

Sixtieth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1374

Introduced by

Representatives Boehning, Haas, Headland

Senator Dever

1 A BILL for an Act to amend and reenact sections 16.1-16-01 and 16.1-16-07 of the North
2 Dakota Century Code, relating to election recounts.

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

4 **SECTION 1. AMENDMENT.** Section 16.1-16-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **16.1-16-01. Election recounts.** A recount of any primary, special, or general election
7 for nomination or election to a congressional, state, district, legislative, county, or city office, or
8 for the approval or disapproval of any measure, question, or bond issue submitted to the
9 qualified electors of this state or one of its political subdivisions must be conducted as follows:

10 1. A recount must be conducted when:

- 11 a. Any person failed to be nominated in a primary election by one percent or less
12 of the highest vote cast for a candidate for the office sought.
- 13 b. Any person failed to be elected in a general or special election by one-half of
14 one percent or less of the highest vote cast for a candidate for that office.
- 15 c. A question, measure, or bond issue submitted to the qualified electors has
16 been decided by a margin not exceeding one-fourth of one percent of the total
17 vote cast for and against the question at any election.

18 2. A demand for a recount may be made by any of the following:

- 19 a. Any person who failed to be nominated in a primary election by more than one
20 percent and less than two percent of the highest vote cast for a candidate for
21 the office sought.
- 22 b. Any person who failed to be elected in a general or special election by more
23 than one-half of one percent and less than two percent of the highest vote
24 cast for a candidate for that office.

- 1 3. A demand for a recount must be made within three days after the canvass of the
2 votes by the county canvassing board in the case of county elections and city
3 elections that are combined with the county and by the state canvassing board in
4 the case of congressional, state, district, or legislative elections. The demand must
5 be in writing, must recite one of the conditions in subsection 2 as a basis for the
6 recount, must contain a bond in an amount previously established by the auditor or
7 auditors doing the recount sufficient to pay the cost of the recount, and must be
8 filed with:
 - 9 a. The secretary of state when the recount is for a congressional, state, district,
10 or legislative office.
 - 11 b. The county auditor when the recount is for a county office or city office when a
12 city election is combined with the county.
- 13 4. Within four days after the canvass of the votes by the state canvassing board in the
14 case of congressional, state, district, or legislative elections, the secretary of state
15 shall notify all the county auditors to conduct recounts as required by subsection 1
16 and, when a timely recount demand is received and it is in proper form, as required
17 by subsection 2. The secretary of state shall fix the date or dates of the recounts
18 of legislative contests to be held within seven days after giving notice to the
19 affected auditors that recounts must be conducted. The secretary of state shall fix
20 the date or dates of the recounts of statewide races to be held within fourteen days
21 after giving notice to the auditors that recounts must be conducted. Within four
22 days after the canvass of votes by the county canvassing board or other political
23 subdivision canvassing board, the county auditor or other political subdivision
24 election official shall fix the date for recounts limited to the county, those cities
25 within the county which combined the election with the county, or other political
26 subdivision. The date must be within eight days after the canvass. In all recount
27 proceedings, the county auditor or other election official, as appropriate, shall send
28 notice of the date, place, and time of the recount to all candidates and petitioners
29 involved by certified mail.
- 30 5. Recount employees. For recounts conducted by counties of federal, state, district,
31 and county offices, measures, and questions, the county auditor must conduct the

1 recount and may employ up to four qualified electors of the county to assist in the
2 recount. The county auditor shall review all paper and electronic voting system
3 ballots and associated records, whether the ballots were counted at the precinct or
4 the county canvass, and all absentee ballots cast pursuant to section 16.1-07-09 to
5 determine which ballots were cast and counted according to the law, including that
6 the ballots were properly initialed and that the initials found on the ballots are
7 verified as those of the precinct election board members. The county auditor shall
8 check the precinct count and the count of the county canvassing board. If the
9 county auditor is a candidate involved in the recount, the county auditor is
10 disqualified from acting thereon, and the ~~clerk of the district court of the county~~
11 recorder shall perform the duties required of the county auditor by this section. For
12 recounts conducted by political subdivisions other than counties of local offices,
13 measures, and questions, the election officer in a political subdivision shall
14 administer a recount in the same manner as is required under this subsection for
15 counties with respect to political subdivision ballot measures, questions, or bond
16 issues.

