

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2409
(Senators Stenehjem, O'Connell)
(Representative Berg)

AN ACT to create and enact two new sections to chapter 16.1-01, a new section to chapter 16.1-06, and a new section to chapter 16.1-13 of the North Dakota Century Code, relating to the secretary of state establishing an election fund, the establishment of a state-based voting grievance procedure and to certify and decertify electronic voting systems, and the casting of ballots after poll closings; to amend and reenact sections 16.1-01-01, 16.1-01-07, 16.1-05-04, 16.1-06-03, 16.1-06-04, 16.1-06-05, 16.1-06-08, 16.1-06-10.1, 16.1-06-11, 16.1-06-12, 16.1-06-14, 16.1-06-15, 16.1-06-17, 16.1-06-19, 16.1-07-13, 16.1-13-22, 16.1-13-24, 16.1-13-25, 16.1-13-26, 16.1-13-29, 16.1-13-32, 16.1-13-33, 16.1-15-01, 16.1-15-09, and 16.1-15-10, subsection 5 of section 16.1-16-01, and sections 16.1-16-07 and 40-21-09 of the North Dakota Century Code, relating to the duties of the secretary of state concerning administration of elections authorizing direct-recording electronic voting systems and prohibiting voting machines, electronic voting systems, and counting machines employing punch cards; to repeal sections 16.1-06-10, 16.1-06-13, 16.1-06-24, and 16.1-15-11 of the North Dakota Century Code, relating to voting machines, requirements for voting machines, violations for tampering with voting machines, preparation of punch card ballots, and locking and securing voting machines; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

16.1-01-01. Secretary of state to supervise election procedures - County administrator of elections.

1. The secretary of state must be, ex officio, supervisor of elections and may employ additional personnel to administer this title. The secretary of state shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, electronic voting system or counting machine authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16 of this Act. The secretary of state, upon determining that any ballot or other material, electronic voting system or counting machine, or device is not in sufficient compliance with the law or established criteria and standards, shall direct the proper changes to be made, and in the case of electronic voting systems and counting machines, may decertify the electronic voting systems and counting machines according to the rules adopted under section 16 of this Act.
2. In addition to other duties provided elsewhere by law, the secretary of state shall:
 - a. Develop and implement uniform training programs for all election officials in the state.
 - b. Prepare information for voters on voting procedures.
 - c. Publish and distribute ~~to each county a political~~ an election calendar, a manual on election procedures, and a map of all ~~election~~ legislative districts ~~for state and national office in that county~~.

- d. Convene ~~an annual~~ a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state to discuss uniform implementation of state election policies.
 - e. Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments.
 - f. Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
 - g. Require such reports from county auditors on election matters as deemed necessary.
 - h. Certify results of statewide elections.
 - i. ~~Establish and carry out accounting procedures designed to reflect all election expenditures incurred by the state.~~
 - ~~j.~~ Prepare and publish biennial reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.
 - ~~k.~~ ~~j.~~ Establish standards for all election machinery, locations, voting precincts and polling locations, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including but not limited to, ballots, ~~wrappers, seals, stamps, ballot boxes,~~ pollbooks, tally sheets, and reports, ~~voting machines, electronic voting systems, and voting places.~~
 - ~~l.~~ k. Prescribe the order in which each political subdivision will appear on a primary an election ballot.
3. In carrying out the secretary of state's duties and to assure uniform voting opportunities throughout the state, and for the purpose of implementing the provisions of this title and any other requirement imposed upon the state by the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301 et seq.] not otherwise addressed in this Act, the secretary of state shall may from time to time issue rules and regulations the secretary of state deems necessary, which must be consistent with the provisions of this title or the Help America Vote Act of 2002 and be adopted and published in accordance with chapter 28-32, but which need not comply with section 28-32-07.
 4. In each county there must be a county administrator of elections who must be the county auditor. The county auditor is responsible to the secretary of state for the proper administration within the auditor's county of state laws, rules, and regulations concerning election procedures.
 5. In addition to other statutory duties, the county auditor shall:
 - a. Procure and distribute supplies required for voting in the county.
 - b. Prepare and disseminate voter information as prescribed by the secretary of state.
 - c. Carry out uniform training programs for all county and precinct election officials as prescribed by the secretary of state.
 - d. Receive and handle complaints referred to the county auditor by any voter or precinct official involving circulation of petitions, challenges to voters, actions of election officials, or irregularities of any kind in voting. The county auditor shall refer complaints to the secretary of state or the proper prosecuting authority, as the county auditor deems appropriate.

