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January 28, 2021

TO: Chairman Kasper and Members of the House Government and Veterans Affairs Committee
FR: Jim Silrum, Deputy Secretary of State on behalf of Secretary of State Al Jaeger
RE: HB 1253 – Election Administration

This 107-section bill is a comprehensive election administration bill that creates one new subdivision and four new sections, amends 101 sections, and repeals four sections of the North Dakota Century Code (NDCC). All but two of the sections are found in Title 16.1, which is the Elections Title in the NDCC. The two sections not in Title 16.1 were included to allow the Secretary of State the authority to conduct background checks for cybersecurity purposes on the employees of the office whose work involves the personally identifying information such as dates of birth, driver's license numbers, social security numbers, and employer identification numbers of the people and businesses of North Dakota.

This bill essentially does three things. By far the largest number of amendments in the bill modernize terminology consistent with technology and terms used in other sections in the NDCC. The bill addresses remedies required by recent litigation. Lastly, the bill addresses options for election administration that will allow the state to step forward into the future appropriately and securely.

This written testimony will cover the details of the substantive portions of this bill by section, but there are many suggested amendments that simply change the wording in the NDCC to what represents more legally proper or modern terminology. The following is a list of those changes throughout the bill.

- The sections in Title 16.1 often use several different terms when referring to the hardware, firmware, and software that make up what is known in the election industry as a voting system. This bill amends these different terms to "voting system" for the sake of consistency.
 - "Electronic" is removed 93 times because all voting systems are electronic.
 - "Counting machine" is removed 24 times.
 - "Automatic tabulating equipment" is removed eight times.
- All ten references to a specific type of voting system hardware known as a "direct-recording electronic" (DRE) voting machine have been removed because all voters in North Dakota cast a paper ballot. The official ballot on a DRE is often only stored electronically.
- "Person" is amended to "individual" 62 times because "person" also refers to a corporation and corporations are not allowed to run for public office except for official county newspaper.
- Antiquated language is updated for the sake of clarity.
- Existing practice is codified, e.g., candidates may file documents electronically rather than by mail.
- Amending incorrect references to sections in the NDCC within other sections.
- Moving paragraphs following subsections to the paragraph before the subsections.

The remainder of the testimony only references those substantive changes not covered in the list above.

Section 1 at the top of page 2 and section 106 at the bottom of page 80 include the amendments necessary so that the Secretary of State may engage the Bureau of Criminal Investigation to conduct background checks on office employees for reasons of cybersecurity.

Section 2 on page 2: moves a definition for “candidate” from NDCC 16.1-08.1-01 to ch. 16.1-01 so that the definition applies throughout the Title. **Section 41** starting on page 33, line 6 and continuing through page 37, line 29, removes the definition from § 16.1-08.1-01.

Section 4 on page 3 and **Section 83** on page 64: the amendments are to address a situation that has occurred in recent elections administered in Minot in which voters have come into the polls near to the time the polls would close and then have taken 90 minutes to 2 hours to mark and cast their ballots. This has held up the election results from that polling place. The solution offered provides a fair chance to the voter to either cast their ballot 30 minutes after the last voter received his or her ballot and the time of poll closing or to continue marking the ballot and securely cast it so that it will be counted by the members of the canvassing board six days after the election. This specificity is to ensure that voters living with disabilities are allowed enough time to mark and cast their ballot if they arrive to vote near the closing of the polls.

Section 8 on page 5, lines 21 and 22: additional wording is added to NDCC § 16.1-01-08 to clarify that only a court may resolve a factual dispute regarding a candidate’s residency. In two separate lawsuits filed against the Secretary of State in 2020, the plaintiffs argued that the Secretary of State should have removed a candidate from the ballot because the candidate was not qualified to hold office due to residency. In both cases, the court made the necessary decision. Although there now exists court rulings on this section of law, the amendments are to pattern the law after the rulings for the sake of clarity. An amendment is being offered that changes “question” on line 21 with “factual dispute” as the proper legal term.

