

ELECTIONS

CHAPTER 189

SENATE BILL NO. 2495
(Naaden)

LIST OF PETITION SIGNERS ELIMINATED

AN ACT to amend and reenact section 16-01-11 of the North Dakota Century Code, relating to removing the requirement that all initiative, referendum, or recall petitions submitted to the secretary of state be accompanied by a typed or printed list of the names of the signers of the petition; or in the alternative, to amend and reenact subsection 1 of section 16.1-01-09 of the North Dakota Century Code as created by section 1 of House Bill No. 1049, as approved by the forty-fifth legislative assembly, relating to the removal of the requirement that all initiative, referendum, or recall petitions submitted to the secretary of state be accompanied by a typed or printed list of the names of the signers of the petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) If House Bill No. 1049 is not approved by the forty-fifth legislative assembly, then section 16-01-11 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16-01-11. REGULATIONS GOVERNING INITIATIVE, REFERENDUM, OR RECALL PETITIONS - PENALTY.) No person shall sign any initiative, referendum, or recall petition circulated pursuant to the provisions of sections 25 and 202 of the Constitution of this state, and article 33 of the amendments to the Constitution, unless he is a qualified elector. No person shall sign any petition more than once, and each signer shall add, after his signature, his post-office address and the date of signing. Every qualified elector signing a petition pursuant to the Constitution and this section shall do so in the presence of the person circulating the petition. Each copy of any petition provided for in this section, before being filed, shall have attached thereto an affidavit executed by the circulator to the effect that each signature to the paper appended is the genuine signature of the person whose name it purports to be, that it was signed in his presence, and that each such person is a qualified elector. Any person not an elector who signs an initiative, referendum, or recall petition, any person signing a name other than his own on such a petition, and any person who executes the affidavit

required by this section knowing all or part of the affidavit to be false, shall be guilty of a class A misdemeanor. All signatures on each copy of a petition to which is attached a false affidavit shall be invalid.

SECTION 2. AMENDMENT.) Subsection 1 of section 16.1-01-09 of the North Dakota Century Code as created by section 1 of House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

1. No person shall sign any initiative, referendum, or recall petition circulated pursuant to the provisions of sections 25 and 202 of the Constitution of this state, and article 33 of the amendments of the Constitution, unless he is a qualified elector. No person shall sign any petition more than once, and each signer shall add, after his signature, his post-office address, telephone number if he has one, and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. Each copy of any petition provided for in this section, before being filed, shall have attached thereto an affidavit executed by the circulator to the effect that each signature was signed in his presence, and that the petition was circulated in its entirety.

Approved April 9, 1977

CHAPTER 190

SENATE BILL NO. 2323
(Hoffner, Freed, Schirado, Christensen)

ELECTRONIC VOTING SYSTEMS

AN ACT to create and enact sections 16.1-06-10.1, 16.1-06-10.2, 16.1-06-11.1, 16.1-06-11.2, 16.1-06-12.1, 16.1-06-14.1, 16.1-06-18.1, 16.1-13-23.1, and 16.1-15-09.1 of the North Dakota Century Code, relating to the use of electronic voting systems and the requirements of such systems; to amend and reenact sections 16.1-06-03, 16.1-06-04, 16.1-06-05, 16.1-07-13, subsection 1 of section 16.1-11-17, subsection 2 of section 16.1-11-22, sections 16.1-13-05, 16.1-13-31, 16.1-13-32, 16.1-15-08, 16.1-15-09, subsection 4 of section 16.1-16-01, and section 16.1-16-07 of the North Dakota Century Code as contained in engrossed House Bill No. 1049 as approved by the forty-fifth legislative assembly, relating to supplying electronic voting systems, and using electronic voting systems at elections; and to provide a penalty; or, in the alternative, to create and enact chapter 16-23 of the North Dakota Century Code, relating to the use of electronic voting systems; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 16.1-06-03 of the North Dakota Century Code as created by section 4 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-06-03. OFFICIAL BALLOTS ONLY TO BE USED.) The official ballot prepared by the county auditor or the local auditor or clerk shall contain the name of each candidate whose name has been certified to or filed with such auditor or clerk in the manner provided in this title. Ballots other than official ballots prepared by the county auditor or local auditor or clerk shall not be cast or counted in any election governed by this title. The list of officers and candidates and the statements of measures and questions to be submitted to the voters shall be deemed an official ballot in precincts in which voting machines or electronic voting systems are used.

