

**1999 HOUSE POLITICAL SUBDIVISIONS**

**MB 1149**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1149

House Political Subdivisions Committee

Conference Committee

Hearing Date 01-08-99

Tape Number	Side A	Side B	Meter #
1	x		0-54.0
		x	.2-30.3
1-subcomm-1-12-99	x		0.0-58.3
		x	0.0-2.5
Committee Clerk Signature <i>Sam Dever</i>			

Minutes:

BILL SUMMARY: Voting by an elector moving from one precinct to another, procedures for challenging voters and voters who apply for absent voter's ballots, and when vacancies in office occur.

Chairman Froseth called the meeting to order at 10:04 a.m. in the Prairie Rm. All committee members present: Chairman Froseth, Vice Chair Maragos, Rep. Delmore, Rep. Disrud, Rep. Eckre, Rep. Ekstrom, Rep. Glasheim, Rep. Gunter, Rep. Johnson, Rep. Koppelman, Rep. Niemeier, Rep. Rose, Rep. Severson, Rep. Thoreson, and Rep. Wikenheiser.

Al Jaeger, Secretary of State, testified in support of HB 1149. (See attached testimony) If the carrier has questions, please don't hesitate to call and we will help at the office. After testimony, Mr. Jaeger explained that the present bill doesn't address what "is" a person's residency. It is a

very touchy issue when you deal with voters who continue to vote “forever” in a precinct in which they no longer reside.

Al Jarger, If the committee has any questions, I have Cory and Leanne here from my office as they are the ones that have taken most of the phone calls concerning this issue. In conclusion, the intent of this bill is to make it easier for election boards and election officials to ask simple and easy to ask questions of voters. If voters sign an affidavit, they will be allowed to vote, if they refuse, they will not; under current law.

Chairman Froseth :(17.5) Are you offering the amendments attached at this time?

Al Jaeger: Yes

Discussion continued on amendments. (See attached testimony)

Chairman Froseth :(19.8) I know this is going to come out, so I’m going to bring it up right away. In rural NORTH DAKOTA, many farmers have moved into towns and still want to vote where there farms are located and want to keep voting privileges in townships. How does this effect their ability to vote in the township matters?

Al Jaeger : Don’t know if I can provide a good answer. The reason they want to vote back in the township is because they have property there and are concerned about that

Rep. Johnson : What is the penalty of the election workers that may have let voters vote that should not have? Is there a penalty or concern?

Al Jaeger : (27.6) There is no penalty. The county auditor is suppose to check out affidavits. Most voters don’t intend to vote illegally. This bill will be a tool to make things easier.

Rep. Eckre :(30.2) Commented on North Dakota election laws are joked about in some out-of-state newspapers and something needs to be done. We need to address some of these issues, because we can possibly have someone running for office who lives out of the state.

Rep. Delmore :(33.6) Will this be a deterrent to college students, military personal, or people who have multiple residencies?

Al Jaeger : If nothing is changed, the same requirements occur. This bill will make the law a bit more clear.

Rep. Koppelman :(39.7) The change you want in sect. 1, is this not redundant?

Cory Fong, Sec. State Office: Yes, I guess it may.

Vice Chair Maragos :(42.1) On the amendment, how do you define “reasonable evidence of residence”? Aren’t we making this a legal problem right away?

Al Jaeger : I understand where you are coming from. The intent was to simplify things and most voters won’t mind answering simple questions.

Rep. Ekstrom :(45.0) I worry about the poll workers and election boards that really need guidance from you saying this is the way it really shall be.

Al Jaeger : You are right, and hopefully this will help alleviate some gray areas.

Chairman Froseth : Thank you, Mr. Jaeger. Do we have any more testimony?

Bev Nielson, North Dakota School Board Association, : I work closely with the Sec. of State on this issue and we had tons of calls concerning election vacancies, procedures, etc. We have a big problem because you can own property in many areas and where do you vote. Either you can vote everywhere you own property or you should pick a place. For school issue and for bond issues and those kinds of things, it really is important who is voting and what interest they have

in the community. For a nonresidence, they may not be concerned, and bond issues then fail.

What about who can run for office? If you can show you voted there, then you run for office.

We really do need to address these messy issues. What about a vacancy? In the middle of a term, can you still vote in the place you vacated. Can we tell this person they are no longer a residence? Too many people have no vested interest in the community they vote.

Chairman Froseth : (side B-3) You have brought up many good points and questions. This doesn't seem to have an easy solution. Do we have any more testimony in support of HB1149?

Bryan Hoime, North Dakota Township Officers Association, I am here neither in favor nor opposed to the bill. I am here too explain what a complicated issue this is for township government. (See attached testimony) 3.6

Questions and answers : 10.4 - 15.5 Bryan ended his testimony.

