

**FIRST ENGROSSMENT  
with Senate Amendments**

Fifty-sixth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1149**

Introduced by

Political Subdivisions Committee

(At the request of the Secretary of State)

1 A BILL for an Act to amend and reenact sections 16.1-01-05, 16.1-05-06, 16.1-07-08, 44-02-01,  
2 and 58-04-09 of the North Dakota Century Code, relating to voting by an elector moving from  
3 one precinct to another, procedures for challenging voters and voters who apply for absent  
4 voter's ballots, and when vacancies in office occur.

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

6 **SECTION 1. AMENDMENT.** Section 16.1-01-05 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **16.1-01-05. Voting by qualified elector moving from one precinct to another.**

9 ~~Where~~ If a qualified elector moves from one precinct to another precinct within this state, the  
10 ~~person~~ elector is entitled to vote in the precinct from which the ~~person~~ elector moved until the  
11 ~~person~~ elector has established a new ~~voting~~ residence pursuant to section 16.1-01-04.

12 **SECTION 2. AMENDMENT.** Section 16.1-05-06 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **16.1-05-06. Challenging right of person to vote - Affidavit required - Penalty for**  
15 **false swearing - Optional poll checkers.**

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

21 2. The members of the election board and poll challengers may challenge the right of  
22 anyone to vote whom they know or have reason to believe is not a qualified  
23 elector. Members of the election board or poll challengers may challenge a voter if  
24 they know or have reason to believe any of the following:

- 1           a. The person offering to vote does not meet the age or citizenship  
2           requirements.
- 3           b. The person offering to vote has never voted in the precinct before and fails to  
4           provide reasonable evidence of residency in the precinct.
- 5           c. Except as provided in section 16.1-01-05, the person offering to vote  
6           physically resides outside of the precinct.
- 7           d. The person offering to vote does not physically reside at the address within  
8           the precinct from which the person intends to vote.
- 9        3. If any person offering to vote is challenged by a poll challenger or by a member of  
10       the election board, the challenged person, unless the challenge is withdrawn, shall  
11       stand aside and may not vote unless the challenged person executes an affidavit,  
12       acknowledged before the election inspector, that the challenged person is a legally  
13       qualified elector of the precinct.
- 14       4. The affidavit must include ~~the~~:
- 15       a. The name and present address of the affiant and the address of the affiant at  
16       the time the affiant last voted.
- 17       b. The previous last name of the affiant if it was different when the affiant last  
18       voted.
- 19       c. A recitation of the qualifications for voting as set forth in section 16.1-01-04  
20       and the rules for determining residence.
- 21       d. Notice of the penalty for making a false affidavit and that the county auditor  
22       may verify the affidavit.
- 23       e. A place for the affiant to sign and swear to the affiant's qualifications as a  
24       voter.
- 25       5. Written notice of the penalty for making a false affidavit and that the county auditor  
26       ~~will~~ may verify the affidavits must also be prominently displayed at the polling place  
27       in a form prescribed by the secretary of state. Any person who falsely swears in  
28       order to vote is guilty of ~~an offense~~ a class A misdemeanor and must be punished  
29       pursuant to chapter 16.1-01.

1           6. The county auditor shall verify randomly at least ten percent of the affidavits signed  
2           in the county and shall report all known or suspected violations to the state's  
3           attorney for investigation and possible prosecution.

4       ~~2-~~ 7. In addition to the poll challenger, not more than two poll checkers appointed by the  
5           district chairman of each political party represented on the election board may be  
6           in attendance at each polling place, provided such poll checkers do not interfere  
7           with the election process or with the members of the election board in the  
8           performance of their duties. The poll challengers and poll checkers must be  
9           qualified electors of the district in which they are assigned.

10       ~~3-~~ 8. No poll challenger or checker may be a member of the election board.

11           **SECTION 3. AMENDMENT.** Section 16.1-07-08 of the North Dakota Century Code is  
12   amended and reenacted as follows:

13           **16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope**  
14   **- Challenging electors voting by absentee ballot - Inability of elector to sign name.**

15           1. Upon receipt of an application for an official ballot properly filled out and duly  
16           signed, or as soon thereafter as the official ballot for the precinct in which the  
17           applicant resides has been prepared, the county auditor, city auditor, or business  
18           manager of the school district, as the case may be, shall send to the absent voter  
19           by mail, at the expense of the political subdivision conducting the election, one  
20           official ballot, or personally deliver the ballot to the applicant or the applicant's  
21           agent, which agent may not, at that time, be a candidate for any office to be voted  
22           upon by the absent voter. The agent shall sign the agent's name before receiving  
23           the ballot and deposit with the auditor or business manager of the school district,  
24           as the case may be, authorization in writing from the applicant to receive the ballot  
25           or according to requirements set forth for signature by mark. No person may  
26           receive compensation, including money, goods, or services, for acting as an agent  
27           for an elector, nor may a person act as an agent for more than four electors in any  
28           one election. A voter voting by absentee ballot may not require the political  
29           subdivision providing the ballot to bear the expense of the return postage for an  
30           absentee ballot.

