

Testimony Prepared for the
Senate GVA

April 8, 2021

By: Donnell Preskey, NDACo

RE: Support for HB 1253- Election Reform

Chairman Vedaa and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. In that capacity, I serve as Executive Director for the County Auditors Association which stands in support of this bill.

County auditors commend the Secretary of State's office and Representative Scott Louser for the diligent effort put forward in this bill to update our state's election law. Prior to the session, auditors identified several of the items included in this bill as items to address this legislative session. We provided testimony during the House hearing and offered recommendations in an effort to further improve this bill. While our recommendations weren't considered by the House GVA committee, Rep. Louser has included many of them in his amendments proposed to you today.

Changes included in HB 1253 that we support are:

- Updating of outdated language.
- Outlines the procedure for signature verification to include specifying that process to include only written communication or an in person visit to the county office. This eliminates the many phone calls made by the county auditor's office.
- Eliminates the requirement to print 3 copies of reports from DS200's. **This bill does not eliminate this. Against our recommendation a couple of sessions ago, the counties submitted a bill to reduce the number of reports generated from the tabulator. We opposed this because each of the reports generated from the tabulator had a specific purpose – one went back to the county along with the results and the other two went to the judges from each political party so they could have an independent verification of the polling place results to which they could compare against what ultimately is submitted to the county auditor.**
- Addresses questions regarding residency of a candidate.
- Addresses questions regarding candidate vacancies.
- Addresses time limit in polling place following closure of polls.
- Eliminates need to wrap write-in ballots as new equipment makes this unnecessary.
- Statement clarifying signature on application affidavit will be compared to signature on ballot envelope affidavit.

Overall, HB 1253 is a good bill, and addresses many areas of election law. North Dakota County Auditors support a vast majority of this bill, there are a few more items we request your strong consideration on to further improve this important piece of legislation.

Working from the proposed amendments to HB 1253 document drafted by Rep. Louser, I have

highlighted items we would like to see further amending.

Section 14 Amendment

We support the clarifying language addressing the intent of HB 1256 in this bill. Auditors are concerned about the unintended consequences of HB 1256, and how it could prohibit a business or church donating the use of space for a polling location or how it could prohibit residents in a community from providing a meal to election workers on Election Day.

However, we oppose subsection 2 which establishes a penalty. HB 1256 did not include a penalty so this is new language. I'd also remind this committee that HB 1256 passed the Senate narrowly (24/22). A class A misdemeanor is a heavy penalty to place for a violation. That penalty is punishable up to 365 days in jail and \$3,000 fine. An "A misdemeanor" is the penalty for a 3rd DUI or Assault. The Legislature's message has been sent that they do not want counties to accept grant dollars for elections. A penalty is NOT necessary. **The vast majority of penalties associated with elections are either a class A misdemeanor or a class C felony. The penalty of a class A misdemeanor just makes this section consistent with other election offenses that are minor. An election offense of any kind is serious, and the penalty is a deterrent. Election officials should not accept private funds for election administration, and we don't think the any official will, but the penalty should not be so minor that there is a temptation to ignore the law because the penalty is so minor. Additionally, the penalty would only apply after legal action is taken, the individual is found guilty, and the court hands down the penalty.**

Page 17 & SO amendments- endorsement language

Amendments are good additions, based on recommendations from Auditors to apply this to the statewide and legislative party races as this doesn't apply to local "non-party" races. **So this is a support rather than a suggested amendment.**

Page 25 & 28 amendments— Signature verification

This was one of the items Auditors identified as being a priority item this session to add language to the application affidavit and ballot affidavit clarifying to the voter the signatures will be compared. These changes will only further enhance the signature verification procedures. Auditors would like to see additional language added to specify that electronic signatures are not allowed. **The language proposed in the bill would still allow county auditors to reject the electronic signatures from any application submitted on a paper form and on the return envelope with the ballot, but it wouldn't eliminate the good the bill does for voters living with disabilities and would not take away the access to the ballot that has been in law for years for military and overseas voters. Please do not accept the requested amendment from the counties.**

