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SENATE STATE & LOCAL
SENATOR KRISTIN ROERS, CHAIR

SENATE BILL 2339
FEBRUARY 10, 2023

TESTIMONY PRESENTED BY

MICHAEL HOWE, SECRETARY OF STATE

Madam Chair and members of the committee, for the record, Michael Howe, North Dakota Secretary of State.

Our office is not opposed to transparency. Our office is not opposed to ensuring our elections are run with accuracy and integrity. In fact, the many protocols and processes we already have in place do just that, which is why we are opposed to SB 2339.

Chapter 16.1-01-01 in North Dakota Century Code is clear. The Secretary of State is the supervisor of elections and may employ additional personnel to administer this title. The Secretary of State shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, voting system authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16.1-06-26. The secretary of state, upon determining any ballot or other material, voting system, or device is not in sufficient compliance with the law or established criteria and standards, shall direct the proper changes to be made, and in the case of voting systems, may decertify the voting systems according to the rules adopted under section 16.1-06-26.

As was shared with the committee in our election demonstration last week, we have many safeguards in place for our elections to ensure accuracy. There are logic and accuracy tests conducted on every machine prior to every election. There are logic and accuracy tests conducted after every election. These are ballots with expected voting outcomes that are run through the machines. The tabulation must match up 100 percent with the expected outcome before they are allowed to be used in an election.

In 2022, the state auditor did a review on the security of the election system. It was determined that it is exceptionally unlikely that the results of an election in North Dakota would be fraudulently influenced. In fact, to quote Auditor Gallion from his release, "The determination after extensive review from our contractor was that our election systems are incredibly secure across our state." Please note, that even though this audit was led by the state auditor, its accuracy was also questioned.

The bill requires a full manual recount for all ballots within the county. A hand recount of every race is sure to have some human error, especially when there may be up to 20 different ballot types in a large county. The amount of time, money, and people required to accomplish that would be large. For example, in Cass County there will be at least 15 to 20 different races on each ballot, and there could be upwards of 60-80 different ballot types. Our elections are accurate, and the effort spelled out in this bill costs the taxpayers to have the same outcomes.

Madam Chair, as you saw in the election demonstration last week. As has been pointed out in this testimony. As has been stated by bill sponsors and the State Auditor. Our elections are secure, fair, and honest. The numerous pre-election and post-election examinations have proven to show that we can trust our results. And to back that up, the recounts that have been conducted is proof our systems are accurate.

As an office, we no doubt have a duty to show our election process to the public and display all the safeguards and checks and balances that go in to conducting our elections. That is my commitment to you, to work alongside our county partners to educate the public on our secure and accurate processes.

I urge a Do Not Pass on SB 2339.

Secretary of State
NORTH DAKOTA

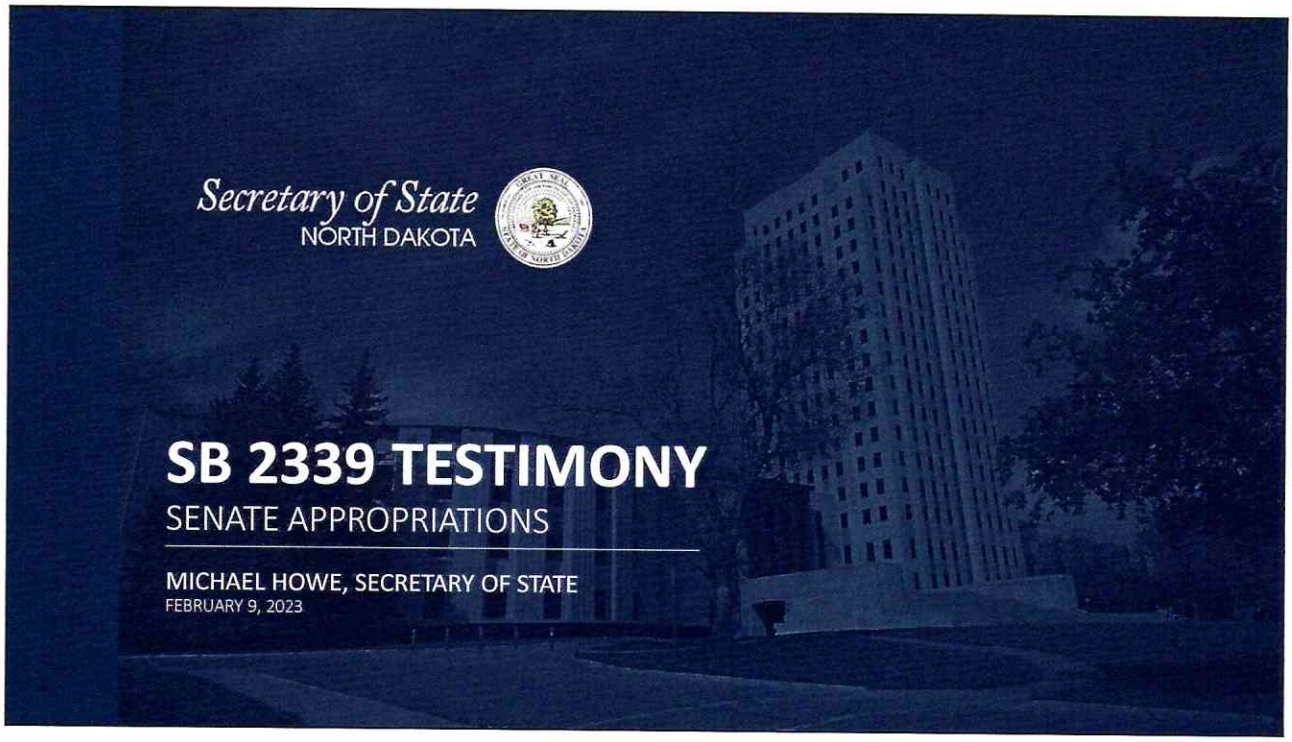
SB 2339 – SENATE STATE & LOCAL
FEBRUARY 10, 2023