1           2. If there is more than one ballot to be voted by an elector of the precinct, one of  
2           each kind must be included and an envelope must be enclosed with the ballot or  
3           ballots. The front of the envelope must bear the official title and post-office  
4           address of the officer supplying the voter with the ballot and upon the other side a  
5           printed statement in substantially the following form:

6           Precinct \_\_\_\_\_

7           Name \_\_\_\_\_

8           Residential Address \_\_\_\_\_

9           City \_\_\_\_\_ ND Zip Code \_\_\_\_\_

10          Under penalty of possible criminal prosecution for making a false  
11          statement, I swear that ~~the above residential address is my address for~~  
12          ~~voting purposes~~ I reside at the residential address provided above,  
13          that I have resided in my precinct for at least thirty days, and this is the  
14          only ballot I will cast in this election.

15          Applicant's Signature \_\_\_\_\_

16          Date \_\_\_\_\_

17          If the absent voter is unable to sign the voter's name, the voter shall mark (X) that  
18          statement in the presence of a disinterested person. The disinterested person  
19          shall print the name of the person marking the X below the X and shall sign that  
20          person's own name following the printed name with the notation "witness to the  
21          mark".

22          3. The county auditor, city auditor, or business manager of the school district, as the  
23          case may be, may challenge the right of anyone to vote an absent voter's ballot  
24          whom that officer knows or has reason to believe is not a qualified elector. When  
25          challenging a voter who has applied for an absentee voter's ballot, the election  
26          official shall follow the procedures and use the affidavit provided for in section  
27          16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot  
28          along with an explanation that the voter's right to vote is being challenged and that  
29          the voter's affidavit must be completed and returned with the voter's absentee  
30          voter's ballot to be accepted.

1           **SECTION 4. AMENDMENT.** Section 44-02-01 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **44-02-01. Vacancies - Causes thereof.** An office becomes vacant if the incumbent  
4 shall:

- 5           1. Die in office;
- 6           2. Be adjudged mentally ill;
- 7           3. Resign from office;
- 8           4. Be removed from office;
- 9           5. Fail to discharge the duties of ~~his~~ the office, when ~~such~~ the failure has continued for  
10 sixty consecutive days, except when prevented from discharging ~~such~~ the duties  
11 by reason of ~~his~~ the person's service in the armed forces of the United States, by  
12 sickness, or by other unavoidable cause; ~~provided, however, that.~~ However, as to  
13 any office which under the law the vacancy must be filled by the governor, the  
14 governor for good cause shown may extend the period, which the incumbent may  
15 be absent, for an additional period of sixty days. No remuneration on account of  
16 such office may be paid to an absentee officeholder during ~~his~~ that person's  
17 absence, and ~~such~~ the office in all cases becomes vacant upon the termination of  
18 the term for which ~~he~~ the person was elected or appointed;
- 19           6. Fail to qualify as provided by law;
- 20           7. Cease to be a resident of the state, district, county, or ~~township~~ other political  
21 subdivision in which the duties of the office are to be discharged, or for which ~~he~~  
22 the person may have been elected;
- 23           8. Be convicted of a felony or any offense involving moral turpitude or a violation of  
24 ~~his~~ the person's official oath;
- 25           9. Cease to possess any of the qualifications of office prescribed by law; or
- 26           10. Have ~~his~~ the person's election or appointment declared void by a competent  
27 tribunal.

28           **SECTION 5. AMENDMENT.** Section 58-04-09 of the North Dakota Century Code is  
29 amended and reenacted as follows:

30           **58-04-09. Challenge to voter - Duty of judges.** If any person offering to vote at any  
31 election or upon any question arising at a township meeting is challenged as unqualified using

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- 1 the criteria provided in section 16.1-05-06, the judges shall proceed in the manner in which
- 2 judges at a general election are required to proceed, adapting the affidavit described in section
- 3 16.1-05-06 to the circumstances of the township meeting.