

Introduced by

Representative Rios

1 A BILL for an Act to create and enact a new section to chapter 16.1-15 of the North Dakota  
2 Century Code, relating to the prohibition against using voting systems in certain elections; and  
3 to amend and reenact sections 16.1-06-12, 16.1-06-14, and 16.1-06-15 and subsection 1 of  
4 section 16.1-06-26 of the North Dakota Century Code, relating to election security and  
5 validation.

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

7 **SECTION 1. AMENDMENT.** Section 16.1-06-12 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **16.1-06-12. Definitions.**

10 As used in this title ~~with regard to voting systems:~~

- 11 1. "Ballot" means a paper ballot from which the votes for candidates and questions are  
12 tabulated by hand or by a voting system. The term includes the digital image of a  
13 marked ballot captured by a voting system.
- 14 2. "Ballot marking device" means a device for marking ballots with ink or other  
15 substance, or any other method for recording votes on ballots such that the votes may  
16 be tabulated and counted by tabulation.
- 17 3. "Counting center" means a location designated by the county auditor for the counting  
18 of ballots and tabulation of votes from the ballots.
- 19 4. "Current" means the ninety days before any election for evaluating the security of the  
20 election systems described under this chapter.
- 21 5. "Digital scan" means a procedure in which votes cast on a paper ballot are tabulated  
22 by examining marks made in voting response locations on the ballot and an image of  
23 the ballot is captured and retained.

1     ~~5-6.~~ "Voting system" means the system and devices authorized under this chapter which  
2             may employ a ballot marking device with use of a touchscreen or other data entry  
3             device to record and count votes in an election.

4             **SECTION 2. AMENDMENT.** Section 16.1-06-14 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6             **16.1-06-14. Requirements for voting systems.**

7             Any voting system used in an election in this state must:

- 8             1. Provide facilities for voting for nominated candidates, for persons not in nomination,  
9             and upon questions or measures submitted to the voters.
- 10            2. Permit each voter to vote for as many persons for any office as the voter is entitled to  
11            vote for, and must allow each voter to vote in primary elections for candidates for  
12            nomination by the political party of the voter's choice, but the system must preclude  
13            each voter from voting for more persons for any office than the voter is entitled to vote  
14            for, from voting more than once for the same candidate or upon the same measure or  
15            question submitted to the voters, or voting the ballot of more than one political party in  
16            any primary election.
- 17            3. Permit each voter, insofar as is possible, by the replacement of spoiled ballots, to  
18            change the voter's vote for any candidate, or upon any measure or question submitted  
19            to the voters, up to the time the voter begins the final operation to register the voter's  
20            vote.
- 21            4. Permit and require secrecy while voting, and be constructed and controlled so no  
22            other individual can see or know for whom an elector has voted or is voting, except an  
23            individual assisting in marking the ballot at the request of the elector as prescribed by  
24            law, and no individual is able to see or know the number of votes registered for any  
25            candidate while the polls are open.
- 26            5. Be provided with a procedure by the use of which, immediately after the polls are  
27            closed, all voting is prevented.
- 28            6. Be so constructed that when properly operated the system shall register or record  
29            correctly and accurately every vote cast.
- 30            7. Be so constructed that a voter may readily learn the method of operating the system.

- 1       8.    Permit voting by ballot or by entering directly into a computer or other device by
- 2            means of a touchscreen or other data entry device.
- 3       9.    Permit voting for presidential electors by making only one mark.
- 4       10.   Permit write-in voting and absentee voting.
- 5       11.   Permit the rotation of names of candidates on ballots as required by this title.
- 6       12.   Fulfill the criteria and standards established by the secretary of state according to
- 7            section 16.1-06-26.
- 8       13.    All voting systems must be certified by the United States election assistance
- 9            commission guidelines version 2.0 for use in the state. Any system certified to the
- 10           United States election assistance commission guidelines version 1.0 standard must be
- 11           immediately decertified.
- 12       14.    The secretary of state shall ensure all voting systems are current regarding software
- 13           security patches for all operating systems and antivirus protection before use in an
- 14           election. If a system is not current and secure under this section, the election officials
- 15           in the jurisdiction shall manually hand count the ballots, and may not use the voting
- 16           system to count ballots.
- 17       15.    The secretary of state shall maintain and store the source code to any voting system
- 18           before a voting system may be approved for use in the state. Any district chairman of a
- 19           district organization entitled to endorse candidates under section 16.1-03-21 may
- 20           conduct an audit of the source code upon written notice to the secretary of state. The
- 21           district party shall pay the expense of the audit.