16.1-01-01. Secretary of state to supervise election procedures - County administrator of elections.

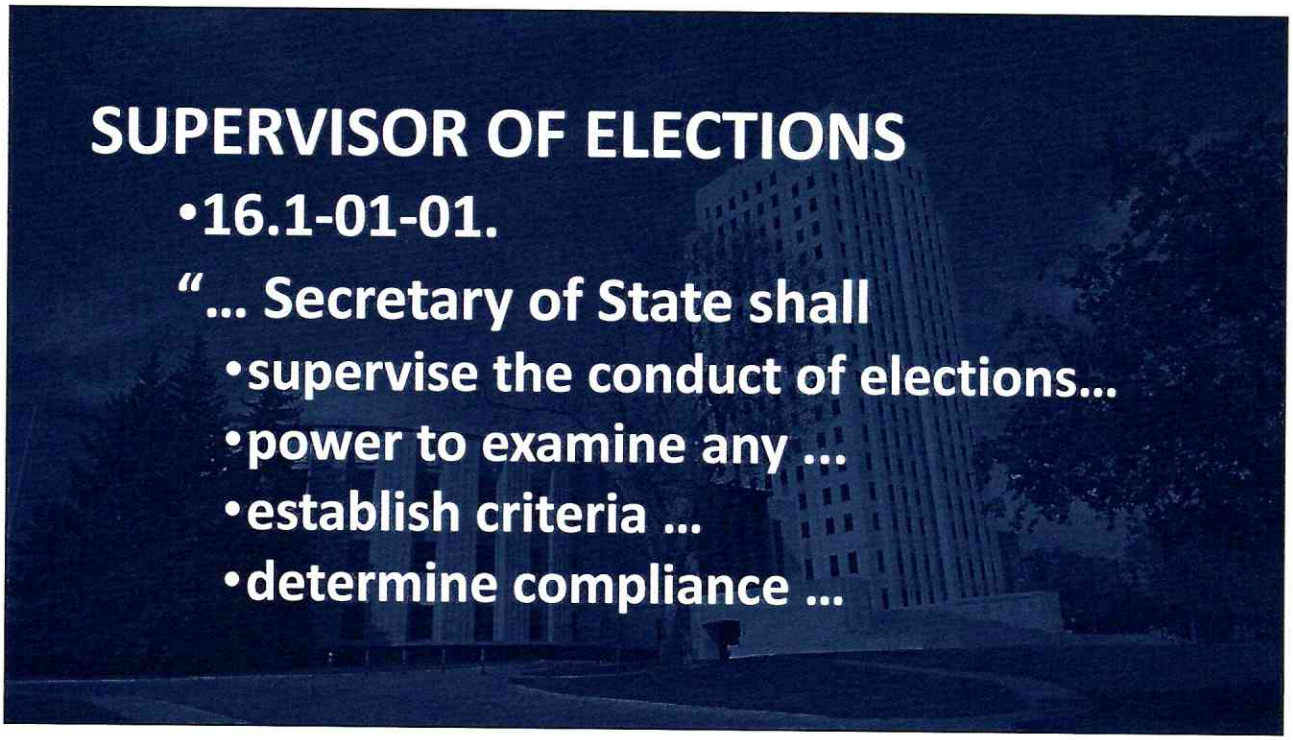
1. The secretary of state is, ex officio, supervisor of elections and may employ additional personnel to administer this title. The secretary of state shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, voting system authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16.1-06-26. The secretary of state, upon determining any ballot or other material, voting system, or device is not in sufficient compliance with the law or established criteria and standards, shall direct the proper changes to be made, and in the case of voting systems, may decertify the voting systems according to the rules adopted under section 16.1-06-26.
2. In addition to other duties provided elsewhere by law, the secretary of state shall:
   a. Develop and implement uniform training programs for all election officials in the state.
   b. Prepare information for voters on voting procedures.
   c. Publish and distribute an election calendar, a manual on election procedures, and a map of all legislative districts.
   d. Convene a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state to discuss uniform implementation of state election policies.
   e. Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments.
   f. Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
   g. Require such reports from county auditors on election matters as deemed necessary.
   h. Certify results of statewide elections.
   i. Prepare and publish reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.
   j. Establish standards for voting precincts and polling places, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including but not limited to, ballots, pollbooks, and reports.
   k. Prescribe the order in which each political subdivision will appear on an election ballot.
   l. Develop and conduct a test election for the state's voting system prior to each statewide election utilizing the votes cast within each county according to the logic and accuracy testing required in section 16.1-06-15.