Al Jaeger : (16.4) The township area seem to be the biggest problem. We are running out of bodies in the rural area as compared to city precincts.

Rep. Severson : Al, I would like to address the auditors meeting that was conducted and the absentee voters request. Were there a lot of problems in this last election process with people outside the area?

Al Jaeger : At the polling location it was business as usual. The present law does not allow for a challenge in the absentee application. The addresses may be a vacant lot.

Rep. Glassheim : Basically, what you have here is self selection. We are afraid to have the law decide. There are very murky guidelines in the law now. Then there is the issue of falsely swearing about residency.(24.5)

Al Jaeger : A voter would not be prosecuted for any unintentional activities.

Rep. Glassheim : (25.8) I would lean to getting this resolved in law where you can vote.

Al Jaeger : (26.2) We just decided to do things a little step at a time. We don't want to make this more than it is.

Vice Chair Maragos : (26.9) I'm very unclear about the ramifications are for the challenger. Can the challenger deny a voter the right to vote?

Al Jaeger : (27.2) If the voter signs the affidavit they vote, and if they don't sign they won't get to vote.

Vice Chair Maragos : Are you aware, Mr. Secretary, of anyone trying to vote twice in the same election in different precinct.?

Al Jaeger : Quite frankly, I don't know of any voter fraud that we have ever had. I hear stories.

Chairman Froseth : (29.4) I think we've had good discussion and we all feel these sections need a little modifying. I appoint a subcommittee of Rep. Koppelman as Chair, Rep. Eckre , and Rep. Thoreson to be on the subcommittee. Please get back to full committee by next Thur. Adjourn.

SUBCOMMITTEE: HB 1149, Tuesday, Jan 12, 1999, 3:35 p.m. Subcommittee Chair Rep. Koppelman, Rep. Eckre, and Rep. Thoreson were present.

Rep. Koppelman :1.5 Hearing opened. This subcommittee needs to remember that this bill is designed to address residency issues at the polls not to totally redefine and rewrite the residency laws of North Dakota. The heart of the issue is to eliminate voter fraud. My hope is to fashion something that is workable and improve the bill to bring back to committee with suggestions.

Cory Fong, Sec. of State Office,: 3.0 After listening to the committee concerns, after the initial hearing of HB1149, I decided to consult our legal council to talk about some the ideas that were expressed during the hearing. The result, we have drafted these amendments for your

consideration. We are trying to break down that misconception that existed for so long, that people could go back to their former precinct and vote for as long as they want. However, in the testimony, I got the sense that people were confused about the word “solely”, so we drafted an amendment to clear that up.<sup>3.6</sup> In conclusion, you need to remember this bill is intended to clarify the procedures at the polls not to change any existing law on residency.<sup>7.7</sup> This will help provide guidance for election workers at the polls.

Subcommittee members discussed some of the issues, but upon further reading, they don't have any problems. All agreed they were good revisions. The subcommittee addressed Vice Chair Maragos concern regarding the word “reasonable”, but upon deliberation and direction from the Sec. of State, the subcommittee was satisfied.

Rep. Koppelman : Requested the Sec. of State come back to the full committee with a clean document with the new amendments discussed.

Rep. Eckre :<sup>23.0</sup> Cory, why did you want to change the word “will” to “may”?

Cory: Statute provides a random sampling, so in actuality the affidavits are not all checked. Only about 10% are. “May” will keep with the practice now. We generally don't have many affidavits.

Al Jaeger, Sec. of State: To follow up on what Cory said, the election workers have been of the mind set that the voter can vote and vote here and not live here. This gives the workers more guidance to ask and challenge with more confidence. The voter needs to take some responsibility.<sup>22.6</sup>

Rep. Thoreson :<sup>23.3</sup> Cory, if we change “will” to “may” in that one section, shouldn't we also change “will” to “may” on page 2, line 31?

Cory : Yes. You have made an excellent catch.

Al Jaeger, : 25.5 This is a house keeping bill and doesn't really change the way things have been going. We don't want to make more of it than it is.

Bryan Hoime, N.D. Township Officers Association :31.8 Testified again to offer an amendment to clarify language.(see attached) This is reference to our law 58-04-09. I have no other objections to the Sec. of State amendments with the one change if possible.

Rep. Koppelman :5.5 My recommendation to the subcommittee, since we are not past the bill introduction deadline, we should throw the ball back to Sec. of State Office with some advise and consent with the townships issues. This gives you more time. I recommend we look at the bill and the amendments offered and go with what Mr. Hoime did offer in the first paragraph of his paper.