Upon completion of the duties required by this subsection, the county auditor shall certify to the secretary of state, in the manner prescribed by the secretary of state, that the duties have been completed.

SECTION 2. AMENDMENT. Section 16.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-07. Constitutional amendments and other questions to be advertised - Notification by secretary of state - Manner of publishing. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than fifty-five days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05. Questions to be submitted to the people of a particular county must be advertised in the same manner.

The secretary of state shall, at the same time the secretary of state certifies notice to the county auditors of the submission of a constitutional amendment or other question, certify the ballot form for such questions. The ballot form must conform to the provisions of section 16.1-06-09 and must be used by all county auditors in preparing ballots for submission to the electorate of each county and in the preparation of sample ballots. Any requirements in this title that a sample ballot be published will be met by the publication of either the paper ballot or the ballot as it will appear to persons using a an electronic voting machine system device, depending upon the method of voting used in the area involved. Absentee voter ballots may not be considered in determining which method of voting is used in an area. If both paper ballots and electronic voting machines system ballots are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. For two consecutive weeks before the sample ballot is published, an analysis of any constitutional amendment, initiated measure, or referred measure, written by the secretary of state after consultation with the attorney general, must be published in columns to enable the electors to become familiar with the effect of the proposed constitutional amendment or initiated or referred measure.

SECTION 3. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to establish and maintain an election fund. The secretary of state shall establish and maintain a fund, known as the election fund, in the state treasury for the purpose of depositing payments and grants made to the state under the provisions of sections 101, 101(c), and 906, and title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301, 42 U.S.C. 15545, 42 U.S.C. 15481-15502], and funds appropriated by the state. The moneys in the election fund must be used for the exclusive purpose of carrying out activities of the Help America Vote Act of 2002 and are subject to chapter 54-16.

SECTION 4. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to establish a uniform state-based administrative complaint procedure. The secretary of state shall establish a uniform state-based administrative complaint procedure to remedy grievances according to section 402 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15512]. The complaint procedure must be uniform and nondiscriminatory and address complaints of violations of any provision of title III of the Help America Vote Act of 2002, including a violation that has occurred, is occurring, or is about to occur. A complaint filed under the complaint procedure must be in writing, notarized, and be signed and sworn by the person filing the complaint. The secretary of state is authorized to consolidate complaints. At the request of a complainant, the secretary of state shall establish a procedure for providing a review on the record. If the secretary of state determines there is a violation of a provision of title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15481-15502], the secretary of state shall determine and provide an appropriate remedy. If the secretary of state determines that a violation of title III of the Help American Vote Act of 2002 has not occurred, the secretary of state shall dismiss the

complaint and publish the results of the review. The secretary of state shall make a final determination with respect to a complaint within ninety days of the date the complaint is filed with the secretary of state, unless the complainant consents to a longer period of time for the secretary of state to make a determination. If the secretary of state fails to meet the ninety-day deadline for determining a complaint, the complaint must be resolved within sixty days under an alternative dispute resolution procedure.

SECTION 5. AMENDMENT. Section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-04. Duties of the members of the election board during polling hours.