22       **SECTION 3. AMENDMENT.** Section 16.1-06-15 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24       **16.1-06-15. Mandatory testing of voting systems before each election and after**  
25 **tabulation of ballots.**

- 26       1.    All voting systems used in this state must be tested according to guidelines
- 27            established by the secretary of state and as follows to ascertain whether the automatic
- 28            tabulating equipment will accurately count the votes cast for all offices and measures.
- 29            The testing must be conducted prior to each election at which the system will be used.
- 30            The testing must be done by the county auditor or county auditor's designee, and after

- 1 each test, the testing materials and any preaudited ballots used during the test must  
2 be sealed and retained in the same manner as election materials after an election.
- 3 2. The test of a voting system employing paper ballots must be conducted by processing  
4 a preaudited group of ballots on which are recorded a predetermined number of valid  
5 votes for each candidate and measure and must include for each office one or more  
6 ballots which have votes in excess of the number allowed by law in order to test the  
7 ability of the automatic tabulating equipment to reject such votes. During the test a  
8 different number of valid votes must be assigned to each candidate for an office and  
9 for and against each measure. Every ballot style must be completely tested in all races  
10 and all precincts. If an error is detected, the cause of it must be ascertained and  
11 corrected, and an errorless count must be secured and filed as provided in this  
12 section.
- 13 3. The test must be conducted at least one week nine a.m. on the Saturday closest to  
14 sixty days before the election. Two weeks before the test is conducted, the county  
15 auditor shall publish notice of the test in the official county newspaper. One week  
16 before the test is conducted, the county auditor must send the district chairman of  
17 each political party having a candidate on the ballot a notice of the test. The notice  
18 must state the time, place, and date of the test or tests and that the district chairman  
19 or district chairman's designee may attend. If the system or the testing remains in error  
20 fifty days before the election, the county and the custodian of the voting system may  
21 not use a tabulator for that election, and a hand count of the election must be made  
22 without using any voting system for tabulation of the count. A copy of the canvass  
23 expected test results report, detail results by precinct report, zero reports,  
24 configuration reports, and any other reports produced during testing must be available  
25 for public inspection, during office hours at no charge, within twenty-four hours of  
26 testing.
- 27 4. At the conclusion of the test, the programming for each voting device must be sealed  
28 within the device with a unique numbered seal that must be verified by the election  
29 inspector before the opening of the polls to make sure the programming has not been  
30 removed from the device.

1           5. ~~After each election, the secretary of state shall order a random testing of the voting~~  
2           ~~system programming for one precinct in each county of the state according to logic~~  
3           ~~and accuracy testing procedures detailed in subsection 2 and as may be further~~  
4           ~~defined by the secretary of state in writing in which a voting system is used in any~~  
5           election, starting at nine a.m. on the day after any primary or general election, the  
6           county auditor shall conduct a complete postelection hand count audit of all ballots  
7           cast in the election. Within one week of the count, the county auditor shall post the  
8           cast vote records and ballot images on the official website of the county. This test is to  
9           be conducted before the meeting of the county canvassing board.

10           **SECTION 4. AMENDMENT.** Subsection 1 of section 16.1-06-26 of the North Dakota  
11 Century Code is amended and reenacted as follows:

- 12           1. The secretary of state may adopt rules according to subsection 3 of section  
13           16.1-01-01 for certifying and decertifying voting systems authorized in section  
14           16.1-06-11 and 16.1-06-14, including any software, hardware, and firmware  
15           components used as a part of a voting system device for use and procurement in the  
16           state. The rules may:
- 17           a. Establish criteria and standards with which all voting systems must comply.
  - 18           b. Describe the procedures for voting systems, any single device of a voting  
19           system, and any update and enhancement made to them, to be certified and  
20           decertified for procurement and use in the state.
  - 21           c. Define what constitutes a vote on each voting system which has been certified for  
22           procurement in the state.
  - 23           d. Describe the procedures for the secretary of state to follow when defining what  
24           constitutes a vote on any new voting system, any single device of a voting  
25           system, and any update and enhancement made to them.

26           **SECTION 5.** A new section to chapter 16.1-15 of the North Dakota Century Code is created  
27 and enacted as follows:

28           **Voting systems.**

29           Notwithstanding any other provision of law, this chapter is subject to limitations provided for  
30 in sections 16.1-06-14 and 16.1-06-15 relating to voting systems. If a voting system was not  
31 used because the system failed to meet the necessary security and testing requirements under

Sixty-ninth  
Legislative Assembly

- 1 chapter 16.1-06, a canvass held under this chapter must be conducted through a manual hand
- 2 count of all ballots cast in the election. The secretary of state shall adopt rules governing the
- 3 hand count held under this chapter.