Rep. Eckre : 2.3 made a motion to recommend to the committee the amendments that the Secretary of State has presented with the exception of those on page 1 and the beginning of page 2, line 1; and with the addition of substituting the word "may" for the word "will" in line 31, page 2; and also to include the amendment offered by Mr. Hoime regarding 58-04-09 with the substitution of the word "criteria" for the word "indicators".

SUBCOMMITTEE VOICE VOTE: all yea and no nays . Meeting adjourned.

1-15-99 HB 1149 was brought before full committee for further discussion. Cory Fong with the Sec. of States Office gave the committee clean amendments. Mr. Hoime was there in support of said amendments. ROLL CALL VOTE on amendments: 14 Yes and 1 No, 0 Absent and not voting. Amendments carry. Rep. B. Thoreson made a motion DO PASS as amended; Rep. Severson seconded. VOTE: 13 Yes and 2 No, 0 Absent. Rep. Koppelman will carry bill.



January 15, 1999

VR  
1/15/99  
1 of 2

HOUSE AMENDMENTS TO HOUSE BILL NO. 1149

Page 1, line 1, remove the second "and"

Page 1, line 2, after "44-02-01" insert ", and 58-04-09"

Page 1, line 11, replace "This" with "Other than as stated in this section, an elector may vote only"

Page 1, remove line 12

HOUSE AMENDMENTS TO HOUSE BILL NO. 1149 1/18/99 PS

Page 2, line 1, replace "use the following" with "challenge a voter if they know or have reason to believe any of the following:"

Page 2, remove line 2

Page 2, line 5, after "before" insert "and fails to provide reasonable evidence of residency in the precinct"

Page 2, line 6, replace "The" with "Except as provided in section 16.1-01-05, the"

Page 2, remove lines 17 through 19

Page 2, line 20, replace "e" with "b"

Page 2, remove lines 22 and 23

Page 2, line 24, replace "g" with "c"

Page 2, line 26, replace "h" with "d"

Page 2, line 27, replace "will" with "may"

Page 2, line 28, replace "i" with "e"

Page 2, line 31, overstrike "will" and insert immediately thereafter "may"

HOUSE AMENDMENT TO HOUSE BILL NO. 1149 1/18/99

Page 4, line 13, overstrike "the above residential address is my address for"

Page 4, line 14, overstrike "voting purposes" and insert immediately thereafter "I reside at the residential address provided above"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1149 1/18/99

Page 5, after line 25, insert:

**"SECTION 5. AMENDMENT.** Section 58-04-09 of the North Dakota Century Code is amended and reenacted as follows:

2 of 2

**58-04-09. Challenge to voter - Duty of judges.** If any person offering to vote at any election or upon any question arising at a township meeting is challenged as unqualified using the criteria provided in section 16.1-05-06, the judges shall proceed in the manner in which judges at a general election are required to proceed, adapting the affidavit described in section 16.1-05-06 to the circumstances of the township meeting."

Renumber accordingly

Please type or use black pen to complete

Date 1-15-99

Roll call vote # 1

### 1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1149

House POLITICAL SUBDIVISIONS Committee

Subcommittee on amendments } Identify or check where appropriate  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken on amendments for HB 1149

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	/		Rep. Wikenheiser	/	
Vice Chair Maragos	/				
Rep. Delmore	/				
Rep. Disrud	/				
Rep. Eckre	/				
Rep. Ekstrom	/				
Rep. Glassheim	/				
Rep. Gunter	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Niemeier		/			
Rep. Rose	/				
Rep. Severson	/				
Rep. Thoreson	/				

Total 14 1  
(Yes) (No)

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

Please type or use black pen to complete

Date 1-15-99

Roll call vote # +2

### 1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1149

House POLITICAL SUBDIVISIONS Committee \_\_\_\_\_

- Subcommittee on \_\_\_\_\_
  - Conference Committee
- } Identify or check where appropriate

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as amended

Motion Made By Rep. Thoreson, B. Seconded By Rep. Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Froseth	/		Rep. Wikenheiser	/	
Vice Chair Maragos		X			
Rep. Delmore	/				
Rep. Disrud	/				
Rep. Eckre	/				
Rep. Ekstrom	/				
Rep. Glassheim	/				
Rep. Gunter	/				
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Niemeier		X			
Rep. Rose	/				
Rep. Severson	/				
Rep. Thoreson	/				

Total 13 2  
(Yes) (No)

Absent -0-

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

HB 1149: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1149 was placed on the Sixth order on the calendar.