16.1-06-15. Mandatory testing of electronic voting systems before each election and after tabulation of ballots.

1. All electronic voting systems used in this state must be tested according to guidelines established by the secretary of state and as follows to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.
2. The test of an electronic voting system employing paper ballots must be conducted by processing a preaudited group of ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.
3. The test must be conducted at least one week before the election. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot a notice of the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.
4. At the conclusion of the test, the programming for each electronic voting device must be sealed within the device with a unique numbered seal that must be verified by the election inspector before the opening of the polls to make sure the programming has not been removed from the device.
5. After each election, the secretary of state shall order a random testing of the voting system programming for one precinct in each county of the state according to logic and accuracy testing procedures detailed in subsection 2 and as may be further defined by the secretary of state in writing. This test is to be conducted before the meeting of the county canvassing board.


Secretary of State
NORTH DAKOTA
SB 2339 TESTIMONY
SENATE APPROPRIATIONS
MICHAEL HOWE, SECRETARY OF STATE
FEBRUARY 9, 2023

1


SUPERVISOR OF ELECTIONS
•16.1-01-01.
"... Secretary of State shall
•supervise the conduct of elections...
•power to examine any ...
•establish criteria ...
•determine compliance ...

2

MANDATORY TESTING

- 16.1-06-15.

"...testing according to the guidelines of the secretary of state ... whether automatic tabulation equipment will accurately count the votes cast ..."

3

MANDATORY TESTING

1 WEEK PRIOR TO ELECTION

TEST CONDUCTED IN All Counties - All Scanners

LOGIC & ACCURACY TESTING

- Scanners Tested
- Pre-audited paper ballots
- Determine accuracy
- Counts must be exact

District chairman for each party notified if district race on ballot and may attend or send representative.

4

MANDATORY TESTING

ELECTION NIGHT TESTING - RANDOM

TEST CONDUCTED IN
All Counties – One Precinct

LOGIC & ACCURACY TESTING

- Random precinct chosen
- All ballots scanned
- Counts must be exact

TO DATE – NO ERRORS DETECTED.

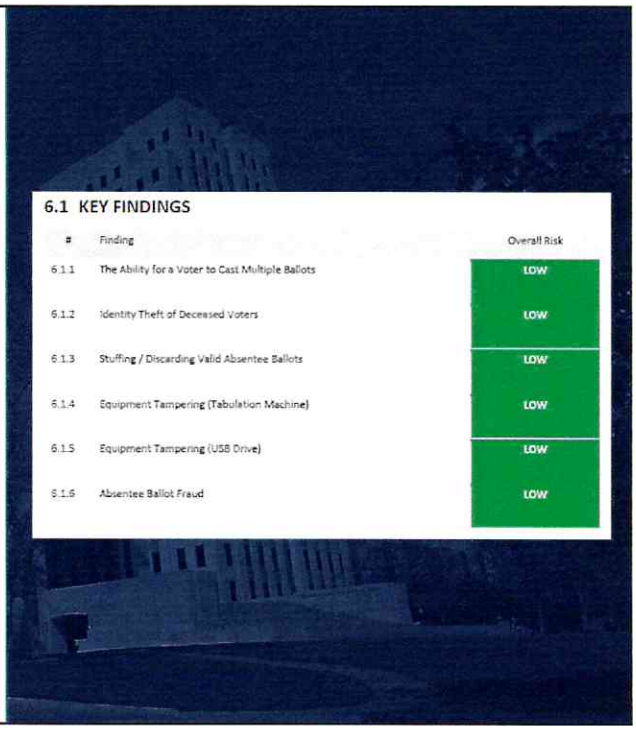
5

SECURITY AUDIT – STATE AUDITOR

2022 ELECTION SECURITY AUDIT

"The determination after extensive review from our contractor was that our election systems are incredibly secure across our state."