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.
2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.
3. The election inspector shall assign the poll clerks, an equal number from each political party represented on the election board, to perform the function of maintaining the pollbooks. The designated poll clerks shall maintain the pollbooks. Each pollbook must contain the name and address of each person voting at the precinct and must be arranged in the form and manner prescribed by the secretary of state.
4. The members of the election board shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector.
5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.
6. All members of the election board shall distribute ballots and other election materials to electors. An election judge from each party represented on the election board shall give any assistance requested by electors in marking ballots or operating electronic voting machines. ~~The election officers shall instruct voters on how to open and close voting machines and how to move the levers to cast and change votes~~ system devices.
7. Each member of the election board shall maintain order in the polling place.
8. ~~All members of the election board at each precinct using an electronic voting system shall, before the polls are open, verify that each voting device in that precinct contains a ballot label that correctly lists the names of the candidates legally on the ballot for that precinct and verify that the booklets are all identical in arrangement.~~

SECTION 6. AMENDMENT. Section 16.1-06-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-03. Official ballots only to be used. The official ballot prepared by the county auditor or the local auditor or clerk must contain the name of each candidate whose name has been certified to or filed with such auditor or clerk in the manner provided in this title. Ballots other than official ballots prepared by the county auditor or local auditor or clerk may not be cast or counted in any election governed by this title. The list of officers and candidates and the statements of measures and questions to be submitted to the voters must be deemed an official ballot in precincts in which ~~voting machines or~~ electronic voting systems are used.

SECTION 7. AMENDMENT. Section 16.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under this title for use in precincts in which ~~voting machines or~~ electronic voting systems are not used must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at that election.
4. Have the language "Vote for no more than _____ name (or names)" placed immediately under the name of each office.
5. Have printed thereon "Place a ~~crossmark~~ cross mark (X) by the name of the person for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."
6. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.
7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark the voter's choice for each candidate opposite the name of that candidate, and the space must precede or follow the candidate's name on the same line in a uniform manner.
8. Provide a space enclosed in a rectangle and have printed next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted." If a stamp with an inkpad is not required under section 16.1-06-18, the language next to the rectangle must be: "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted."

Any precinct that uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

In precincts in which electronic voting systems ~~purchased after June 30, 1985,~~ are used, the ballot ~~card~~ must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot ~~card~~ must otherwise be arranged in a manner and form approximating as far as possible the requirements of this section.

~~In precincts in which voting machines or electronic voting systems purchased before July 1, 1985, are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating the requirements of this section. In precincts in which electronic voting systems are used, the requirements of subsection 8 must be met for the ballot card and ballot envelope.~~

SECTION 8. AMENDMENT. Section 16.1-06-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-05. Form of general election ballot. The official ballots provided for in this title for partisan election at general elections in precincts in which electronic voting machines systems are not used must be prepared as follows:

1. The ballots must be of sufficient length and width to contain a continuous listing of the designation of all the offices to be voted for.

2. On the top left-hand side of such ballot must begin a continuous listing of the designation of each office to be voted for, and under the designation of each office all of the names of the candidates duly nominated for that office must be printed.
3. The names of candidates nominated for each office must appear under the designation of that office, and under each candidate's name must appear, in smaller type, the appropriate party designation for each candidate. Where a candidate has been nominated by petition, the designation under that candidate's name, in smaller type, must be "independent nomination".
4. The names of candidates under the designation of each office must be alternated in the printing of the official ballot in the same manner as is provided for the primary election ballot.
5. The size of type must be as specified by the secretary of state.

In precincts in which electronic voting machines systems are used, the list of offices and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating as far as possible the requirements of this section.

SECTION 9. AMENDMENT. Section 16.1-06-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-08. No-party ballot at general elections - Contents - Delivered to elector. There must be a separate no-party ballot at the general election upon which must be placed the names of all candidates who have been nominated on the no-party primary ballot at the primary election. Such ballots must be in the same form as the no-party primary ballot and must be delivered to each elector by the proper election official. In precincts in which ~~voting machines~~ or electronic voting systems are used, the list of offices and candidates must be entitled "no-party ballot" in a manner to clearly indicate the separation of the no-party list of offices and candidates from the party list of offices and candidates.