Page 1, line 1, remove the second "and"

Page 1, line 2, after "44-02-01" insert ", and 58-04-09"

Page 1, line 11, replace "This" with "Other than as stated in this section, an elector may vote only"

Page 1, remove line 12

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**REPORT OF STANDING COMMITTEE (410)**  
**January 18, 1999 8:23 a.m.**

**Module No: HR-10-0729**  
**Carrier: Koppelman**  
**Insert LC: 98235.0101 Title: .0200**

Renumber accordingly

**1999 SENATE POLITICAL SUBDIVISIONS**

**HB 1149**


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HOUSE BILL 1149

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 25, 1999

Tape Number	Side A	Side B	Meter #
1	x		4684 to end
1		x	0 to 1085
Committee Clerk Signature 			

Minutes:

SENATOR LEE: open the hearing on HOUSE BILL 1149

AL JAEGAR: introduce HOUSE BILL 1149, see testimony, house Political Subdivisions spent allot of time on this bill

SENATOR LEE: anyone who don't have the appendix A

AL JAEGAR: have actual references in clarifying residencies, law on voter registration in the county

SENATOR KELSH: rural areas population's establishing residency in two different counties

AL JAEGAR: sending out of absentee ballots to places where houses used to sit and eliminating this interpretation. Addressing the residency and the local boards challenging this bill.

Clarification in this law would be helpful



SENATOR KELSH: what further actions does the county take in a absentee ballot that is falsified.

AL JAEGAR: allowed to vote once the affidavit is signed and there is no way to distinguish the ballot specifically. Computer data bases and better record keeping by the county auditor to insure that there isn't any double voting

SENATOR LEE: college students and older people whom move so often, are not being affected by this, correct?

AL JAEGAR: correct, dealing with the issues of students and older people and the request of the county auditor challenging where absentee ballots are coming from and if these people live within the county, better guidance to existing law and dealing with fraudulent voters

SENATOR LEE: any other questions

TERRY TRAYNOR: confirm and reiterate what the county auditor has said, support the bill

SENATOR LEE: any further question's

KEN YANTES: see testimony

SENATOR KELSH: is there a problem with people moving from the town to the city and still wanting to be involved in city elections?

KEN YANTES: yes there is a problem with this as to residency and there still remains the same question as to residency and people wanting to establish residency when moving, loosing of township officers

SENATOR LEE: any further questions

MOTION: close the hearing on HOUSE BILL 1149

MOTION: Do Pass

Page 3

Senate Political Subdivisions Committee

Bill/Resolution Number Hb1149

Hearing Date February 25, 1999

MOTION: made by SENATOR WATNE: and seconded by SENATOR LYSON:

SENATOR LYSON: to carry this bill on the floor

Date: 2-25-99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1149

Senate Political Subdivisions Committee Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass

Motion Made By Watne Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chairman)	/				
Senator Flakoll	/				
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson					

Total (Yes) 5 No 0

Absent 1 absent - Nelson

Floor Assignment Sen. Lyson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
February 25, 1999 2:30 p.m.

Module No: SR-34-3603  
Carrier: Lyson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1149, as engrossed: Political Subdivisions Committee (Sen. Lee, Chairman)**  
recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed HB 1149 was placed on the Fourteenth order on the calendar.

SECRETARY OF STATE  
ALVIN A. JAEGER



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E-MAIL sos@state.nd.us

HOME PAGE <http://www.state.nd.us/sec>

SECRETARY OF STATE  
STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500  
March 5, 1999

*3/12  
amended  
Hank  
Carroll*

TO: . Senator Lee and Members of the Senate Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: **HB 1149 – Proposed Amendments**

Page 1, line 11, remove "Other"

*} disenfranchisement*

Page 1, remove lines 12 and 13

Page 4, line 27, after "16.1-05-06" insert "The election official shall include a voter's affidavit with the out-going absent voter's ballot along with an explanation that the voter's affidavit must be completed and returned with the voter's absent voter's ballot in order to be accepted."

*voter is being challenged that the*

*in code section re: challenging the voter*

Renumber accordingly

March 12, 1999

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1149

Page 1, line 11, remove "Other"

Page 1, remove lines 12 and 13

Page 1, line 13, remove "pursuant to section 16.1-01-04"

Page 4, line 27, after "16.1-05-06" replace the period with a semi colon and insert "the election official shall include a voter's affidavit with the outgoing absent voter's ballot along with an explanation that vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absent voter's ballot in order to be accepted,"

Renumber accordingly the voter's right to

*absentee*

*and*

*cc*

*le*

Date: 3-12  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1149

Senate Political Subdivisions Committee Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass as amended

Motion Made By Watnel Seconded By Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chairman)					
Senator Flakoll	/				
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson	/				

Total (Yes) 5 No 0

Absent Lyson

Floor Assignment Lyson

If the vote is on an amendment, briefly indicate intent:

SR 464841

REPORT OF STANDING COMMITTEE

HB 1149, as engrossed: Political Subdivisions Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1149 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "Other"

Page 1, remove line 12

Page 1, line 13, remove "pursuant to section 16.1-01-04"

