.1-16-01. If a
8 recount results in a tie vote, the county auditor shall give notice to the persons to appear at the
9 county auditor's office at a time appointed by the county auditor. The persons then shall
10 publicly decide by a ~~coin flip~~ drawing of names which of them must be declared elected. The
11 county auditor shall prepare and deliver to the person elected an election certificate as provided
12 in this chapter.

13 **SECTION 21. AMENDMENT.** Section 16.1-15-30 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **16.1-15-30. Determining tie vote for legislative assembly.** If the requisite number of
16 persons are not elected to the state senate or house of representatives because two or more
17 persons have equal and the highest number of votes for one and the same office, a recount
18 must be done pursuant to section 16.1-16-01. If a recount results in a tie vote, the county
19 auditor, if the legislative district in question is within one county, shall notify the secretary of
20 state. The secretary of state shall notify the persons with equal and the highest number of
21 votes to appear in the office of the secretary of state at a time fixed by the secretary of state.
22 The time fixed may not be more than five days from the date the tie is determined by the county
23 auditor. On the date fixed, the persons notified to appear shall publicly decide by ~~the toss of a~~
24 ~~coin~~ a drawing of names which of them must be declared elected, and the secretary of state
25 shall prepare and deliver to the person elected a certificate of election as provided in this
26 chapter. If the legislative district in question is within the boundaries of more than one county,
27 the county auditor of the county which cast the greater number of votes for the office of
28 governor at the last election at which a governor was elected shall proceed in accordance with
29 this section.

30 **SECTION 22. AMENDMENT.** Section 16.1-15-33 of the North Dakota Century Code is
31 amended and reenacted as follows:

16.1-15-33. State canvassing board - Membership - Oath - Quorum -

Compensation. The clerk of the supreme court, the secretary of state, the state treasurer, and the chairman, or chairman's designee, of the state committee of the two political parties which cast the highest vote for governor at the last general election at which a governor was elected shall constitute the state canvassing board. The duties of the state canvassing board are ministerial, mandatory, and nondiscretionary and consist of canvassing the results received from the various counties, ~~computing~~ verifying the computed final results, and certifying the results on the basis of the canvass. After taking the oath required of civil officers, the board shall proceed to canvass publicly the election returns made by the county auditors. Three members of the board constitute a quorum and may make the canvass provided for in this chapter and certify to the result thereof. If less than a quorum attend on the day appointed for a meeting of the board, the members attending may summon other state officers until there is a sufficient number to constitute a quorum. Any other state officer, upon being notified by the members of the board, shall attend without delay and act as a member of the board. Members of the board may be compensated only for their expenses incurred in attending meetings in accordance with sections 44-08-04 and 54-06-09. The compensation must be paid from the appropriation to the secretary of state.

SECTION 23. AMENDMENT. Section 16.1-15-34 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-34. Member of state canvassing board - When disqualified. When a member of the state canvassing board is a candidate for any office for which that member canvasses the votes, the ~~governor shall designate some other state officer to act in that member's stead at the session of the board while the votes given for that member are being~~ canvassed member shall be removed from that portion of the canvass. If a quorum still exists, the remaining members shall canvass the votes for that office. If a quorum does not exist, another state officer, summoned according to the authorization granted the state canvassing board in section 16.1-15-33, shall be required to canvass the votes for that office.

SECTION 24. AMENDMENT. Section 16.1-15-35 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-35. Meeting of state canvassing board. Not later than seventeen days next following a primary, general, or special election, the state canvassing board shall meet at the

1 office of the secretary of state for the purpose of canvassing and ascertaining the result of the
2 election. The secretary of state shall notify the members of the board of the date and time of
3 the meeting.

4 **SECTION 25. AMENDMENT.** Section 16.1-15-43 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **16.1-15-43. When special election ordered.** ~~If there is no choice~~ a certificate of
7 election cannot be issued for a judicial district office, other than the office of member of the
8 ~~legislative assembly,~~ or a state office because any two or more persons have equal and the
9 highest number of votes, the governor, by proclamation, shall order a new election.

10 **SECTION 26. AMENDMENT.** Section 40-21-17 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **40-21-17. Highest number of votes elects in municipal election - Procedure on tie**
13 **vote.** The person having the highest number of votes for any municipal office shall be declared
14 elected to such office. In case of a tie vote in the election of any municipal officer, a recount
15 must be conducted pursuant to section 16.1-16-01. If a recount results in a tie vote, the choice
16 must be determined by a ~~coin flip~~ drawing of names in the presence of the governing body of
17 the municipality and in a manner it directs. A candidate involved in a tie vote may withdraw the
18 candidate's name from consideration if the candidate is willing to sign a statement to that effect
19 in the presence of and witnessed by the filing officer of the election. If no candidates remain,
20 the office is to be filled according to the rules for filling an office when a vacancy exists.

21 **SECTION 27. AMENDMENT.** Section 58-04-15 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **58-04-15. Tie vote - How determined.** If two or more persons have an equal and the
24 highest number of votes for an office, the judges of election, immediately and publicly, shall
25 determine by a ~~coin flip~~ drawing of names who of such persons shall be declared elected. A
26 candidate involved in a tie vote may withdraw the candidate's name from consideration if the
27 candidate is willing to sign a statement to that effect in the presence of and witnessed by the
28 filing officer of the election. If no candidates remain, the office is to be filled according to the
29 rules for filling an office when a vacancy exists.

30 **SECTION 28. REPEAL.** Sections 16.1-15-02.1 and 16.1-15-03 of the North Dakota
31 Century Code are repealed.