

Fifty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1354

Introduced by

Representatives Galvin, Byerly, Grande, M. Klein

Senator Thane

1 A BILL for an Act to amend and reenact sections 16.1-07-09 and 16.1-15-19 and subsections 5  
2 and 6 of section 16.1-16-01 of the North Dakota Century Code, relating to the counting of  
3 absentee ballots.

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

5 **SECTION 1. AMENDMENT.** Section 16.1-07-09 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **16.1-07-09. Canvassing of mailed absent voters' ballots received late.** In the case  
8 of congressional, state, county, city, or school district elections, if an envelope postmarked or  
9 otherwise officially marked by the United States postal service or other mail delivery system  
10 before the date of election and containing an absent voter's ballot is received by the officer too  
11 late to be forwarded to the proper voting precinct in time to be tabulated, the ballot must be  
12 tallied by the canvassing board of the county, the governing body of the city, or the school  
13 board of the school district, as the case may be, at the time the returns are canvassed. Any  
14 envelope without a postmark or other official marking by the United States postal service or  
15 other mail delivery system or with an illegible postmark or other official marking and containing  
16 an absentee voter's ballot must be received by mail by the proper officer within two days after  
17 the election to be canvassed and counted. An absent voter may personally deliver the absent  
18 voter's ballot to the appropriate officer's office at any time before five p.m. on the day before the  
19 election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer  
20 forwarding the ballot shall print the date of receipt on the envelope. Upon receipt, the  
21 canvassing board shall first determine that the elector was qualified to vote in that precinct and  
22 that the elector did not previously vote in that precinct on the date of the election before  
23 allowing the ballot to be tallied.

1           **SECTION 2. AMENDMENT.** Section 16.1-15-19 of the 1999 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **16.1-15-19. County canvassing board to disregard technicalities, misspelling, and**  
4 **abbreviations - Votes from unestablished precincts disregarded.** In canvassing the  
5 election returns, the county canvassing board shall disregard technicalities, misspelling, and the  
6 use of initial letters or abbreviations of the name of any candidate for office if it can be  
7 ascertained for whom the vote was intended. The board may not count votes polled in any  
8 place except at established precincts. The county canvassing board is authorized to stamp and  
9 initial ~~properly postmarked~~ all absentee ballots cast pursuant to section 16.1-07-09 that were  
10 not considered or counted or were rejected at the various precincts in the county for the  
11 reasons provided in sections 16.1-07-11 and 16.1-07-12.

12           **SECTION 3. AMENDMENT.** Subsections 5 and 6 of section 16.1-16-01 of the 1999  
13 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 14           5. Except for recounts conducted by political subdivisions other than counties,  
15 recounts must be conducted by the county auditor who may employ up to four  
16 qualified electors of the county to assist in the recount. The county auditor shall  
17 review all paper, machine, and electronic voting system ballots, whether the ballots  
18 were counted at the precinct or the county canvass, and all ~~properly postmarked~~  
19 absentee ballots cast pursuant to section 16.1-07-09 to determine which ballots  
20 were cast and counted according to the law. The county auditor shall check the  
21 precinct count and the count of the county canvassing board. If the county auditor  
22 is a candidate involved in the recount, the county auditor is disqualified from acting  
23 thereon, and the clerk of the district court of the county shall perform the duties  
24 required of the county auditor by this section. The election officer in a political  
25 subdivision other than a county which is conducting a recount shall administer a  
26 recount in the same manner as is required under this subsection for counties with  
27 respect to political subdivision ballot measures, questions, or bond issues.
- 28           6. The persons entitled to participate at the recount are:
- 29           a. Each candidate involved in the recount, either personally or by a  
30           representative.

b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor or other political subdivision election official shall count the challenged ballot as the auditor or election official deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor or other election official shall submit all challenged ballots to the recount board for decision. Except for political subdivision recounts other than counties, the recount board 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. 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. 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 ~~properly postmarked~~ 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.