Page 4, line 27, after "16.1-05-06" insert "and include a voter's affidavit with the outgoing absentee voter's ballot along with an explanation that the voter's right to vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absentee voter's ballot to be accepted"

Renumber accordingly



**1999 TESTIMONY**

**HB 1149**

Testimony of Bev Neilson, North Dakota School Board Association  
To House Political Subvisions - 01-08-99 HB 1149

Ms. Neilson: I am here in favor of HB 1149. We work closely with the Sec. of State Office on this issue and several others on the course of the summer. I started my position in April, and that is when the election process generally begins around that time and runs through June. I was dumbstruck by the number of calls that we had having to do everything from what vacancies, etc. do with residency.

Our concern is two fold. One, whether or not there is a legal folder for areas concerning school board elections. I certainly understand the property owners perspective. But as Mr. Jaeger said earlier, in North Dakota we don't have a law that says if you own property in a district you can vote there. We have people that own property in many districts and could vote in many districts. I own property in Arizona, but I don't yet to vote there. This no taxation without representation went out the window long time ago. The person may have a financial interest in the tax levy of that district and they may want to come back and vote. But, do they have an interest in the development of that area, in the schools. Do they live somewhere else where everything is going fine and want to come back here and vote not to raise taxes. Those kinds of issues, I think, we need to say either you can vote everywhere that you own land or you have to pick a place where you live and that's where you vote.

For school issues, and passing bond issues it is important who's voting and what interest they actually have in the community and that school. For nonresident, they may want to concentrate their resources where they are living and where their kids go to school, then they are out here. This causes bond issues to have difficulty in passing.

The second concern is, who votes or who can run for office. Our biggest issue was, who can run for office. And the only qualification for school board member is that you are a qualified voter. If you can show that you have voted there, you can run for school board or county commission, or state office and not have to prove your actual residency. So, if the only qualification to run for office is North Dakota is that you legally vote here, and in a school district if you are allowed to vote in that school board election, technically you can claim you are an electorate and you may not even live. We don't like it and it's messy, we really have to address it somehow.

The third issue is what do we do for a vacancy on the school board or county commission. If you are in the middle of a term and you move. You are still voting here until the next election. At what point does a vacancy occur. We get a lot of calls on this. Can we appoint, can we tell this person they are no longer a resident. It's a touchy issue. Does any one have any grounds to take those issues, because we do have people voting on very local and personal things, who have no vested interest in the development of those programs. They only want to keep their taxes down. This makes it real hard to make progress.

I have a personal comment, if I may Mr. Chair, if we were less reliant on property taxes this whole thing would probably not be discussed.

1-8-99

Testimony for House Bill 1149  
Political Subdivisions Committee  
Prepared by Bryan Hoime  
North Dakota Township Officers Association

Mr. Chairman, members of the Political Subdivision committee, year after year townships hold elections, and year after year the greatest question I and members of my association faces is "who can vote". Township government isn't necessarily unique when it comes to elections, we do face some different challenges, how to address a voter who shows up to vote at township elections, whether for a township or primary election, who doesn't necessarily or hasn't changed his voting precinct. Much case law has been set over the years stating simply that a voter hasn't changed their voting precinct simply by moving. Many cases in township voting come into question, how do election judges decide if a person has actually changed his residence or precinct.

There are farmers who have multiple residences, usually one in town and one out on a farm or of a rural nature. These voters move into there city residences during the winter months to be closer to services they may need, medical or otherwise, yet they return to their "rural" roots in the spring to live. There are farmers who have decided to move their residence into town and return there every night after working out on their rural farms. How are these voters handled. Another common case are elderly farmers and spouses who retire in town yet return every year to vote at their township annual meeting, or for other elections held throughout any given year. Their friends, common interests, and other reasons exist which compel them to return time and time again.

House Bill 1149 goes a long way in addressing questions we face time and again, it is true that a voter shouldn't be able to use as a reason for not being allowed to vote in a former precinct

the fact that they haven't voted in their current precinct. On page two the criteria followed for challenging a voter seem reasonable and does give guidance to election judges. The law is very clear, it's not within the power of election judges to deny a person from the privilege to vote. All the law allows is that the voter in question is asked to sign an affidavit and then allowed to vote, its up to a higher power to decided on the merits of the affidavit.

These changes in the law are beneficial in giving a greater understanding as too who can vote where. I must also point out that my association is greatly divided on this issue, because of these changes, some townships may no longer be townships simply because the last few people who vote or hold offices because the reside outside of the precinct yet haven't given up their right to vote and return to vote, and do the majority of their business within the boundaries of that township will possibly be challenged. The township's government could be lost.