SECTION 2. AMENDMENT.) Section 16.1-06-04 of the North Dakota Century Code as created by section 4 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-06-04. FORM AND QUALITY OF BALLOTS GENERALLY.) All official ballots prepared under the provisions of this title for use in precincts in which voting machines or electronic voting systems are not used shall:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at such election.
4. Have the language "Vote for _____ name (or names) only" placed immediately under the name of each office.
5. Have printed thereon "Place a crossmark (X) following the name of the person for whom you wish to vote".
6. Leave sufficient space under the name of each candidate to write or paste a name in lieu of the one printed on the ballot.
7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark his choice for each candidate opposite the name of such candidate, and such space shall follow the candidate's name on the same line.

In precincts in which voting machines or electronic voting systems are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters shall be arranged in a manner and form approximating the requirements of this section.

SECTION 3. AMENDMENT.) Section 16.1-06-05 of the North Dakota Century Code as created by section 4 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

ALTERNATIVE NO. 1

16.1-06-05. FORM OF GENERAL ELECTION BALLOT.) The official ballots provided for partisan election at general elections in precincts in which voting machines or electronic voting systems are not used shall be prepared as follows:

1. The ballots shall be of sufficient width to contain all of the political party tickets to be voted for, under the appropriate party designation for each.
2. On the left-hand side of such ballot shall be a column designating the office to be voted for, and on the same line, in the column under the appropriate party designation of each, all of the names of the candidates duly nominated for that office shall be printed.

3. The names of candidates under headings designating each official position shall be alternated in the printing of the official ballot in the same manner as is provided for the primary election ballot.
4. The names of all persons nominated by petition shall be placed in one column under the designation "independent nominations" in the lines respectively specifying the offices for which they are nominated.
5. The size of type shall be specified by the secretary of state.

In precincts in which voting machines or electronic voting systems are used, the list of offices and candidates and the statements of measures and questions to be submitted to the voters shall be arranged in a manner and form approximating the requirements of this section.

ALTERNATIVE NO. 2

16.1-06-05. FORM OF GENERAL ELECTION BALLOT.) The official ballots provided for partisan election at general elections in precincts in which voting machines or electronic voting systems are not used shall be prepared as follows:

1. The ballots shall be of sufficient length and width to contain a continuous listing of the designation of all the offices to be voted for.
2. On the top left-hand side of such ballot shall begin a continuous listing of the designation of each office to be voted for, and under the designation of each office all of the names of the candidates duly nominated for that office shall be printed.
3. The names of candidates nominated for each office shall appear under the designation of that office, and under each candidate's name shall appear, in smaller type, the appropriate party designation for each candidate. Where a candidate has been nominated by petition, the designation under that candidate's name, in smaller type, shall be "independent nomination".
4. The names of candidates under the designation of each office shall be alternated in the printing of the official ballot in the same manner as is provided for the primary election ballot.
5. The size of type shall be specified by the secretary of state.

In precincts in which voting machines or electronic voting systems are used, the list of offices and candidates and the statements of

measures and questions to be submitted to the voters shall be arranged in a manner and form approximating the requirements of this section.

SECTION 4.) Section 16.1-06-10.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-06-10.1. ELECTRONIC VOTING SYSTEMS AUTHORIZED.) The use of electronic voting systems in accordance with the provisions of this chapter, is hereby authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. The advisory committee on elections, as provided for in section 16.1-01-01 of the North Dakota Century Code as created by subsection 5 of section 1 of engrossed House Bill No. 1049 as approved by the forty-fifth legislative assembly, shall approve any electronic voting system prior to acquisition. Thereafter, the system or systems shall be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, the system or systems may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

SECTION 5.) Section 16.1-06-10.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-06-10.2. DEFINITIONS.) As used in this title with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on paper ballots or ballot cards.
2. "Ballot card" means a tabulating card on which votes may be recorded.
3. "Ballot label" means the booklet or guide containing the names of offices, candidates, and questions to be voted on, which is used in conjunction with the voting device and voting card, or paper ballot.
4. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.
5. "Electronic voting system" means a system employing a voting device in conjunction with ballot labels, paper ballots, or ballot cards and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.

