Sixtieth
Legislative Assembly   **ENGROSSED HOUSE BILL NO. 1374**
of North Dakota

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 according to

10 guidelines established by the secretary of state and as follows:

11   1.   A recount must be conducted when:

12   a.   Any person failed to be nominated in a primary election by one percent or

13   less of the highest vote cast for a candidate for the office sought.

14   b.   Any person failed to be elected in a general or special election by one-half of

15   one percent or less of the highest vote cast for a candidate for that office.

16   c.   A question, measure, or bond issue submitted to the qualified electors has

17   been decided by a margin not exceeding one-fourth of one percent of the total

18   vote cast for and against the question at any election.

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

20   a.   Any person who failed to be nominated in a primary election by more than

21   one percent and less than two percent of the highest vote cast for a candidate

22   for the office sought.

1   b.   Any person who failed to be elected in a general or special election by more

2   than one-half of one percent and less than two percent of the highest vote

3   cast for a candidate for that office.

4   3.   A demand for a recount must be made within three days after the canvass of the

5   votes by the county canvassing board in the case of county elections and city

6   elections that are combined with the county and by the state canvassing board in

7   the case of congressional, state, district, or legislative elections. The demand

8   must be in writing, must recite one of the conditions in subsection 2 as a basis for

9   the recount, must contain a bond in an amount previously established by the

10   auditor or auditors doing the recount sufficient to pay the cost of the recount, and

11   must be filed with:

12   a.   The secretary of state when the recount is for a congressional, state, district,

13   or legislative office.

14   b.   The county auditor when the recount is for a county office or city office when

15   a city election is combined with the county.

16   4.   Within four days after the canvass of the votes by the state canvassing board in

17   the case of congressional, state, district, or legislative elections, the secretary of

18   state shall notify all the county auditors to conduct recounts as required by

19   subsection 1 and, when a timely recount demand is received and it is in proper

20   form, as required by subsection 2. The secretary of state shall fix the date or dates

21   of the recounts of legislative contests to be held within seven days after giving

22   notice to the affected auditors that recounts must be conducted. The secretary of

23   state shall fix the date or dates of the recounts of statewide races to be held within

24   fourteen days after giving notice to the auditors that recounts must be conducted.

25   Within four days after the canvass of votes by the county canvassing board or

26   other political subdivision canvassing board, the county auditor or other political

27   subdivision election official shall fix the date for recounts limited to the county,

28   those cities within the county which combined the election with the county, or other

29   political subdivision. The date must be within eight days after the canvass. In all

30   recount proceedings, the county auditor or other election official, as appropriate,

1   shall send notice of the date, place, and time of the recount to all candidates and

2   petitioners involved by certified mail.

3   5.   Recount employees. For recounts conducted by counties of federal, state, district,

4   and county offices, measures, and questions, the county auditor must conduct the

5   recount and may employ up to four qualified electors of the county to assist in the

6   recount. The county auditor shall review all paper and electronic voting system

7   ballots and associated records, whether the ballots were counted at the precinct or

8   the county canvass, and all absentee ballots cast pursuant to section 16.1-07-09 to

9   determine which ballots were cast and counted according to the law, including that

10   the ballots were properly initialed and that the initials found on the ballots are

11   verified as those of the precinct election board members. The county auditor shall

12   check the precinct count and the count of the county canvassing board. If the

13   county auditor is a candidate involved in the recount, the county auditor is

14   disqualified from acting thereon, and the ~~clerk of the district court of the~~ county

15   recorder shall perform the duties required of the county auditor by this section. For

16   recounts conducted by political subdivisions other than counties of local offices,

17   measures, and questions, the election officer in a political subdivision shall

18   administer a recount in the same manner as is required under this subsection for

19   counties with respect to political subdivision ballot measures, questions, or bond

20   issues.

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

22   a.   Each candidate involved in the recount, either personally or by a

23   representative.

24   b.   A qualified elector favoring each side of a question if the recount involves a

25   question or proposition submitted to a vote of the electorate.

26   The persons allowed to participate may challenge the acceptance or exclusion of

27   any ballot. The person challenging a ballot must state the reason for the challenge

28   based upon the law, and the county auditor or other political subdivision election

29   official shall count the challenged ballot as the auditor or election official deems

30   proper and shall then set the ballot aside with a notation that it was challenged and

31   how it was counted.

