

Introduced by

Senator Magrum

Representatives Christensen, Hoverson

1 A BILL for an Act to amend and reenact subsection 1 of section 16.1-01-01 and sections  
2 16.1-15-02, 16.1-15-04, and 16.1-16-01 of the North Dakota Century Code, relating to  
3 decertification of election equipment, manual ballot recounts, and county election officials'  
4 responsibilities.

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

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 16.1-01-01 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 1. The secretary of state is, ex officio, supervisor of elections and may employ additional  
9 personnel to administer this title. The secretary of state shall supervise the conduct of  
10 elections within this state and in that supervisory capacity has, in addition to other  
11 powers conferred by law, the power to examine upon the secretary of state's request  
12 or the request of any election official, any election ballot or other material, voting  
13 system authorized by chapter 16.1-06, or device used in connection with any election,  
14 for the purpose of determining sufficient compliance with the law and established  
15 criteria and standards adopted by the secretary of state according to section  
16 16.1-06-26. ~~The secretary of state, upon determining~~If an election official determines  
17 any ballot or other material, voting system, or device is not in sufficient compliance  
18 with the law or established criteria and standards, the secretary of state shall direct the  
19 proper changes to be made, and in the case of voting systems, ~~may~~shall decertify the  
20 voting systems according to the rules adopted under section 16.1-06-26. If a  
21 decertified voting system becomes in sufficient compliance with the law or established  
22 criteria and standards, the secretary of state shall recertify the decertified voting  
23 systems according to the rules adopted under section 16.1-06-26.

1       **SECTION 2. AMENDMENT.** Section 16.1-15-02 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **16.1-15-02. Board of election to generate canvass reports - Location - Public may**  
4 **attend.**

5       After the polls are closed, the inspector of elections and the judges immediately shall  
6 generate the canvass report from the electronic voting system. The ballots counted by the  
7 machine must be equal in number with the names of those who voted in the election being  
8 canvassed on the poll clerks' lists and with the number of ballots as counted manually. If the  
9 numbers are not equal, the pollbooks ~~are to,~~ electronic voting system canvass report, and  
10 manual count must be rechecked or performed again to find the discrepancy. The canvass must  
11 continue without adjournment until completed and must be open to the public. Ballots may not  
12 be removed to another location before the canvass report ~~is~~ and abstract are generated after the  
13 ballot boxes have been opened. Except in unusual and compelling circumstances, the canvass  
14 ~~shall~~ must occur at the polling place. If good and substantial reasons, as defined by the  
15 secretary of state and posted on the official website for the secretary of state before the election  
16 commences, exist for the removal of the ballots and election records to another location for  
17 canvass, the removal must be to another location within the same county and approved by the  
18 election board. Upon approval of a change of location by the election board as provided in this  
19 section, the ~~approximate~~ time and location of the canvass must be ~~prominently~~ posted  
20 prominently on the main entrance to the polling place, ~~the~~ and posted on the official websites of  
21 the county and secretary of state before the canvassing board meeting. The ballots and records  
22 must be moved in the presence of the election board, ~~and the.~~ Each relocation of ballots must  
23 be recorded with proper chain of custody documentation signed by all county election officials  
24 present during the relocation and by representatives of each political party represented by a  
25 candidate on the ballot. The canvass as provided in this chapter must proceed immediately  
26 upon arrival at the alternate location and may not adjourn until complete.

27       **SECTION 3. AMENDMENT.** Section 16.1-15-04 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29       **16.1-15-04. Canvass report prepared by election board for county auditor.**

30       1. The election board shall generate at least one canvass report from the electronic  
31 voting system. The ballots may not be sealed, nor may the canvass report be signed,

1 by the election board or poll clerk until the counts in the poll clerks' books ~~and in~~ the  
2 canvass report ~~shows~~, and the manual count by county election officials show the  
3 same totals for ballots cast.

4 2. In the case of the absentee ballot precinct as authorized in section 16.1-07-12.1, early  
5 voting precincts as authorized in section 16.1-07-15, and mail ballot precinct as  
6 authorized in section 16.1-11.1-06, if the work of the election board is completed ~~prior-~~  
7 ~~to~~before the close of the polls on election day, the election board shall create and sign  
8 a statement consisting of a reconciliation of the number of voters recorded in the  
9 pollbook ~~and~~ the number of ballots processed through the tabulators, and the number  
10 of ballots or ballot records counted manually. The voting system must be secured in a  
11 manner prescribed by the county auditor that will protect the system and ballots from  
12 tampering. ~~Prior to~~Before generating the canvass report from one of these three types  
13 of precincts, an election judge representing each political party, or two election judges  
14 in the case of an election that does not include a political party contest, shall verify ~~that~~  
15 the system and ballots remain secure and the statement created by the election board  
16 is ~~still~~ accurate. The verification must be made in documentation including a  
17 description of the chain of custody of the system, ballots, and election board  
18 statement.