6. "Paper ballot" means an official ballot conforming in layout and format to the electronic voting system in use and, as nearly as possible, fulfills the requirements for ballots in this title.
7. "Voting device" means a device in which paper ballots or ballot cards are used in connection with a punch device for the piercing of ballots by the voter, a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.

SECTION 6.) Section 16.1-06-11.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-06-11.1. REQUIREMENTS FOR ELECTRONIC VOTING SYSTEMS.) Any electronic voting system used in an election in this state shall:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.
2. Permit each voter to vote for as many persons for any office as he is entitled to vote for, and shall allow each voter to vote in primary elections for candidates for nomination by the political party of his choice, but it shall preclude each voter from voting for more persons for any office than he is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.
3. Permit each voter, by the replacement of spoiled ballots, to change his vote for any candidate, or upon any measure or question submitted to the voters, up to the time he begins the final operation to register his vote.
4. Permit and require voting in absolute secrecy, and shall be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, save a voter whom he has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism.
5. Have a counter, or other device, the register of which is visible at all times from the outside of the system, which shall show during any period of tabulation the total number of votes tabulated during the period of tabulation and have a protective counter, or other device, which shall record the cumulative total number of movements of the tabulating equipment.

6. Be provided with a procedure, by the use of which, immediately after the polls are closed, all voting is absolutely prevented.
7. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.
8. Be so constructed that a voter may readily learn the method of operating it.
9. Permit voting by paper or by ballot card.
10. Permit voting for presidential electors by making only one mark or punch.
11. Permit write-in voting and absentee voting.
12. Permit the rotation of names of candidates on ballots where required by this title.

SECTION 7.) Section 16.1-06-11.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-06-11.2. MANDATORY TESTING OF ELECTRONIC VOTING SYSTEMS BEFORE ELECTION AND BEFORE AND AFTER TABULATION OF BALLOTS.) All electronic voting systems used in this state shall be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing shall be conducted prior to each election at which the system will be used, and before and after the counting of the ballots at each election. The testing shall be done by the county auditor or his designee, and after each test, the testing materials, programs, and preaudited ballots shall be sealed and retained in the same manner as paper ballots after an election. The automatic tabulating equipment shall also be sealed in a manner which will ensure that it cannot be tampered with prior to the counting of ballots. The test shall be conducted by processing a preaudited group of paper, ballots or ballot cards on which are recorded a predetermined number of valid votes for each candidate and measure, and shall 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 shall be assigned to each candidate for an office, and for and against each measure. If an error is detected, the cause of it shall be ascertained and corrected, and an errorless count shall be secured and filed as provided in this section. The test that is conducted before the election shall be conducted at least one week before the election, and the legislative district chairmen of each political party having a candidate on the ballot shall be sent notice of the test by the county auditor by certified mail at least one week before the test. The notice shall state the time, place, and date of the test or tests, and that the district chairman or his designee may attend.

SECTION 8.) Section 16.1-06-12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-06-12.1. COUNTY AUDITOR TO PROVIDE BALLOTS AND OTHER ELECTRONIC VOTING SYSTEM SUPPLIES.) At the same time as other election supplies are provided and distributed, the county auditor shall provide to each precinct in the county using an electronic voting system:

1. A sufficient number of voting devices and ballots.
2. Four facsimile diagrams of the entire face of the voting device as it will appear on election day.
3. Appropriate instruction material for the use of the voting devices.
4. All other materials required to carry on the election process through the use of electronic voting systems.