SECTION 10. AMENDMENT. Section 16.1-06-10.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-10.1. Electronic counting machines authorized - Sharing of machines. The use of electronic counting machines is authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which the election precinct is located, that the use is advisable or necessary in that precinct. Thereafter, ~~the electronic counting machines must~~ may be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, provided the machines being procured have been certified for procurement and use in the state by the secretary of state according to section 16 of this Act. Two or more counties may enter an agreement concerning the shared use and transport between counties of electronic counting machines and apportioning of expenses. Any electronic counting machine used in an election must be so constructed that when properly operated it registers or records correctly and accurately every vote cast.

SECTION 11. AMENDMENT. Section 16.1-06-11 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-11. Electronic voting systems authorized. The use of electronic voting systems in accordance with the provisions of this chapter is hereby authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, ~~the a system or systems must~~ may be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, provided the system or systems being procured have been approved and certified for

procurement and use in the state by the secretary of state according to section 16 of this Act. The system or systems may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

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

16.1-06-12. Definitions. As used in this title with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on ~~ballot cards~~ ballots or entered directly into a computer or other electronic device by means of a touchscreen or other data entry device and data processing machines which can be used for counting votes and tabulating results.
2. "Ballot card" means, ~~for a handcount paper ballot or for an electronic voting system purchased after June 30, 1985 includes,~~ a tabulating card paper ballot, recorded by optical scan reader, containing the names of offices and candidates and the questions to be voted on, which is used in conjunction with the voting marking device and on which votes may be recorded. ~~For an electronic voting system purchased before July 1, 1985, ballot card means a tabulating card on which votes may be recorded.~~ For direct recording electronic voting systems, ballot means the ballot display provided by electro-optical devices showing the names and candidates and the questions to be voted on that allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device.
3. "Ballot envelope" means the envelope in which the ballot card is enclosed and upon which the names of write-in candidates may be written.
4. "Ballot label" means, ~~for an electronic voting system purchased before July 1, 1985, the booklet or guide containing the names of offices, candidates, and questions to be voted on, which is used in conjunction with the voting device and voting card.~~
5. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.
4. "Direct-recording electronic voting system" means a voting system that records votes by means of a ballot display provided by electro-optical devices that allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device. An alphabetic keyboard may be employed as an entry device to facilitate voting for write-in candidates. A voter's choices are stored in the direct-recording electronic voting system's internal memory devices and added to the choices of all other voters.
6. 5. "Electronic voting system" means a system ~~employing a,~~ or the combination of electronic voting systems and devices authorized under this chapter, that may employ a marking device in conjunction with ~~ballot labels~~ ballots or ~~ballot cards~~ the use of a touchscreen or other data entry device and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.
6. "Electronic voting system device" means a single unit of an electronic voting system.
7. "Voting Marking device" means a device in which ~~ballot cards are used in connection with a punch device for the piercing of ballots by the voter,~~ a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.
8. "Optical scan" means a procedure in which votes cast on a paper ballot are tabulated by means of examining marks made in voting response locations on the ballot with an optical reader.