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

21 **16.1-16-01. Election recounts.**

22 A recount of any primary, special, or general election for nomination or election to a  
23 presidential, congressional, state, judicial district, multicounty district, legislative, county, or city  
24 office, or for the approval or disapproval of any measure, question, or bond issue submitted to  
25 the qualified electors of this state or one of its political subdivisions must be conducted  
26 according to guidelines established by the secretary of state and as follows:

- 27 1. A recount must be conducted when:
  - 28 a. Any individual failed to be nominated by the individual's party or to a no-party  
29 office in a primary election by one percent or less of the highest vote cast for a  
30 candidate seeking nomination from the political party for the office sought or for a  
31 candidate for the no-party office sought.

- 1           b. Any individual failed to be elected in a general or special election by one-half of  
2           one percent or less of the highest vote cast for a candidate for that office.
- 3           c. A question, measure, or bond issue submitted to the qualified electors has been  
4           decided by a margin not exceeding one-fourth of one percent of the total vote  
5           cast for and against the question at any election.
- 6        2. A demand for a recount may be made by any of the following:
- 7           a. Any individual who failed to be nominated by the individual's party or to a  
8           no-party office in a primary election by more than one percent and less than  
9           two percent of the highest vote cast for a candidate seeking nomination from the  
10          political party for the office sought or for a candidate for the no-party office  
11          sought.
- 12          b. Any individual who failed to be elected in a general or special election by more  
13          than one-half of one percent and less than two percent of the highest vote cast  
14          for a candidate for that office.
- 15        3. A demand for a recount must be made within three days after the canvass of the votes  
16        by the county canvassing board in the case of county elections and city elections that  
17        are combined with the county and by the state canvassing board in the case of  
18        presidential, congressional, state, judicial district, multicounty district, or legislative  
19        elections. The demand must be in writing, must recite one of the conditions in  
20        subsection 2 as a basis for the recount, must contain a bond in an amount previously  
21        established by the auditor or auditors doing the recount sufficient to pay the cost of the  
22        lawfully authorized recount, and must be filed with:
- 23           a. The secretary of state when the recount is for a congressional, state, district, or  
24           legislative office.
- 25           b. The county auditor when the recount is for a county office or city office when a  
26           city election is combined with the county.
- 27        4. Within four days after the canvass of the votes by the state canvassing board in the  
28        case of presidential, congressional, state, judicial district, multicounty district, or  
29        legislative elections, the secretary of state shall notify all the county auditors to  
30        conduct recounts as required by subsection 1 and, when a timely recount demand is  
31        received and it is in proper form, as required by subsection 2. The secretary of state

1 shall fix the date or dates of the recounts of legislative contests to be held within seven  
2 days after giving notice to the affected auditors that recounts must be conducted. The  
3 secretary of state shall fix the date or dates of the recounts of statewide races to be  
4 held within fourteen days after giving notice to the auditors that recounts must be  
5 conducted. Within four days after the canvass of votes by the county canvassing  
6 board or other political subdivision canvassing board, the county auditor or other  
7 political subdivision election official shall fix the date for recounts limited to the county,  
8 those cities within the county which combined the election with the county, or other  
9 political subdivision. The date must be within eight days after the canvass. In all  
10 recount proceedings, the county auditor or other election official, as appropriate, shall  
11 send notice of the date, place, and time of the recount to all candidates and petitioners  
12 involved by certified mail and shall post the notice on the official websites of the county  
13 and secretary of state.

- 14 5. For recounts conducted by counties of federal, state, district, and county offices,  
15 measures, and questions, the county auditor ~~must~~shall conduct the recount and may  
16 employ up to ten qualified electors of the county to assist in the recount. ~~The county~~  
17 ~~auditor~~All lawfully authorized election officials in each county involved in the recount  
18 shall review all properly cast ballots and all associated records. The recount must be  
19 conducted with high-definition digital imaging to verify the authenticity of all physical  
20 election records. All manual ballot and vote counts must match exactly the  
21 corresponding ballot and vote counts tabulated electronically. The entire recount must  
22 be recorded by video and audio and must be livestreamed for public viewing on official  
23 websites of the county auditor and secretary of state. The county auditor shall check  
24 the precinct count and the count of the county canvassing board. If the county auditor  
25 is a candidate involved in the recount, the county auditor is disqualified from acting  
26 thereon, and the county recorder shall perform the duties required of the county  
27 auditor by this section. For recounts conducted by political subdivisions other than  
28 counties of local offices, measures, and questions, the election officer in a political  
29 subdivision shall administer a recount in the same manner as is required under this  
30 subsection for counties with respect to political subdivision offices, ballot measures,  
31 questions, or bond issues.