SECTION 9.) Section 16.1-06-14.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-06-14.1. ELECTION INSPECTOR AND JUDGES TO DISPLAY MATERIAL AND PROVIDE INSTRUCTION.) In addition to other duties provided by law, the election inspector in precincts using an electronic voting system shall post in a conspicuous manner at the voting place, the four facsimile diagrams of the voting devices used to vote with electronic voting systems and three copies of the official ballot used with electronic voting systems. The election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before he enters the voting booth.

SECTION 10.) Section 16.1-06-18.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-06-18.1. ELECTRONIC VOTING SYSTEMS - VIOLATIONS - PENALTY.) Any person who violates any of the provisions of this chapter relating to electronic voting systems, who tampers with or injures any electronic voting system or device to be used or being used in any election, or who prevents the correct operation of any such system or device to be used or being used in any election shall be guilty of a class A misdemeanor.

SECTION 11. AMENDMENT.) Section 16.1-07-13 of the North Dakota Century Code as created by section 5 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-07-13. REGISTRATION OF ABSENT VOTERS' BALLOTS ON VOTING MACHINES OR ON ELECTRONIC VOTING SYSTEMS.) Absent voters' ballots, if any, shall be registered on voting machines or electronic voting systems by the two election judges. The voting of absent voters'

ballots on voting machines shall be done by the two election judges during the voting day at times when the voting machines are not in use by voters, or after the close of the voting day and before the machines are unlocked for tallying. The voting of absent voters' ballots on an electronic voting system shall be done by the two election judges during the voting day at times when the electronic voting devices are not in use by voters, or after the close of the voting day and before the electronic voting system ballots are tallied. The absentee electronic voting system ballots prepared pursuant to this section shall be deposited in the ballot boxes and counted as other ballots. If the electronic voting system in use so provides, the actual electronic voting system ballot may be used as the absentee ballot.

SECTION 12. AMENDMENT.) Subsection 1 of section 16.1-11-17 of the North Dakota Century Code as created by section 8 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballot shall conform in all respects to the form prescribed by the legal publications handbook under subsection 5 of section 46-01-02 for the sample primary ballot. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in his county. Absent voters' ballots shall not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county shall be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.

SECTION 13. AMENDMENT.) Subsection 2 of section 16.1-11-22 of the North Dakota Century Code as created by section 8 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

2. On the official ballot used at the election, including electronic voting system ballots, the names of candidates under headings designating each office to be voted for shall be alternated in the following manner:
 - a. The ballot shall first be arranged with the names in the order in which they are submitted for use on the sample ballots by the secretary of state for the state and district offices, and prepared by the county auditor for the state, district, and county offices.
 - b. In printing each set of official ballots for the various election precincts, the position of the names shall be changed in each office division as many times as there are candidates in the office division

in which there are the most names. The same number of ballots shall be printed after each change of position.

- c. In making the changes of position, the printer shall take the candidate's name at the head of each office division and place it at the bottom of that division, moving the column up so the name that was second before the change is first after the change.

SECTION 14. AMENDMENT.) Section 16.1-13-05 of the North Dakota Century Code as created by section 10 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-13-05. NOTICE OF ELECTION - CONTENTS - PUBLICATION WITH SAMPLE BALLOT.) Notice of all general elections shall be published by the county auditor in the official county newspaper at the same time as, and as a part of, the publication of the sample ballot preceding such election. The notice shall be substantially as follows:

Notice is hereby given that on Tuesday, the _____ day of November, 19__, at the polling places in the various precincts in the county of _____, an election will be held for the election of state, district, and county officers, which election will be opened at _____ a.m. and will continue open until _____ p.m. of that day with the following exceptions:

Dated this _____ day of _____, 19__

Signed _____
County Auditor

The county auditor shall publish a copy of the sample ballot of the general election once each week for two consecutive weeks prior to the election in the official county newspaper. If no newspaper is published in the county, the publication shall be in a newspaper published in an adjoining county in the state. The form of the sample ballot as ordered and arranged by the county auditor shall conform in all respects to the form prescribed by the legal publications handbook, published pursuant to subsection 5 of section 46-01-02, for the sample general election ballot. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in his county. Absentee voter ballots shall not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county shall be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.