SECTION 13. AMENDMENT. Section 16.1-06-14 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-14. Requirements for electronic voting systems. Any electronic voting system used in an election in this state must:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.
2. Permit each voter to vote for as many persons for any office as the voter is entitled to vote for, and must allow each voter to vote in primary elections for candidates for nomination by the political party of the voter's choice, but it must preclude each voter from voting for more persons for any office than the voter is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.
3. Permit each voter, insofar as is possible, by the replacement of spoiled ballots, to change the voter's vote for any candidate, or upon any measure or question submitted to the voters, up to the time the voter begins the final operation to register the voter's vote.
4. Permit and require voting in absolute secrecy, and must be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, ~~save~~ except a voter whom the person has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism.
- ~~5. Have a counter, or other device, the register of which is visible at all times from the outside of the system, which must show during any period of tabulation the total number of votes tabulated during the period of tabulation and have a protective counter, or other device, which must record the cumulative total number of movements of the tabulating equipment.~~
- ~~6.~~ Be provided with a procedure by the use of which, immediately after the polls are closed, all voting is absolutely prevented.
- ~~7.~~ 6. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.
- ~~8.~~ 7. Be so constructed that a voter may readily learn the method of operating it.
- ~~9.~~ 8. Permit voting by ballot ~~and~~ or by entering directly into a computer or other electronic device by means of a touchscreen or other data entry device.
- ~~10.~~ 9. Permit voting for presidential electors by making only one mark ~~or punch.~~
- ~~11.~~ 10. Permit write-in voting and absentee voting.
- ~~12.~~ 11. Permit the rotation of names of candidates on ballots as required by this title.
12. In the case of electronic systems procured after August 1, 2003, be capable of notifying a voter that the voter has overvoted, undervoted, and in the case of a primary election, cross-party voted before the voter casts a ballot.
13. In the case of direct-recording electronic voting systems, capable of preventing a voter from overvoting and cross-party voting before the voter casts a ballot.
14. In the case of direct-recording electronic voting systems, be capable of producing in random order a paper copy of each ballot cast on the system.

15. Ensure that any direct-recording electronic voting system procured or used in the state may not transmit uncounted votes or ballots through the internet.
16. Fulfill the criteria and standards established by the secretary of state according to section 16 of this Act.

SECTION 14. AMENDMENT. Section 16.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-15. Mandatory testing of electronic voting systems before election and before and after tabulation of ballots.

1. All electronic voting systems used in this state must be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used ~~and before and after the counting of the ballots at each election.~~ The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials, ~~programs,~~ and any preaudited ballots used during the test must be sealed and retained in the same manner as ~~paper ballots~~ election materials after an election.
2. The test of an electronic voting system employing paper ballots must be conducted by processing a preaudited group of ~~ballet cards~~ ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.
3. The test ~~that is conducted before the election~~ must be conducted at least one week before the election ~~and~~. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot must be sent a notice of the test by the county auditor at least one week before the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.

SECTION 15. AMENDMENT. Section 16.1-06-17 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-17. County auditor to provide ballots and other electronic voting system supplies. At the same time as other election supplies are provided and distributed, the county auditor shall provide to each precinct in the county using an electronic voting system:

1. A sufficient number of electronic voting system devices and ballots if the electronic voting system employs ballots.
2. Four facsimile diagrams of the entire face of the electronic voting system device as it will appear on election day.
3. Appropriate instruction material for the use of the electronic voting system devices.
4. All other materials required to carry ~~on~~ out the election process through the use of electronic voting systems.

SECTION 16. A new section to chapter 16.1-06 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to adopt rules for the purpose of certifying and decertifying electronic voting systems and electronic counting machines. The secretary of state may adopt rules according to subsection 3 of section 16.1-01-01 for certifying and decertifying electronic counting machines authorized in section 16.1-06-10.1 and electronic voting systems authorized in section 16.1-06-11, including any software, hardware, and firmware components used as a part of an electronic voting system or electronic counting machine for use and procurement in the state. The rules may:

1. Establish criteria and standards with which all electronic voting systems and electronic counting machines must comply.
2. Describe the procedures for electronic voting systems and electronic counting machines, any single device of an electronic voting system and electronic counting machine, and any update and enhancement made to them, to be certified and decertified for procurement and use in the state.
3. Define what constitutes a vote on each electronic voting system and electronic counting machine which has been certified for procurement in the state.
4. Describe the procedures for the secretary of state to follow when defining what constitutes a vote on any new electronic voting system and electronic counting machine, any single device of an electronic voting system and electronic counting machine, and any update and enhancement made to them.

An electronic voting system and electronic counting machine, a single device of an electronic voting system and electronic counting machine, and an update and enhancement made to them, in use by a county prior to August 1, 2003, must be reviewed by the secretary of state according to rules adopted under this section by April 1, 2004, and must meet the requirements of the rules, or must be replaced by another electronic voting system and electronic counting machine, a single device of an electronic voting system and electronic counting machine, and an update and enhancement made to them, that meets the requirements of the rules by January 1, 2006.