- 1           6.   a.   The individuals entitled to participate at the recount are:
- 2                   (1)   Each candidate involved in the recount, either personally or by a
- 3                               representative.
- 4                   (2)   A qualified elector favoring each side of a question if the recount involves a
- 5                               question or proposition submitted to a vote of the electorate.
- 6           b.   The individuals allowed to participate may challenge the acceptance or exclusion
- 7                   of any ballot. The individual challenging a ballot must state the reason for the
- 8                               challenge based upon the law, and the county auditor or other political
- 9                               subdivision election official shall count the challenged ballot as the auditor or
- 10                              election official determines proper and then shall set the ballot aside with a
- 11                              notation that it was challenged and how it was counted.
- 12       7.   At the conclusion of the recount, the county auditor or other election official shall
- 13           submit all challenged ballots to the recount board for decision. Except for political
- 14           subdivision recounts other than counties, the recount board must be composed of the
- 15           state's attorney of the county, the chairman of the board of county commissioners, and
- 16           the county recorder. Unless otherwise specified by law, for a political subdivision other
- 17           than a county, the governing body of the political subdivision shall appoint the recount
- 18           board. An individual may not serve on the recount board if the individual has anything
- 19           of value bet or wagered on the result of the election, is a candidate for the office being
- 20           recounted, or is ~~the husband, wife, father, mother, father-in-law, mother-in-law, son,~~
- 21           ~~daughter, son-in-law, daughter-in-law, brother, or sister~~ a relative, whether by birth or
- 22           marriage, ~~of the whole or the half blood~~, of any candidate involved in the recount. If
- 23           any of the members of the recount board are disqualified or cannot serve for any other
- 24           reason, the members of the board of county commissioners or other political
- 25           subdivision governing body who would be qualified to serve on the board shall appoint
- 26           disinterested qualified electors of the county or other political subdivision to serve as
- 27           alternates. The recount board shall review all challenged ballots and on majority vote
- 28           shall decide how those ballots are counted. The decision of the recount board is final,
- 29           subject to the right to contest the election as provided in this chapter. If during the
- 30           recount a recess is called, the county auditor or other political subdivision election
- 31           official shall take appropriate steps to safeguard the ballots.

- 1           8.    The county auditor or other election official shall certify the results of the recount  
2                    immediately after the recount. The recount result is the official result of the election in  
3                    the county or other political subdivision. The county auditor or other election official  
4                    shall prepare a corrected abstract of the votes. In a recount limited to the county, city,  
5                    or other political subdivision, if the corrected abstract shows no change in the outcome  
6                    of the election, no further action may be taken. If the corrected abstract changes the  
7                    outcome of the election, the county auditor or other election official shall issue  
8                    certificates of nomination or election accordingly and shall certify the new result of a  
9                    question submitted to the qualified electors. In the case of a city election that is  
10                  combined with a county election, the county auditor shall certify the new results of the  
11                  election to the city auditor who is responsible for issuing new certificates of election if  
12                  applicable.
- 13           9.    In presidential, congressional, statewide, judicial district, multicounty district, or  
14                  legislative recounts, the county auditor, immediately after the recount, shall submit  
15                  electronically the corrected abstract to the secretary of state according to the  
16                  instructions provided by the secretary of state. The secretary of state immediately shall  
17                  assemble the state canvassing board, who shall canvass the corrected abstracts and  
18                  certify the election results. The secretary of state shall issue certificates of election or  
19                  nomination or record the approval or disapproval of a question submitted to the  
20                  qualified electors accordingly.
- 21           10.   The expenses incurred in a recount of a county election under subsection 1 must be  
22                  paid by the county on a warrant by the county auditor. The expenses incurred in a  
23                  recount of a political subdivision other than a county election must be paid by that  
24                  political subdivision. The expenses incurred in a recount of a city election must be paid  
25                  by the city on a warrant by the city auditor. The expenses incurred in a recount of a  
26                  presidential, congressional, state, judicial district, multicounty district, or legislative  
27                  election must be paid by the state from the general fund upon approval by the  
28                  secretary of state of a statement of expenses received from the county auditors. The  
29                  expenses incurred in a recount demanded under subsection 2 ~~of section 16.1-16-01~~  
30                  must be paid ~~by~~to the secretary of state or county auditor from the bond submitted by  
31                  the individual requesting the recount.

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- 1        11.    This section also applies to city elections that are not combined with the county except  
2            the city auditor, to the extent applicable, shall perform the duties of the county auditor.