SECTION 15.) Section 16.1-13-23.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-13-23.1. PREPARATION OF ELECTRONIC VOTING SYSTEM BALLOTS. Except as provided in this section, voting procedures for electronic voting systems shall be the same as for regular paper ballot voting. After marking or punching the paper ballot or ballot card for electronic voting systems, the voter shall place the ballot inside the ballot envelope and return it to the election judge. The judge shall remove the stub and deposit the envelope with the ballot inside the ballot box. The ballot stub shall be deposited in an envelope provided for that purpose. Ballot cards from which the ballot stub has been detached by anyone except an election judge shall not be deposited in the ballot box, but shall be marked spoiled and placed with other spoiled ballots.

SECTION 16. AMENDMENT.) Section 16.1-13-31 of the North Dakota Century Code as created by section 10 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-13-31. SECURING NEW BALLOT UPON SPOILING OF OTHERS.) If any elector spoils a ballot, including an electronic voting system ballot, he may obtain others successively, one at a time, not exceeding three in all, upon returning each spoiled ballot. Each ballot returned shall be canceled immediately and, together with those not distributed to the electors, shall be preserved and secured in sealed packages and returned to the county auditor from whom received.

SECTION 17. AMENDMENT.) Section 16.1-13-32 of the North Dakota Century Code as created by section 12 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-13-32. VOTING MACHINES - ELECTRONIC VOTING SYSTEMS - ELECTION LAWS APPLY.) All provisions of law relating to the conduct of elections shall apply as closely as possible to elections at which voting machines or electronic voting systems are used.

SECTION 18. AMENDMENT.) Section 16.1-15-08 of the North Dakota Century Code as created by section 12 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-15-08. WRAPPING AND RETURNING OF BALLOTS TO COUNTY JUDGE.) After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers shall then be folded tightly together and the wrapper shall be pasted or glued securely at the outer end to completely envelop and hold the ballots together. Ballots which are void shall be wrapped in a separate wrapper and shall be marked "void". Ballots which are spoiled shall be separately wrapped and

marked "spoiled". In folding and sealing ballots, the various classes of ballots shall be kept separate. The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper shall be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers shall be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, shall be returned either in person or by mail to the county judge. Ballots used with any electronic voting system shall be wrapped, sealed, and returned as provided in this section.

SECTION 19. AMENDMENT.) Section 16.1-15-09 of the North Dakota Century Code as created by section 12 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-15-09. VOTING MACHINES - ELECTRONIC VOTING SYSTEMS - RETURNS.) Election officers shall make returns of votes cast upon voting machines and on electronic voting systems for all candidates and for any measures of questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. The county auditor shall designate the counting centers where electronic voting system ballots shall be counted. An election board and officials shall be appointed from the legislative district in which the counting center is located, as provided for in section 16.1-05-01 of the North Dakota Century Code as created by section 3 of engrossed House Bill No. 1049 as approved by the forty-fifth legislative assembly, to supervise the counting of ballots. All such counting centers shall have tabulating equipment which has an element which generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment shall also be equipped with an element which generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot.

If any electronic voting system ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, a true duplicate copy shall be made by the two election judges and substituted for the damaged or defective ballot. All duplicate ballots shall be clearly labeled duplicate, shall bear a serial number which shall be recorded on the damaged or defective ballot, and shall be wrapped and delivered with other ballots to the county judge.

SECTION 20.) Section 16.1-15-09.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

16.1-15-09.1. FAILURE OF AUTOMATIC TABULATING EQUIPMENT - COUNTING BY ALTERNATE METHOD.) If the automatic tabulating equipment used as part of any electronic voting system fails to operate during the ballot count at any election, the ballots shall be counted

according to section 16.1-15-03 of the North Dakota Century Code as created by section 12 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly.

SECTION 21. AMENDMENT.) Subsection 4 of section 16.1-16-01 of the North Dakota Century Code as created by section 13 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

4. Recounts shall be conducted by the county auditor who may employ up to four county electors to assist in the recount. The county auditor shall review all paper, machine, electronic voting system, and absentee ballots, whether or not the ballots were counted at the precinct or the county canvass, to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor files a recount demand, he shall be disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section.