With these thoughts, I hope I've outlined the positive and the negative implications of this bill, and my reluctance to show support in either direction. I'll have to leave this "gray" area to you to make a decision, which I know you will. Thank you.



**SECRETARY OF STATE**

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 8, 1999

**TO:** Rep. Froseth and Members - House Political Subdivisions Committee  
**FR:** Al Jaeger, Secretary of State  
**RE:** **HB 1149 – Voter Qualifications, Challenging Voters, and Qualifications of Elected Officials**

Where do you live? Seems like a simple question.

Is where you live, your residence? That also does not seem to be an unusual question.

According to North Dakota law (N.D.C.C. § 16.1-01-04(2)), "every qualified elector of the state may have only one voting residence."

Of all the questions that the Secretary of State's office is faced with, those relating to the qualifications of voters as to residency are among the most difficult and challenging to address. These questions come from concerned citizens, candidates, county and local election officials, the media, and others. The questions relate to all levels of government, e.g., state, district, county, city, school, township, etc.

Voter qualification questions have certainly existed for quite some time and long before I became North Dakota's Secretary of State. However, during the past two years, the issue seems to have risen to new heights. Perhaps, there have been more situations, more publicity, or it is just a reflection of the changing nature of our state and a more mobile society. Regardless of the reason, I believe the issues that are raised by the questions needs to be addressed.

During the past year, my office undertook an organized and concerted effort to discuss the questions and issues surrounding voter qualifications as they relate to residency. Our hope and intent in doing so was to come to a better understanding of the sources of these questions, provide guidance and training to better address them, and to determine whether or not solutions could be found.

In this effort, we sought input and feedback from a variety of groups. These groups included the North Dakota County Auditors Association, the North Dakota Township Officers Association, the North Dakota League of Cities, the North Dakota School Boards Association, legislative leadership, our legal counsel and others. What we learned was not surprising. Everyone had his or her share of stories and the issue of residency was not an easily defined or resolved issue.

4.0  
\* Nevertheless, I strongly believe something needs to be done because the issues will not go away. That is why I introduced House Bill 1149. It is not a dramatic or big step forward. There are some that may even contend it does not go far enough or will not change the current situation. For example, the bill does not resolve the issue of "what is" a person's residency. Rather, it relies on laws already existing.

However, I still believe this bill is an essential step forward for maintaining the integrity of the election process. What House Bill 1149 is intended to do is to provide guidance, procedures and tools at the front line for election boards, election officials, and those that hold public office.

## Section 1

Section 1 is intended to clear up a commonly held misperception that has been fostered by the Secretary of State's office and election officials across the state for many years. That is, a voter may vote in his or her former precinct, even if the voter no longer resides in that precinct, for as long as the voter chooses and until the voter votes in another precinct.

5.1 The source of this misperception is likely rooted in the current language of 16.1-01-05 (appendix C) of the North Dakota Century Code. We believe the current law (unchanged since at least 1981 – see source footnote) is intended to allow a voter to vote in his or her former precinct during a transitional time. A time when the voter has not yet established another residence or when the voter has not yet met the 30-day residency requirement in order to vote in his or her new precinct. However, that is not the way it has been interpreted over the years.

But, think about it for a moment. For myself, I find it difficult to comprehend that the intent of 16.1-01-05 was to allow a voter to vote at a precinct "forever" (even if they no longer "lived" in that precinct) until they decided to vote in another location.

6.1 The change to 16.1-01-05 is intended to make it clearer. The added language in lines 11, 12, and 13 states, "This section does not authorize an elector to vote in a former precinct "solely" by reason of not voting in the precinct where the elector resides pursuant to section 16.1-01-04." (See appendix B for text of 16.1-01-04)

## Section 2

7.3 When determining the qualifications of voters, election officials who are assigned to work the polls are often hesitant and uncertain about when and how to use the process to challenge voters. This challenge process, which is the only process provided by law to challenge the qualifications of voters, authorizes the election inspector and judges to challenge voters whom they "know or have reason to believe" are not qualified to vote in the precinct. When a challenge is issued to a voter, the voter may not vote unless the challenge is withdrawn or unless the voter executes an affidavit, swearing to his or her voter qualifications.

8.2 Section 2 is intended to better emphasize and strengthen the challenge process by providing "better guidance" to election officials as to when and how the challenge process should be used and what information must be included in a completed affidavit. The intent, in lines 23 and 24 on page 1 and lines 1 through 8 on page 2, is to provide "key indicators" for election officials to look for when deciding whether or not to challenge a voter. (The deadline for the introduction of agency bills was December 10. Since that time, we have continued to evaluate and fine-tune the bill. Therefore, in appendix A, we have proposed two amendments for Section two).