SECTION 17. AMENDMENT. Section 16.1-06-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-19. Instructions, advertisements, maps, and ballots posted in polling places.

Each county auditor shall have cards printed, in large type, containing full instructions to electors on obtaining and ~~preparing~~ voting ballots and a copy of section 16.1-01-12, any federal laws regarding prohibitions on acts of fraud and misrepresentations, and general information on voting rights under applicable federal and state laws, including instructions on how to contact the appropriate officials if these rights are alleged to have been violated. The county auditor shall furnish ten such cards to the election inspector in each election precinct who, ~~prior to~~ before the opening of the polls, shall post at least one of the cards in each booth or compartment provided for the preparation of ballots and at least three of the cards in and about the polling place. Three of the official ballots without the official stamp thereon must be posted conspicuously in the polling place on the morning of the election. The county auditor, at the time of delivering the ballots to the inspector of elections in each precinct, shall deliver at least five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to such inspector of elections. Not less than three of ~~such~~ the newspaper publications or copies must be posted conspicuously in the polling place on the morning of the election. Each county auditor shall furnish the election inspector in each precinct with four copies of a map showing the election precinct's boundaries and information regarding the date of the election and the hours during which polling places will be open. The inspector shall, ~~prior to~~ before the opening of the polls, post the maps and information regarding the date of the election and the hours during which polling places will be open at the entry to and in other conspicuous places around the polling place.

SECTION 18. AMENDMENT. Section 16.1-07-13 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-13. Registration of absent voters' ballots on ~~voting machines or on electronic voting systems.~~ At polling places using ~~voting machines or~~ electronic voting systems, absent voters' ballots, if any, must be ~~registered on the voting machines or electronic voting systems~~ entered in secrecy by the two election judges. ~~The voting of absent voters' ballots on voting machines or voting systems must be done in sececrey by the two election judges, acting jointly, during the voting day at times when the voting machines or voting systems are not in use by voters, or after the close of the voting day and before the machines are unlocked for tallying.~~ The absentee electronic voting system ballots prepared pursuant to this section must be deposited in the ballot boxes and counted as other ballots. If the electronic voting system in use so provides, the actual electronic voting system ballot may be used as the absentee ballot.

SECTION 19. AMENDMENT. Section 16.1-13-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-22. Delivering ballot to elector - Stamping. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot ~~or ballot card, ballot stub, and ballot envelope~~ shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been stamped and initialed.

1. The paper ballot is considered stamped if it is either stamped with a stamp and an inepad or has the stamped information preprinted on the paper ballot, as provided in section 16.1-06-18.
2. ~~When an electronic voting system is used, the inspector or judge delivering the ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot stub is detached by anyone except an election inspector or judge, the ballot card and ballot envelope may not be deposited in the ballot box, but must be marked spoiled and placed with the other spoiled ballots.~~
3. At primary elections, the inspector or judge shall also inform each elector that if the elector splits the party ballot or votes for candidates of more than one party the elector's party ballot will be rejected.
4. 3. Before delivering any paper ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot ~~or ballot card and ballot envelope~~, if required under subsection 1, the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall initial the ballot. Failure to stamp and initial a paper ballot ~~or ballot card~~ in the proper place does not invalidate the ballot ~~or ballot card~~, but a complete failure to stamp and initial a paper ballot ~~or ballot card~~ does invalidate the ballot ~~or ballot card~~. ~~Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope does not invalidate the ballot envelope, but complete failure to stamp and initial a ballot envelope that has been used to write in a vote does invalidate the ballot envelope and the vote found thereon.~~