- State Auditor Josh Gallion
10/27/2022
Press Release



6.1 KEY FINDINGS

#	Finding	Overall Risk
6.1.1	The Ability for a Voter to Cast Multiple Ballots	LOW
6.1.2	Identity Theft of Deceased Voters	LOW
6.1.3	Stuffing / Discarding Valid Absentee Ballots	LOW
6.1.4	Equipment Tampering (Tabulation Machine)	LOW
6.1.5	Equipment Tampering (USB Drive)	LOW
6.1.6	Absentee Ballot Fraud	LOW

6

RECOUNTS
HAND COUNT COMPARED TO SCANNED BALLOTS

2022 GENERAL ELECTION – State Representative District 43

	Ethan Harsell	Eric Murphy	Mary Adams	Zachary Ista
ELECTION	1582	1759	1714	1717
RECOUNT	1580	1756	1712	1716

2020 GENERAL ELECTION – McKenzie County Commission

	Joel Brown	Craig Hystad	Thomas McCabe	H. Wayne Olson	Jeremy Olson	Clint Wold
ELECTION	2080	1938	1934	1551	1815	2108
RECOUNT	2077	1941	1932	1549	1814	2105

7

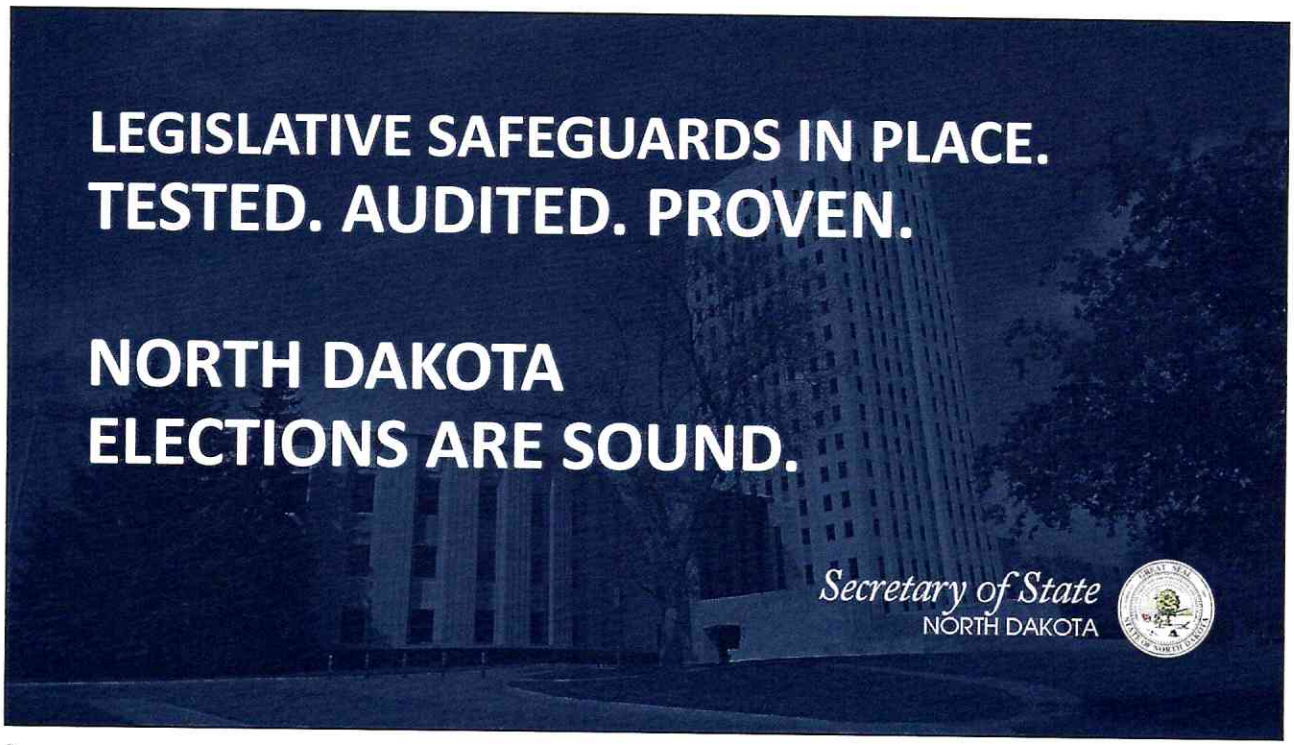
RECOUNTS
DEMAND RECOUNT OPTION

DEMAND RECOUNT
2020 - 2022
Election Cycle

RECOUNT HAS NEVER OVERTURNED RACE DUE TO SCANNER MIS-READING VOTER INTENT

80 Demand Recounts Available
NONE REQUESTED

8


LEGISLATIVE SAFEGUARDS IN PLACE.
TESTED. AUDITED. PROVEN.
NORTH DAKOTA
ELECTIONS ARE SOUND.
Secretary of State
NORTH DAKOTA

9