Section 2, page 2, lines 14 through 29, makes it a matter of law the information that must be included in a voter's affidavit when they are challenged.

On page 3, lines 5 and 6, makes clearer the duties of the county auditor and state's attorney in regard to the signed affidavits.

### Section 3

9.7  
10.1 Quite often, questions regarding voter qualifications arise when people apply for an absentee voter ballot and when the election officials know or have reason to believe they are not qualified electors of the precinct they have applied to vote in. Therefore, it becomes crucial that election officials also have the ability and a means of challenging voters who apply for an absentee voter ballot. At present, the law does not provide a challenge process for absentee ballots.

Therefore, Section 3, page 4, lines 23 through 28 would allow election officials to employ the same challenge process available in 16.1-05-06 when people apply to vote by absentee ballot. (appendix A also contains two proposed amendments for Section 3)

### Section 4

10.7 Closely related to the issues and questions surrounding the qualifications of voters are those surrounding the qualifications of elected officials, especially those at the local level. Situations arise when an elected official moves and takes up a new residence outside of the jurisdiction he or she was elected to represent. When this happens, it begs the question, when is an elected official no longer qualified to serve in his or her elected capacity?

Section 4 is intended to address this issue by further clarifying the scope of 44-02-01. On page 5, lines 18 and 19 make it clearer that positions at all levels of government are considered vacant when the office holder ceases to be a resident.

### Summary

11.4 As stated at the beginning of my testimony, the intent of this bill was not to resolve the issue of "what is" a person's residency for the purpose of voting. That is already in state law. According to 16.1-01-04 (appendix B), a person is a qualified elector if they meet the requirements in that section of law and the residency provisions found in 54-01-26 (appendix D).

\* 11.8 The intent of this bill is to make it easier for election boards and election officials to ask simple, yet not easy to ask questions.

Where do you live? Is where you plan to vote, your residence? If so, are you willing to sign an affidavit to that effect? Under current law, if a voter signs the affidavit, they must be allowed to vote. If they refuse, they are not allowed to vote.

**HB 1149 – Proposed Amendments**

Page 2, line 5, after “before” insert “and fails to provide reasonable evidence of residency in the precinct”

Page 2, line 6, replace “The” with “Except as provided in section 16.1-01-05, the”

Page 4, line 13, overstrike “the above residential address is my address for” and insert immediately thereafter “I reside at the residential address provided above”

Page 4, line 14, overstrike “voting purposes”

Re-number accordingly



**16.1-01-04. Qualifications of electors.**

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14 is a qualified elector.
2. Every qualified elector of the state may have only one voting residence.
3. A person's voting residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by persons convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.

*per tains  
to  
Presidential  
Electors*

*— See  
Appendix  
D*

**Source:** S.L. 1981, ch. 241, § 1; 1993, ch. 207, § 1.

**Cross-References.**

Qualification of electors, see N.D. Const., Art. II, §§ 1, 2.

Qualification of electors in municipal election, see § 40-21-01.

Township election, qualified voters, see § 58-04-08.

Unqualified voting, penalty, see § 16.1-01-12.

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U.S.C., § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *United States v. Arizona*, 400 U.S. 112, 91 S. Ct. 260, 27 L. Ed. 2d 272 (1970).

**Place of Residency.**

The place of one's residence for the purpose of voting is where he has his established home, the place where he is habitually present, and to which, when he departs, he intends to return, must be determined from all the facts and circumstances, and the intention must be accompanied by acts in harmony therewith. *Nelson v. Gass*, 27 N.D. 357, 146 N.W. 537, 1915C Ann. Cas. 796 (1914).

**Presumption of Naturalization.**

A presumption that a voter is naturalized arises from the fact that he has voted. *Kadlec v. Pavik*, 9 N.D. 278, 83 N.W. 5 (1900).

**DECISIONS UNDER PRIOR LAW**

**Congressional Power.**

As it did in Voting Rights Act Amendments of 1970, 42 U.S.C., § 1973aa-1. Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *United States v. Arizona*, 400 U.S. 112, 91 S. Ct. 260, 27 L. Ed. 2d 272 (1970).

**Collateral References.**

Elections ⇌ 59-94.

25 Am. Jur. 2d. Elections, § 103 et seq.

29 C.J.S. Elections, §§ 14-35.

State voting rights of residents of federal military establishments, 34 A.L.R.2d 1193.

What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime. 36 A.L.R.2d 1238.

Residence of student or teacher for voting purposes, 98 A.L.R.2d 488.

Conviction under federal law, or law of another state or county, as affecting right to vote or hold public office, 39 A.L.R.3d 303.

Residence of students for voting purposes, 44 A.L.R.3d 797.

Mentally incapacitated persons' voting rights, 80 A.L.R.3d 1116.