SECTION 20. AMENDMENT. Section 16.1-13-24 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-24. ~~Preparation of Voting on electronic voting system ballots devices.~~ Except as provided in this section, voting procedures for electronic voting systems must be ~~the same as for similar or as close as practicable to regular paper ballot voting.~~ After marking the ballot envelope or punching the ballot card for electronic voting systems, the voter shall place the ballot inside the ballot envelope and return it to the election judge. The judge shall remove the stub and deposit the envelope with the ballot inside the ballot box. The ballot stub must be deposited in an envelope provided for that purpose. Ballot cards from which the ballot stub has been detached by anyone except an election judge may not be deposited in the ballot box but must be marked spoiled and placed with other spoiled ballots. Voting procedures on direct-recording electronic voting system devices must follow as close as practicable the procedures for voting by paper ballot, with the exception of voting on a ballot display provided by

electro-optical devices which shows the names and candidates and the questions to be voted on and which allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device.

SECTION 21. AMENDMENT. Section 16.1-13-25 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-25. Elector may write or paste name on ballot - Counting. The provisions of this title do not prevent any elector from writing or pasting on the paper ballot ~~or ballot envelope~~, or in the case of direct-recording electronic voting system devices, entering by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted the same as if printed on the ballot and marked by the elector.

SECTION 22. AMENDMENT. Section 16.1-13-26 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-26. Name written or pasted on ballot evidence of vote without marking "x". If a name has been written or pasted, or in the case of direct-recording electronic voting system devices, entered by touchscreen or other data entry device, opposite an office to be voted for, it must be deemed sufficient evidence that the person ~~depositing~~ casting the ballot ~~or ballot envelope~~ intended to vote for the person whose name is written ~~or~~, pasted, or entered thereon, and not for the person whose name originally was printed on the ballot, whether or not the elector made a mark or cross opposite the written ~~or~~, pasted, or entered name.

SECTION 23. AMENDMENT. Section 16.1-13-29 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-29. Election booths or compartments - Number required - Expense. The inspector of elections shall provide a sufficient number of voting booths or compartments in the inspector's polling place, which must be designed to enable the elector to mark, or in the case of direct-recording electronic voting system devices, enter by touchscreen or other data entry device, the elector's ballot screened from observation. The number of booths or compartments in precincts ~~in which voting machines are not used~~ may not be less than one for each one hundred fifty electors or fraction thereof in the precinct. The expense of providing the booths or compartments must be paid in the same manner as other election expenses. One ~~voting machine or~~ electronic voting system device must be provided ~~for each two hundred electors or fraction thereof in the~~ each precinct.

SECTION 24. AMENDMENT. Section 16.1-13-32 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-32. Securing new ballot upon spoiling of others. If any elector spoils a ballot, ~~including an electronic voting system ballot~~, the elector may obtain others successively, one at a time, not exceeding three in all, upon returning each spoiled ballot. Each paper ballot returned must be canceled immediately and, together with those not distributed to the electors, must be preserved and secured in sealed packages and returned to the county auditor from whom received.

SECTION 25. AMENDMENT. Section 16.1-13-33 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-33. ~~Voting machines~~ - Electronic voting systems - Election laws apply. All provisions of law relating to the conduct of elections apply as closely as possible to elections at which ~~voting machines or~~ electronic voting systems are used.

SECTION 26. A new section to chapter 16.1-13 of the North Dakota Century Code is created and enacted as follows:

Voters casting ballots after regular poll closings - Provisional ballots. An individual who votes after the regular poll closing time in an election in which a federal office appears as a result of a

federal or state court order or any other order extending the time established for closing the polls under state law in effect ten days before the date of that election may only vote in that election by casting a provisional ballot. The ballot must be marked as a provisional ballot and must be separated and held apart from other ballots cast by those not affected by the order. The secretary of state shall approve the form of any provisional ballot and may prescribe any procedures the secretary of state determines to be necessary to facilitate the casting, secrecy, and counting of provisional ballots.