SECTION 22. AMENDMENT.) Section 16.1-16-07 of the North Dakota Century Code as created by section 13 of engrossed House Bill No. 1049, as approved by the forty-fifth legislative assembly, is hereby amended and reenacted to read as follows:

16.1-16-07. CONTEST INVOLVING IRREGULARITY OF BALLOTS - PRESERVATION OF BALLOTS.) Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the county judge of any county where he desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the county judge to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

* SECTION 23.) Only if engrossed House Bill No. 1049 is not approved by the forty-fifth legislative assembly, chapter 16-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

16-23-01. DEFINITIONS.) As used in this chapter with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on paper ballots or ballot cards.
2. "Ballot card" means a tabulating card on which votes may be recorded.
3. "Ballot label" means the booklet or guide containing the names of offices, candidates, and questions to be voted on, which is used in conjunction with the voting device and voting card, or paper ballot.

*NOTE: This chapter is codified as North Dakota Century Code Chapter 16-21.1.

4. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.
5. "Electronic voting system" means a system employing a voting device in conjunction with ballot labels, paper ballots, or ballot cards and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.
6. "Paper ballot" means an official ballot conforming in layout and format to the electronic voting system in use and, as nearly as possible, fulfills the requirements for ballots in this title.
7. "Voting device" means a device in which paper ballots or ballot cards are used in connection with a punch device for the piercing of ballots by the voter, a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.

16-23-02. ELECTRONIC VOTING SYSTEMS AUTHORIZED.) The use of electronic voting systems, in accordance with the provisions of this chapter, is hereby authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, the system or systems shall be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, the system or systems may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part. The secretary of state shall approve any electronic voting system prior to acquisition.

16-23-03. REQUIREMENTS FOR ELECTRONIC VOTING SYSTEMS.) Any electronic voting system used in an election in this state shall:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.
2. Permit each voter to vote for as many persons for any office as he is entitled to vote for, and shall allow each voter to vote in primary elections for candidates for nomination by the political party of his choice, but it shall preclude each voter from voting for more persons for any office than he is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.

3. Permit each voter, by the replacement of spoiled ballots, to change his vote for any candidate, or upon any measure or question submitted to the voters, up to the time he begins the final operation to register his vote.
4. Permit and require voting in absolute secrecy, and shall be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, save a voter whom he has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism.
5. Have a counter, or other device, the register of which is visible at all times from the outside of the system, which shall show during any period of tabulation the total number of votes tabulated during the period of tabulation and have a protective counter, or other device, which shall record the cumulative total number of movements of the tabulating equipment.
6. Be provided with a procedure, by the use of which, immediately after the polls are closed, all voting is absolutely prevented.
7. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.
8. Be so constructed that a voter may readily learn the method of operating it.
9. Permit voting by paper ballot or by ballot card.
10. Permit voting for presidential electors by making only one mark or punch.
11. Permit write-in voting and absentee voting.
12. Permit the rotation of names of candidates on ballots where required by this title.

16-23-04. ELECTRONIC VOTING SYSTEMS - ELECTION LAWS APPLY.)

All provisions of law, including ballot form, wrapping and returning of ballots, and recounts and contests, relating to the conduct of elections shall apply as closely as possible to elections at which electronic voting systems are used. Any publication of sample ballots required by this title shall include a sample of electronic voting system ballots if applicable to the method of voting in the county.

16-23-05. COUNTY AUDITOR TO PROVIDE ELECTRONIC VOTING SYSTEM SUPPLIES.) At the same time as other election supplies are provided

and distributed, the county auditor shall provide to each precinct in the county using an electronic voting system:

1. A sufficient number of voting devices and ballots.
2. Four facsimile diagrams of the entire face of the voting device as it will appear on election day.
3. Appropriate instruction material for the use of the voting devices.
4. All other materials required to carry on the election process through the use of electronic voting systems.