Sections 9 and 10 on pages 6 and 7: two sentences are added to subsection 5 of NDCC 16.1-01-09 requiring sponsoring committees for initiative, referral, and recall petitions to provide a list including the names and contact information of those who circulated the submitted petition. In 2020, the Secretary of State requested these lists from sponsoring committees because of questions concerning the qualifications of the circulators. However, the sponsoring committees chose not to provide these lists because the law did not require them to do so.

Section 11 on page 8, lines 15 and 16 and lines 22-24 change the penalty for willful destruction of ballots, ballot boxes, etc. when not authorized by law to do so or for a cyber attack to attempt to prevent voting from a class A misdemeanor to a class C felony. (An example of a cyber attack could be an attempt to disable the state’s power grid during an election.)

Section 13 on page 10: the amendment appropriately instructs when Legislative Council is to begin the process for determining the fiscal impact of an initiated or referred measure. Under the current wording, Legislative Council could be required to determine the fiscal impact of a measure before it is certified for inclusion on a ballot.

Section 14 on page 11, lines 2-4: the added language is to codify what should already be occurring. The Secretary of State is to provide documentation and training for those granted access to the Central Voter File and this training and documentation must be followed when using the system.

Section 16 on page 11, line 26: requires new voters to be added into the Central Voter File by the County Auditors before the county canvassing boards meet on the sixth day after the election. On page 12, lines 1 and 2, the Secretary of State is to search the Central Voter File before the state canvassing board meets to determine if any voter voted more than once in the election. This expedited timeline is now possible because of the electronic pollbooks that are utilized statewide.

Section 19 on page 13: County Auditors are required to post voting history in the Central Voter File before the end of the period during which an election may be contested. The contest period referenced in NDCC

§ 16.1-16-04 is five days after the certification of a recount or 14 days after the final certification of results if no recount is conducted. This is also possible through the utilization of electronic pollbooks.

Section 21 starting at the bottom of page 14: the added language is to define what constitutes the “pollbook” when electronic pollbooks are used.

Section 22 on page 16, lines 5 and 6: the added language instructs the County Auditor to inform the district party chair when an appointment of an election judge is made by the County Auditor because no names for election judges were received from that district party. This is already happening in most cases.

Section 23 on page 17, lines 1-4 and **Section 54** on page 50, lines 1-6: the added subdivision requires the Secretary of State in a primary election to place the word “endorsed” near the name of a candidate who was endorsed by the candidate’s political party and “petition” near to the name of a candidate whose name was placed on the ballot under a party’s designation by circulating petitions.

Section 33 on page 25 and **Section 35** on pages 26-28: currently, only those voters who qualify as military and overseas voters, may receive their absentee ballot by secure electronic delivery. The state has provided this service to our residents temporarily stationed far away from their North Dakota homes for nearly 30 years. As soon as the technology is finalized, it is time to offer that same option to voters living here in the state, however, with a slight twist. Under these amendments, a voter could request that their ballot be delivered to them electronically, they could mark the ballot in the privacy of their own home, come to their polling place during early voting or on election day, sign in at the election clerk’s table, take the marked ballot to the Express Vote ballot marking device where their electronic ballot will be converted into a paper ballot with their selections marked, and then cast the ballot in the voting system tabulator in the same manner as other voters who mark their ballots while at the polls.

The Secretary of State’s office believes this could reduce the number of absentee and mail ballots that are cast because it would allow the voter time to mark their ballot in privacy but allow them the experience of voting in a polling place in an efficient and secure manner. This is also necessary because of the frustrations some voters experienced with the service provided by the USPS during the 2020 election cycle. Although 96% of the election mail was delivered according to schedule, that meant that 4% was not. (Statistics provided by USPS.) Preventing any qualified elector from voting is not acceptable.

Additionally, those voters living with disabilities have often wondered when they would be allowed the same access to the ballot as military and overseas voters. We do not dispute the legitimacy of their question but recognize that no law could be written that would grant this ballot access expansion to only those living with disabilities. The option offered in these sections does not completely satisfy the voting desires of those living with disabilities, but it is a good first step forward.