1   7.   Recount board. At the conclusion of the recount, the county auditor or other

2   election official shall submit all challenged ballots to the recount board for decision.

3   Except for political subdivision recounts other than counties, the recount board

4   must be composed of the state's attorney of the county, the chairman of the board

5   of county commissioners, and the ~~clerk of the district court of the~~ county recorder.

6   Unless otherwise specified by law, for a political subdivision other than a county,

7   the governing body of the political subdivision shall appoint the recount board. No

8   person may serve on the recount board if the person ~~would not be qualified to~~

9   ~~serve on the election board pursuant to subsection 2 of section 16.1-05-02~~ has

10   anything of value bet or wagered on the result of the election, is a candidate for the

11   office being recounted, or is the husband, wife, father, mother, father-in-law,

12   mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister,

13   whether by birth or marriage, of the whole or the half-blood, of any candidate

14   involved in the recount. If any of the members of the recount board are

15   disqualified or cannot serve for any other reason, the members of the board of

16   county commissioners or other political subdivision governing body who would be

17   qualified to serve on the board shall appoint disinterested qualified electors of the

18   county or other political subdivision to serve as alternates. The recount board shall

19   review all challenged ballots and on majority vote shall decide how those ballots

20   are counted. The recount board is authorized to ~~stamp and~~ initial all absentee

21   ballots cast pursuant to section 16.1-07-09 that were not considered or counted ~~or~~

22   ~~were rejected~~ at the various precincts in the county for the reasons provided in

23   sections 16.1-07-11 and 16.1-07-12 or by the county canvassing boards as

24   provided in section 16.1-15-19. The decision of the recount board is final, subject

25   to the right to contest the election as provided in this chapter. If during the recount

26   a recess is called, the county auditor or other political subdivision election official

27   shall take appropriate steps to safeguard the ballots.

28   ~~7.~~ 8.   The county auditor or other election official shall certify the results of the recount

29   no later than three days after the recount. The recount result is the official result of

30   the election in the county or other political subdivision. The county auditor or other

31   election official shall prepare a corrected abstract of the votes. In a recount limited

1   to the county, city, or other political subdivision, if the corrected abstract shows no

2   change in the outcome of the election, no further action may be taken. If the

3   corrected abstract changes the outcome of the election, the county auditor or other

4   election official shall issue certificates of nomination or election accordingly and

5   shall certify the new result of a question submitted to the qualified electors. In the

6   case of a city election that is combined with a county election, the county auditor

7   shall certify the new results of the election to the city auditor who is responsible for

8   issuing new certificates of election if applicable.

9   8. 9. In congressional, statewide, district, or legislative recounts, the county auditor

10   shall, no later than three days after the recount, send by certified mail a certified

11   copy of the corrected abstract to the secretary of state. The secretary of state

12   shall immediately assemble the state canvassing board, who shall canvass the

13   corrected abstracts and certify the election results. The secretary of state shall

14   issue certificates of election or nomination or record the approval or disapproval of

15   a question submitted to the qualified electors accordingly.

16   9. 10. The expenses incurred in a recount of a county election must be paid by the

17   county on a warrant by the county auditor. The expenses incurred in a recount of

18   a political subdivision other than a county election must be paid by that political

19   subdivision. The expenses incurred in a recount of a city election must be paid by

20   the city on a warrant by the city auditor. The expenses incurred in a recount of a

21   congressional, state, or legislative election must be paid by the state from the

22   general fund upon approval by the secretary of state of a statement of expenses

23   received from the county auditors. The expenses incurred in a recount demanded

24   under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or

25   county auditor from the bond submitted by the person requesting the recount.

26   10. 11. This section also applies to city elections that are not combined with the county

27   except the city auditor, to the extent applicable, shall perform the duties of the

28   county auditor.

29   **SECTION 2. AMENDMENT.** Section 16.1-16-07 of the North Dakota Century Code is

30   amended and reenacted as follows:

1   **16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots.**

2   Either the contestant or the contestee, within the time provided by this title for the preservation

3   of ballots, may give notice by certified mail to the ~~district judge or to the clerk of district court~~

4   <u>county recorder</u> of any county where the contestant or the contestee desires the ballots

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

6   of the ~~district judge or the clerk of district court~~ <u>county recorder</u> to preserve all the paper ballots

7   and electronic voting system ballots and associated records until the contest has been finally

8   determined.