17 6. Recount participants. The persons entitled to participate at the recount are:

- 18 a. Each candidate involved in the recount, either personally or by a
19 representative.
20 b. A qualified elector favoring each side of a question if the recount involves a
21 question or proposition submitted to a vote of the electorate.

22 The persons allowed to participate may challenge the acceptance or exclusion of
23 any ballot. The person challenging a ballot must state the reason for the challenge
24 based upon the law, and the county auditor or other political subdivision election
25 official shall count the challenged ballot as the auditor or election official deems
26 proper and shall then set the ballot aside with a notation that it was challenged and
27 how it was counted.

28 7. Recount board. At the conclusion of the recount, the county auditor or other
29 election official shall submit all challenged ballots to the recount board for decision.
30 Except for political subdivision recounts other than counties, the recount board
31 must be composed of the state's attorney of the county, the chairman of the board

of county commissioners, and the ~~clerk of the district court of the county~~ recorder.

Unless otherwise specified by law, for a political subdivision other than a county, the governing body of the political subdivision shall appoint the recount board. No

person may serve on the recount board if the person ~~would not be qualified to~~

~~serve on the election board pursuant to subsection 2 of section 16.1-05-02~~ has

anything of value bet or wagered on the result of the election, is a candidate for the

office being recounted, or is the husband, wife, father, mother, father-in-law,

mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister,

whether by birth or marriage, of the whole or the half-blood, of any candidate

involved in the recount. If any of the members of the recount board are disqualified

or cannot serve for any other reason, the members of the board of county

commissioners or other political subdivision governing body who would be qualified

to serve on the board shall appoint disinterested qualified electors of the county or

other political subdivision to serve as alternates. The recount board shall review all

challenged ballots and on majority vote shall decide how those ballots are counted.

The recount board 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 or by the county canvassing boards as provided in

section 16.1-15-19. The decision of the recount board is final, subject to the right

to contest the election as provided in this chapter. If during the recount a recess is

called, the county auditor or other political subdivision election official shall take

appropriate steps to safeguard the ballots.

~~7.~~ 8. The county auditor or other election official shall certify the results of the recount no

later than three days after the recount. The recount result is the official result of

the election in the county or other political subdivision. The county auditor or other

election official shall prepare a corrected abstract of the votes. In a recount limited

to the county, city, or other political subdivision, if the corrected abstract shows no

change in the outcome of the election, no further action may be taken. If the

corrected abstract changes the outcome of the election, the county auditor or other

election official shall issue certificates of nomination or election accordingly and

shall certify the new result of a question submitted to the qualified electors. In the case of a city election that is combined with a county election, the county auditor shall certify the new results of the election to the city auditor who is responsible for issuing new certificates of election if applicable.

~~8-~~ 9. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than three days after the recount, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.

~~9-~~ 10. The expenses incurred in a recount of a county election must be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a political subdivision other than a county election must be paid by that political subdivision. The expenses incurred in a recount of a city election must be paid by the city on a warrant by the city auditor. The expenses incurred in a recount of a congressional, state, or legislative election must be paid by the state from the general fund upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the person requesting the recount.

~~40-~~ 11. This section also applies to city elections that are not combined with the county except the city auditor, to the extent applicable, shall perform the duties of the county auditor.

SECTION 2. AMENDMENT. Section 16.1-16-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots.

Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the ~~district judge or to the clerk of district court~~ county recorder of any county where the contestant or the contestee desires the ballots

preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of

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- 1 the ~~district judge or the clerk of district court~~ county recorder to preserve all the paper ballots
- 2 and electronic voting system ballots and associated records until the contest has been finally
- 3 determined.