16-23-06. ELECTION INSPECTOR AND JUDGES TO DISPLAY MATERIAL AND PROVIDE INSTRUCTION.) In addition to other duties provided by law, the election inspector in precincts using an electronic voting system shall post in a conspicuous manner at the voting place, four facsimile diagrams of the voting devices used to vote with electronic voting systems and three copies of the official ballot used with electronic voting systems. The election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before he enters the voting booth.

16-23-07. PREPARATION OF ELECTRONIC VOTING SYSTEM BALLOTS.) Except as provided in this section, voting procedures for electronic voting systems shall be the same as for regular paper ballot voting. After marking or punching the paper ballot or ballot card for electronic voting systems, the voter shall place the ballot inside the ballot envelope and return it to the election judge. The judge shall remove the stub and deposit the envelope with the ballot inside the ballot box. The ballot stub shall be deposited in an envelope provided for that purpose. Ballot cards from which the ballot stub has been detached by anyone except an election judge shall not be deposited in the ballot box, but shall be marked spoiled and placed with other spoiled ballots.

16-23-08. MANDATORY TESTING OF ELECTRONIC VOTING SYSTEMS BEFORE ELECTION AND BEFORE AND AFTER TABULATION OF BALLOTS.) All electronic voting systems used in this state shall be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast all offices and measures. The testing shall be conducted prior to each election at which the system will be used, and before and after the counting of the ballots at each election. The testing shall be done by the county auditor or his designee, and after each test, the testing materials, programs, and preaudited ballots shall be sealed and retained in the same manner as paper ballots after an election. The automatic tabulating equipment shall also be sealed in a manner which will ensure that it cannot be tampered with prior to the counting of ballots. The test shall be conducted by processing a preaudited group of paper ballots or ballot cards on which are recorded a predetermined number of valid votes for each candidate and measure, and shall 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 shall be assigned to each candidate for an office, and for and against each measure. If an error is detected, the cause of it shall be ascertained and corrected, and an errorless count shall be secured and filed as provided in this section. The test that is conducted before the election shall be conducted at least one week before the election, and the legislative district chairmen of each political party having a candidate on the ballot shall be sent notice of the test by the county auditor by certified mail at least one week before the test. The notice shall state the time, place, and date of the test or tests, and that the district chairman or his designee may attend.

16-23-09. ELECTRONIC VOTING SYSTEMS - RETURNS.) Election officers shall make returns of votes cast upon electronic voting systems for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. The county auditor shall designate the counting centers where electronic voting system ballots shall be counted. An election board and officials shall be appointed from the legislative district in which the counting center is located, as provided for in chapters 16-10 and 16-13 of the North Dakota Century Code. All such counting centers shall have tabulating equipment which has an element which generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment shall also be equipped with an element which generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot.

If any electronic voting system ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, a true duplicate copy shall be made by the two election judges and substituted for the damaged or defective ballot. All duplicate ballots shall be clearly labeled duplicate, shall bear a serial number which shall be recorded on the damaged or defective ballot, and shall be wrapped and delivered with other ballots to the county judge.

16-23-10. FAILURE OF AUTOMATIC TABULATING EQUIPMENT - COUNTING BY ALTERNATE METHOD.) If the automatic tabulating equipment used as part of any electronic voting system fails to operate during the ballot count at any election, the ballots shall be counted according to chapters 16-10 and 16-13 of the North Dakota Century Code.

16-23-11. REGISTRATION OF ABSENT VOTERS' BALLOTS ON ELECTRONIC VOTING SYSTEMS.) Absent voters' ballots, if any, shall be registered on electronic voting systems in the same manner as on voting machines. If the electronic voting system in use provides, the actual electronic

voting system ballot may be used as the absentee ballot.

16-23-12. ELECTRONIC VOTING SYSTEMS - VIOLATIONS - PENALTY.) Any person who violates any of the provisions of this chapter relating to electronic voting systems, who tampers with or injures any electronic voting system or device to be used or being used in any election, or who prevents the correct operation of any such system or device to be used or being used in any election shall be guilty of a class A misdemeanor.

Approved April 21, 1977