Section 64 Amendment— application for mail ballots

I would like to draw your attention to the language highlighted in this section. We would urge you not to include the additional language highlighted in the amendment. Auditors do not have access to a list of individuals eligible to vote in the state for the first time. Therefore, we are requesting on the proposed amendment document to remove "and each qualified individual to vote in the state for the first time". That language is being proposed to be inserted in two places. **Actually, the counties have access to this information at the same time as the Secretary of State. This is primarily to make sure that vote by mail counties send an absentee ballot application to any individual who will turn 18 before an election.**

Three-hour time limit to return results

I'm sure you have recognized by now, that this language looks familiar. The senate soundly defeated a bill that set a three-hour time limit to deliver results to the county auditor with a vote of 14-32; which followed a do not pass recommendation from this committee. County Auditors again, oppose the changes suggested in the proposed amendments to HB 1253 attempting to put this in law. **Nothing in law says that the results from a polling place must be brought back to the county by more than one poll worker. By sealing the results stick in a tamper-proof bag, one poll worker can easily bring back the results. In fact, this chain of custody is common practice in other states. Also, this proves why the multiple tabulation report requirement was a wise law that was unfortunately eliminated.**

I want to assure the committee that poll workers are very busy at the end of election night and that the results tabulation work happens simultaneously with the poll site clean up work. Poll workers divide up and conquer all the work at the end of the night with both the election results work and the clean up work ending at nearly the same time.

We do offer a recommendation, one that auditors believe will address the issue more appropriately. Recognizing that there has been one county with an issue of a voter who holds up the process by protesting to cast their ballot in a timely fashion, we propose the following:

Page 3, line 22, after "mark the ballot" insert "for an additional one hundred fifty minutes." **This changes the intent of the initial amendment to get the results back to the county auditor as quickly as possible. It places an ending time limit for how long a voter may take to mark and cast their ballot. Although it was stated that a poll worker could "call law enforcement" to kick a voter out of a polling place, that would be the last thing a poll worker would want to do since they would probably be taken to court over that action. The law doesn't need to place an ending time limit for voters to mark and cast their ballot because there will be no incentive to stay in the polling place if they are made aware that staying later than 30 minutes will not hold up the election day results.**

You'll find this proposed amendment on my additional proposed amendments to HB 1253 page included in my testimony.

With that change you can remove the language that I have overstruck and highlighted on the Louser Proposed Amendment document for the references on Page 66.

What this change will do is:

- };a- Provide clear direction to voter they have 30 minutes after polls close to complete their ballot if they want it to be cast and counted on Election night. **The bill already says that the Secretary of State will provide instructions for poll workers across the state to follow.**
- };a- At 30 minutes, if they haven't completed their ballot they are provided 2.5 additional hours to complete their ballot. The ballot will not be included in the Election night totals; but will be counted at canvassing. **Already addressed as unwise.**
- };a- This change will provide clear direction to the inspector to gather the ballot at end of the three hours. **Already addressed as unwise.**
- };a- Ensures all ballots delivered to the precinct are accounted for and delivered to the

county auditor at the end of Election night. **No more than what the bill already does.**

};a- Provides clear direction on how to handle "protest voters". **The bill already does this.**

};a- Procedure will be outlined in Century Code. **If needed the Secretary of State could place the instructions in Administrative Code, but the instructions don't need to be in the NDCC.**

Turning your attention back to the additional amendments the Auditors propose.

The time limit issue is addressed in the first amendment provided. The next eight amendments are all related to shortening the timeline for auditors to update voter history these are found in **Section 16 and 19 of the bill (version.05008)**

The changes in HB 1253 change the following deadlines for auditors:

};a- Section 16, subsection 1 shortens the time frame for an Auditor to enter voter information for voters who voted but were not in the central voter file – the time to complete this task would be reduced from **forty-five days to 3 business days** with using the language suggested of "before the meeting of the county canvassing board". **This section only addresses the entry of new voters into the Central Voter File. Because nearly 100% of the individuals voting do so with their ND Driver's License or nondriver's ID. The only possible new voters would be those who vote using their tribal ID or with a long-term care certificate.**

};a- Section 16, subsection 2 shortens the time frame for the Secretary of State and Auditors to query the central voter file for individuals who voted more than once from **eighty-five days to 17 days**. **This subsection only deals with the Secretary of State. Since the implementation of electronic poll books, the posting of voting credit is an electronic rather than the manual process that it used to be. With our new technology, this electronic process is very quick.**

