

**HOUSE BILL NO. 1374**

Introduced by

Representatives Boehning, Haas, Headland

Senator Dever

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

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

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

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

10 1. A recount must be conducted when:

11 a. Any person failed to be nominated in a primary election by one percent or less  
12 of the highest vote cast for a candidate for the office sought.

13 b. Any person failed to be elected in a general or special election by one-half of  
14 one percent or less of the highest vote cast for a candidate for that office.

15 c. A question, measure, or bond issue submitted to the qualified electors has  
16 been decided by a margin not exceeding one-fourth of one percent of the total  
17 vote cast for and against the question at any election.

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

19 a. Any person who failed to be nominated in a primary election by more than one  
20 percent and less than two percent of the highest vote cast for a candidate for  
21 the office sought.

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

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

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

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

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

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

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

1 of county commissioners, and the ~~clerk of the district court of the county~~ recorder.  
2 Unless otherwise specified by law, for a political subdivision other than a county,  
3 the governing body of the political subdivision shall appoint the recount board. No  
4 person may serve on the recount board if the person ~~would not be qualified to~~  
5 ~~serve on the election board pursuant to subsection 2 of section 16.1-05-02~~ has  
6 anything of value bet or wagered on the result of the election, is a candidate for the  
7 office being recounted, or is the husband, wife, father, mother, father-in-law,  
8 mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister,  
9 whether by birth or marriage, of the whole or the half-blood, of any candidate  
10 involved in the recount. If any of the members of the recount board are disqualified  
11 or cannot serve for any other reason, the members of the board of county  
12 commissioners or other political subdivision governing body who would be qualified  
13 to serve on the board shall appoint disinterested qualified electors of the county or  
14 other political subdivision to serve as alternates. The recount board shall review all  
15 challenged ballots and on majority vote shall decide how those ballots are counted.  
16 The recount board is authorized to ~~stamp and~~ initial all absentee ballots cast  
17 pursuant to section 16.1-07-09 that were not considered or counted ~~or were~~  
18 ~~rejected~~ at the various precincts in the county for the reasons provided in sections  
19 16.1-07-11 and 16.1-07-12 or by the county canvassing boards as provided in  
20 section 16.1-15-19. The decision of the recount board is final, subject to the right  
21 to contest the election as provided in this chapter. If during the recount a recess is  
22 called, the county auditor or other political subdivision election official shall take  
23 appropriate steps to safeguard the ballots.

24 ~~7.~~ 8. The county auditor or other election official shall certify the results of the recount no  
25 later than three days after the recount. The recount result is the official result of  
26 the election in the county or other political subdivision. The county auditor or other  
27 election official shall prepare a corrected abstract of the votes. In a recount limited  
28 to the county, city, or other political subdivision, if the corrected abstract shows no  
29 change in the outcome of the election, no further action may be taken. If the  
30 corrected abstract changes the outcome of the election, the county auditor or other  
31 election official shall issue certificates of nomination or election accordingly and

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

5 ~~8-~~ 9. In congressional, statewide, district, or legislative recounts, the county auditor  
6 shall, no later than three days after the recount, send by certified mail a certified  
7 copy of the corrected abstract to the secretary of state. The secretary of state shall  
8 immediately assemble the state canvassing board, who shall canvass the  
9 corrected abstracts and certify the election results. The secretary of state shall  
10 issue certificates of election or nomination or record the approval or disapproval of  
11 a question submitted to the qualified electors accordingly.

12 ~~9-~~ 10. The expenses incurred in a recount of a county election must be paid by the county  
13 on a warrant by the county auditor. The expenses incurred in a recount of a  
14 political subdivision other than a county election must be paid by that political  
15 subdivision. The expenses incurred in a recount of a city election must be paid by  
16 the city on a warrant by the city auditor. The expenses incurred in a recount of a  
17 congressional, state, or legislative election must be paid by the state from the  
18 general fund upon approval by the secretary of state of a statement of expenses  
19 received from the county auditors. The expenses incurred in a recount demanded  
20 under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or  
21 county auditor from the bond submitted by the person requesting the recount.

22 ~~40-~~ 11. This section also applies to city elections that are not combined with the county  
23 except the city auditor, to the extent applicable, shall perform the duties of the  
24 county auditor.

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

27 **16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots.**

28 Either the contestant or the contestee, within the time provided by this title for the preservation  
29 of ballots, may give notice by certified mail to the ~~district judge or to the clerk of district court~~

30 county recorder of any county where the contestant or the contestee desires the ballots

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

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Legislative Assembly

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