Section 35 on page 28, lines 17-19: the added subsection is to make it abundantly clear in law that an absentee ballot is never given to a voter without first receiving a valid application from a qualified elector.

Sections 37 and **39** on pages 28 and 29: the added language outlines the process for the County Auditor to follow in contacting the applicant if the signature on the absentee ballot application does not match with the signature on the envelope containing the marked ballot. The Secretary of State faced a lawsuit filed during the late spring of 2020 because state law did not allow a voter whose ballot was rejected to have the opportunity to confirm the validity of the signatures so the ballot could be counted. The language to be added complies with the court’s ruling in the case.

Section 38 on page 30, line 6: changes the “may” to “shall,” recognizing that all counties have been provided a high-speed digital scanner for the tabulation of the votes on the ballots submitted by absentee or mail ballot voters. The through-put on the high-speed scanners are at least 40 ballots per minute as opposed to the polling place scanner allows fewer than five ballots per minute, individually fed, rather than by the sheet feeder on the high-speed scanners.

Section 45 on page 40, line 12: voters signing candidate petitions would be required to print as well as sign their names so the election official validating the signatures can read the names.

Section 46 on page 41, lines 9-12: provides clarity that the Affidavit of Candidacy must be filed along with either the Certificate of Endorsement or petition before the candidate's name may be placed on the ballot.

Section 48 at the bottom of page 43 and **Section 61** on page 52: the added language is for clarity that the documents filed by a candidate must meet all applicable requirements before the candidate's name can be placed on the ballot and what is to occur if a mistake was made in validating the documents after the filing deadline for the primary election. Before the filing deadline for the 2020 primary election, the Stark County Auditor failed to ensure that enough signatures were included on the petition for a candidate running for County Commission. The candidate also did not file the required Affidavit of Candidacy until after the primary election. Even though this should not have occurred, nothing was in law to remedy the situation, and this section addresses the situation should a similar one occur.

Section 50 on page 45: the current wording of subsections 4-6 of NDCC § 16.1-11-18 are appropriately being moved to a new section being added to ch. 16.1-12. Ch. 16.1-11 deals with primary elections and ch. 16.1-12 deals with the period between the primary and general elections. The new section is found in **Section 70** beginning on page 56 and addresses a vacancy that occurs after the nominations have been made in the primary election.

Section 63 at the bottom of page 52: adds clarity to ch. 16.1-11.1, Mail Ballot Elections, to ensure that the reader understands that the only difference between absentee voting and voting by mail is that the application is provided to the voter in vote by mail counties. In all other aspects, they are the same.

Section 73 at the bottom of page 59: this section of the bill is being removed by amendment in favor of HB 1461 that deals with the topic of filling vacancies in the office of members of the legislative assembly. HB 1461 is sponsored by the majority leaders in both the House and Senate.

Section 88 on page 67 and **Section 91** at the bottom of page 69: the new voting system purchased by the state not only captures an image of the entire ballot cast by the voter, but the individual contests included on those ballot images are separated out as well for the purpose of adjudicating the legitimate write-in votes that were cast by the voters for each contest. This allows for the adjudication process to occur in the County Auditor's office by looking at these images when the election workers in the polling place return the election materials after the polls have closed and all their work has been completed. The counting of write-in votes used to take a considerable amount of time for the poll workers at the end of a very long day. That work can now be completed in a more efficient manner than in past elections.

The sections of the NDCC that are to be repealed by Section 107 are:

1. **NDCC § 16.1-06-10.1 – Electronic counting machines authorized - Sharing of machines.** This is a redundant section of law.
2. **NDCC § 16.1-07-11 – Submitting ballot to inspector of elections.** This is unnecessary because the appropriate contents are covered in NDCC § 16.1-07-12.1.
3. **NDCC § 16.1-07-13 – Registration of absent voters' ballots on electronic voting systems.** This is unnecessary because all ballots are tabulated by the state's voting system.
4. **NDCC § 16.1-13-24 – Voting on electronic voting system devices.** Unnecessary.

On behalf of the Secretary of State and his election team, we request the committee to vote for a Do Pass recommendation.