};a- Section 19 shortens the time frame for auditors to post the voting history of individuals from **75 days to 20 days**. **As stated during testimony, the later deadline that is in current law makes it nearly impossible for someone to contest an election because individuals who were not qualified to vote. The shortened deadlines not only provide the necessary data to those that need it, but it allows the contest to be decided before a candidate takes the Oath of Office. In the Cass and Sioux County scenarios that were just resolved in the last weeks, it would be horrifying if the recertification of results had overturned who was elected to a public office. Had that been a legislator, the 2021 legislative assembly is nearly at an end. This would not look good, and we need to prevent that from happening in the future. Further, election laws should not prioritize convenience for election officials over election integrity. Finally, over 50% of the counties already met the timeline proposed in this bill after the November election in 2020.**

Auditors are puzzled on why this time frame should be adjusted. It's important for you to recognize that this is a part of the process that takes time, it shouldn't be rushed and there are several tasks auditors need to accomplish to prepare for the county canvassing board meeting. In addition, elections aren't the only responsibility of our county auditors. There has been no testimony supporting a reason for changing these dates. **There is plenty of verbal testimony.**

Therefore, as you will see on the additional proposed amendments submitted with my testimony we are asking you to leave the dates as they currently are in century code. **Please do not accept this for the reasons stated.**

It's also important to recognize that even if an individual is identified for voting more than once; no adjustments can be made to the vote totals as there is no way to know how that individual voted *nor* can you determine which ballot should be discarded. Regardless, of when it is determined – the county auditor will forward the information to the state's attorney for possible prosecution. **This has nothing to do with what is contemplated by a court when an election is contested.**

The final amendment we bring to you for your consideration relates to the appointment of judges. Section 22 lays out the process – district chairs are supposed to appoint judges from each party. When the county auditor doesn't get a response, they find individuals to fill those roles. Subsection 2 of Section 22 adds language that would require the auditor then to provide notice of the appointment to the district party chair. Auditors question the rationality in this when they are acting to fill those positions due to unresponsiveness from the chair.

Therefore, as you can see in the amendments we submitted, we are asking for that language to be removed. **It is never correct for a district party chairman or chairwoman to fail to provide the counties with the names of the election judges they have appointed. However, if a county has to resort to appointing the judges, the district should still be made aware of who is representing them on the election board. I'm fairly certain that a district political party would have strong opposition to a member of the opposite party being appointed by the county. Notifying the districts soon after the 40-day requirement for district parties to appoint judges would provide ample time to resolve any problems that may come up with who was appointed. Better to have that discussion well in advance of the election rather than day of. Best is to have the district parties appoint the election judges as they are supposed to do so.**

Mr. Chairman, I appreciate your patience in allowing us to walk through the details and offer recommendations. The North Dakota County Auditor's Association respectfully requests you to take some time to review their suggested amendments and give them thorough consideration. I know this was a lot and may have been confusing as I was working from the proposed amendments from Rep. Louser and additional amendments we are offering. I am willing to work with a subcommittee to help expedite the process.

*** Suggestions for further amending Rep. Louser's .06006 amendment from ND County Auditors Association are highlighted below

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1253

Page 1, line 6, after the third comma insert "and"

Page 1, line 6, after the fourth comma insert "section 1 of House Bill No. 1256, as approved by the sixty-seventh legislative assembly, sections"

Page 1, line 14, after the third comma insert "16.1-11.1-02,"

Page 1, line 18, after the second comma insert "16.1-15-06,"

Page 10, after line 26, insert:

"SECTION 14. AMENDMENT. Section 1 of House Bill No. 1256, as approved by the sixty-seventh legislative assembly, is amended and reenacted as follows:

SECTION 1. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Use of nonpublic funds prohibited - Penalty.

1. The state and political subdivisions may not solicit, accept, or use any grants or donations from private persons for elections operations or administration except:
 - a. The use of privately owned facilities for polling places;
 - b. Food for poll workers; and
 - c. Other nonmonetary donations that are not used to prepare, process, mark, collect, or tabulate ballots or votes.
2. An individual who knowingly violates subsection 1 is guilty of a class A misdemeanor.