SECTION 27. AMENDMENT. Section 16.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. In the canvass of the votes at any election, a ballot is void and may not be counted if:
 - a. It is not endorsed with the official stamp and initials as provided in this title; or
 - b. It is impossible to determine the elector's choice from the ballot or parts of a ballot, and in the case of electronic voting systems, based upon the criteria established by the secretary of state for counting votes on each electronic voting system authorized for procurement and use in the state according to section 16 of this Act.
2. 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 28. AMENDMENT. Section 16.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-09. ~~Voting machines~~ - Electronic voting systems - Electronic counting machines - Returns.

1. Election officers shall make returns of votes cast upon ~~voting machines and on~~ electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law or rule insofar as such provisions of law or rule are applicable.
2. Within the ability of ~~the~~ an electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes.
3. Votes cast upon a direct-recording electronic voting system must be tabulated from the voter's choices stored in the system's internal memory devices that are added to the choices of all other voters.
4. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. The county auditor shall designate the public place or places where votes cast upon direct-recording electronic voting systems are to be counted.
5. All ~~such~~ counting centers used for counting votes cast upon electronic voting ~~system~~ ballots ~~systems~~ shall have tabulating equipment that has an element that generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element that generates a printed

record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. ~~Both printed records must be certified by the~~ The election inspector and the two election judges must certify both printed records.

6. If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number that must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the district judge or to the clerk of district court.

SECTION 29. AMENDMENT. Section 16.1-15-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-10. Failure of automatic tabulating or electronic counting equipment - Counting by alternate method. If the automatic tabulating or electronic counting equipment used as part of any electronic voting system, any electronic voting system device, or any electronic ~~voting~~ machine fails to operate during the ballot count at any election, the ballots must be counted by an alternate method.

SECTION 30. AMENDMENT. Subsection 5 of section 16.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~Except for~~ For recounts conducted by ~~political subdivisions other than~~ counties of federal, state, district, and county offices, measures, and questions, ~~recounts must be conducted by~~ the county auditor ~~who must conduct the recount and~~ may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper, ~~machine,~~ and electronic voting system ballots and associated records, whether the ballots were counted at the precinct or the county canvass, and all absentee ballots cast pursuant to section 16.1-07-09 to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor is disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section. ~~The~~ For recounts conducted by political subdivisions other than counties of local offices, measures, and questions, the election officer in a political subdivision ~~other than a county which is conducting a recount~~ shall administer a recount in the same manner as is required under this subsection for counties with respect to political subdivision ballot measures, questions, or bond issues.

SECTION 31. 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 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 the district judge or the clerk of district court to preserve all the paper ballots, and electronic voting system ballots, ~~and voting machine~~ associated records until the contest has been finally determined.

SECTION 32. AMENDMENT. Section 40-21-09 of the North Dakota Century Code is amended and reenacted as follows:

40-21-09. Election districts in council cities - Division and consolidation by ordinance - Ballots to be kept separate by wards. Each city operating under the council form of government in

which council members are elected at large constitutes an election district or voting precinct, and in all other cities each ward constitutes an election district or voting precinct. Whenever the number of electors in any two or more contiguous wards does not exceed one hundred as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate those two or more wards into one precinct for voting purposes. In any city containing less than four hundred electors as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate all the wards of the city into one precinct for voting purposes. An ordinance dividing or consolidating wards must be passed and takes effect before the time of giving notice of the election. Wards and precincts established under this section constitute election districts for all state, county, and city elections. In city elections, separate ballot boxes and pollbooks must be provided and kept for each precinct. The terms "wards", "precincts", and "election districts" have the same meaning except where two or more wards are consolidated into one precinct for voting purposes or where one ward is divided into more than one precinct for voting purposes. This section does not prohibit the use of one building as the election polling place for more than one ward or the installation of ~~voting machines~~ electronic voting systems from separate wards in one building.

SECTION 33. REPEAL. Sections 16.1-06-10, 16.1-06-13, 16.1-06-24, and 16.1-15-11 of the North Dakota Century Code are repealed.

SECTION 34. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2409 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 88 Nays 3 Absent 3

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at ___ o'clock _____ M.

Secretary of State