

Testimony Prepared for the
Senate State and Local Government
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RE: OPPOSITION TO HB 1167

Chair Roers and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. In my role at NDACo, I serve as executive director of the North Dakota County Auditors Association. We stand in opposition to HB 1167 and ask for a Do NOT Pass recommendation. We oppose HB 1167 because, in critical emergency situations, someone needs to have the authority to respond.

This bill stems from executive orders and decisions that were made during the COVID-19 pandemic related to elections, specifically the June primary election in 2020. In March 2020, shortly after the Governor declared a state of emergency for COVID-19, County Auditors sent a formal request to the Governor requesting the Governor to use his emergency powers to make necessary changes to waive polling location requirements.

It's important to understand the election timeline in relation to when COVID-19 pandemic hit to help explain the reasons for the county Auditors' requests.

March 13th – Governor Burgum declares state of emergency for COVID-19.

March 24th – ND County Auditors sent letter to Governor requesting the following:

- **Waive requirements for 1 physical polling location for June election.**
- **2020 Primary be mail ballot only.**
- **Increase time to process mail/absentee ballots from 2 to 5 days.**

March 26th - Governor signed Executive Order which:

- Strongly encouraged county commissions to:
 - o Approve and authorize voting by mail ballot "absentee ballot".
 - o Establish secure mail ballot drop box locations.
- The Executive Order also:
 - o Suspended the requirement for counties to have one polling location; allowing county commissions to utilize all vote by mail ballots.
 - o Suspended requirement to establish polling places no later than 64th day before the election.
 - o Allow for processing absentee ballots 5 days prior to election.
 - o Required applications for ballots to be sent to all voters in state's central voter file.
 - o Provide an assistive ballot marking device 40 days prior to election through election day.

Auditors have deadlines to follow in election preparations, which was the reason for the urgency in making the request to move to all vote by mail in June.

April 6th (64 days before election) – deadline for setting polling locations.

April 6th - filing deadline for candidates.

April 6th – deadline to upload ballot information for election programming.

April 20-30th – Applications for ballots need to be mailed.

County commissioners in all 53 counties passed resolutions to go all vote by mail due to the pandemic.

To summarize, when the COVID-19 emergency was declared in North Dakota, the state shut down – schools closed, workplaces adjusted by having employees work from home if able, businesses and most county courthouses were restricted or closed. County auditors had to make quick decisions on how to plan for the June election during this time of great uncertainty. Election deadlines were quickly approaching, and auditors were faced with venues typically used as polling locations being closed, “gatherings” were restricted under the emergency order, and willing poll workers were impossible to hire. In addition, personal protection equipment was almost impossible to find at that time. Imagine, faced with all that, planning and holding an in-person election.

We have never experienced an emergency that has affected the entire state like this. If the legislature wants to restrict the Governor’s authority to respond in dire emergency situations, then the power needs to lie with our local elected officials, in this case our county commissioners. In an emergency, in the most urgent situation, someone needs to have the power to make the necessary adjustments.

For the 2020 General Election in November, every county had at least one voting location open. Auditors had the time to prepare for holding an election during a pandemic and were able to purchase PPE to provide a safe voting environment for citizens who wanted to vote in person. It is important to note that elections returned to normal for the 2022 election cycle.

The County Auditors urge a Do Not Pass on HB 1167.