Page 17, line 12, remove "Have printed on the ballot "The word 'endorsed' following or under a candidate's"

Page 17, remove lines 13 through 15

Page 17, line 16, remove "f."

Page 17, line 18, replace "g.:" with "L"

Page 17, line 22, replace "b." with "g/

Page 25, line 8, after "signature" insert", a notification the signature on this affidavit will be compared to the signature on the affidavit on the envelope in which the absentee ballot must be placed"

Page 27, line 21, replace "voter who is blind, visually impaired, or print disabled" with "qualified elector living with a disability that prevents the elector from reading or marking the ballot without assistance"

Page 27, line 21, after "and" insert "who".

Page 28, after line 17, insert:

"The signature on this affidavit will be compared to the signature on the affidavit included in the application for the absentee ballot."

Page 50, line 9, after the period insert "The word 'endorsed' or 'petition' will appear after or under the name of a candidate for statewide or legislative district office. The word 'endorsed' in this context means the candidate was endorsed by the political party indicated. The word 'petition' in this context means the candidate circulated a petition for signatures to be included on the ballot."

Page 50, line 23, after the first "g" insert "statewide or legislative district"

Page 50, line 26, after "g" insert "statewide or legislative district"

Page 53, after line 17, insert:

"SECTION 64.AMENDMENT. Section 16.1-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11.1-02.Application for mail ballots.

The county auditor shall mail an application form for a mail ballot to each individual active voter listed in the central voter file for the county and each qualified individual eligible to vote in the state for the first time on one date no sooner than the fiftieth day before the election and no later than the fortieth day before the election. The county auditor, for two consecutive weeks after the date on which the mail ballot applications are mailed, shall publish in the official newspaper of the county an application form for a mail ballot and a notice that additional mail ballot applications may be obtained from the election official. The application form for a mail ballot must be in substantially the form provided in section 16.1-07-06."

Page 53, line 28, replace "individual" with "active voter"

Page 53, line 29, after "mail" insert "and each qualified individual eligible to vote in the state for the first time"

Page 64, line 11, remove "A voter may take up to thirty minutes to mark and cast the ballot after"

Page 64, remove lines 12 through 20

Page 66, line 3, overstrike "After" and insert immediately thereafter:

"1. Within three hours after"

Page 66, line 3, overstrike "polls are closed" and insert immediately thereafter "official closing time of the polling place"

Page 66, line 4, after "system" insert "and deliver the report to the county auditor in the time frame provided in section 16.1 15 06"

Page 66, line 6, overstrike "shall" and insert immediately thereafter "must"

Page 66, line 7, after the period insert

"2."

Page 66, after line 18, insert:

"SECTION 90. AMENDMENT. Section 16.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-06. Canvass report and pollbooks sent to county auditor - Compensation for making returns.

Immediately following

1. Following 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 the signed canvass report provided for in section 16.1-15-04 to the county auditor within three hours after the official closing time of the polling place. The report, carefully sealed under cover, accompanied by the pollbook provided for in sections 16.1-02-13 and 16.1-06-21 with the oaths of the inspector and poll clerks affixed thereto, must be delivered properly to the county auditor.
2. The individual making the return is entitled to receive compensation therefor in accordance with section 16.1-05-05. 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 to the proper official."

Renumber accordingly

ADDITIONAL PROPOSED AMENDMENTS TO HB 1253

Page 3, line 22, after "mark the ballot" insert "for an additional one hundred fifty minutes."

Page 11, line 26, remove the overstrike over "Within forty five days"

Page 11, line 26, remove "Before the meeting of the county canvassing board"

Page 12, line 1, remove the overstrike over "within eighty-five"

Page 12, line 2, remove the overstrike over "days following an election"

Page 12, line 2, remove "before the meeting of the state canvassing board,"

Page 13, line 20, remove the overstrike over "Within seventy-five days after each election"

Page 13, line 20, remove "Before the end of the contest period allowed"

Page 13, line 21, remove "under section 16.1-16-04"

Page 16, line 5, remove "and provide notice of the appointment to the district party"

Page 16, line 6, remove "chair"

The reasons that these should not be accepted are addressed above.