**Law Reviews.**

A Study of Guardianship in North Dakota, 60 N.D. L. Rev. 45, 77 (1984).

**16.1-01-05. Voting by qualified elector moving from one precinct to another.** Where a qualified elector moves from one precinct to another precinct within this state, the person is entitled to vote in the precinct from which the person moved until the person has established a new voting residence.

**Source:** S.L. 1981, ch. 241, § 1.

**Cross-References.**

Removal of voter from one precinct to another, see N.D. Const., Art. II, § 1.

**54-01-26. Residence — Rules for determining.** Every person has in law a residence. In determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during his or her life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.
7. The residence can be changed only by the union of act and intent.

**Source:** R.C. 1895, § 12; R.C. 1899, § 12; R.C. 1905, § 12; C.L. 1913, § 14; R.C. 1943, § 54-0126; S.L. 1967, ch. 158, § 103; 1983, ch. 172, § 52.

**Cross-References.**

Divorce actions, presumption of domicile inapplicable, see § 14-05-18.

Residence for poor relief purposes, see chapter 50-02.

**In General.**

Plaintiff must prove three elements to establish defendant's change of residence: (1) abandonment of the old domicile, (2) actual removal to a new domicile, and (3) intent to change from the old to the new and to remain at the new domicile. *Keating v. Keating* (1987) 399 NW 2d 872.

**Burden of Proving Change of Residence.**

There is a presumption against a change of legal residence, and the burden of proving a change of legal residence is on the person alleging the change. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

The burden of proving a change of legal residence is on the person alleging the change. *Keating v. Keating* (1987) 399 NW 2d 872.

**Inmates.**

The rules for determining residence set forth in this section do not support any argument that an inmate in a penitentiary is a resident of the county where he is incarcerated. *Shulze v. Shulze* (1982) 322 NW 2d 250.

**Intention of Party.**

Residence is a question of fact in which the intention of the party enters as an important element. *Wehrung v. Ideal School Dist. No. 10* (1956) 78 NW 2d 68.

Intent to move in the near future without any act of movement does not bring about a change in residence. *Bernhardt v. Dittus* (1973) 265 NW 2d 684.

**Length of Residence Irrelevant.**

A person is not required to reside for any specified length of time in order to acquire residence in the state within purview of general laws. *Burke County v. Brusven* (1932) 62 ND 1, 241 NW 82.

**One Legal Residence.**

Every person has only one legal residence or domicile, as distinguished from the possibility of several actual physical residences. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

**Question of Fact.**

Legal residence, determined according to the rules in this section, is a question of fact, which will not be disturbed on appeal unless it is clearly erroneous. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

**Subsection 3 — Abandonment.**

A person who qualifies as an elector does not lose his status as a resident by voluntary absence from the county unless he actually abandons his residence therein and gains a residence elsewhere. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117, explained in 62 ND 709, 714, 245 NW 483.

Leaving a place of residence does not constitute an abandonment thereof unless the resident establishes another, and a new residence can be established only by the union of act and intent. *State ex rel. Sathre v. Moodie* (1935) 65 ND 340, 258 NW 558.

A domicile once existing cannot be lost by mere abandonment, even when coupled with the intent to acquire a new one, but continues until a new one is in fact gained. *Northwestern Mtg. & Security Co. v. Noel Constr. Co.* (1941) 71 ND 256, 300 NW 28.

A person having his legal residence in the state, who removes from the place of his domicile with the intention not to reside there any longer and to remove to another state, is

still a resident of this state as long as he remains herein. *Northwestern Mtg. & Security Co. v. Noel Constr. Co.* (1941) 71 ND 256, 300 NW 28.

**Subsection 4 — Domicile of Origin.**

The domicile of origin is determined by the domicile, at time of child's birth, of that person upon whom he is legally dependent. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

**Subsection 5 — Rebuttable Presumption.**

The presumption of continuance of the marriage relation and identity of domicile of husband and wife cannot prevail when the facts are shown to be to the contrary. *Krumenacker v. Andis* (1917) 38 ND 500, 165 NW 524; *Fisher v. Fisher* (1926) 53 ND 631, 207 NW 434.

**Subsection 5 — Separation and Divorce.**

In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife does not apply; after separation, each party may have a separate domicile, depending upon proof of actual residence. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

**Subsection 7 — Act and Intent.**

Moving from one place of residence to another with the intent to abandon the old residence and establish a new residence is in law a change of residence which may be accomplished in one day between townships. *Burke County v. Oakland* (1927) 56 ND 343, 217 NW 643.

A nonresident may become a resident of the state upon the performance of some act indicative of an intention to establish a residence within the state, coupled with an actual present intention to establish such a residence. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117, explained in 62 ND 709, 714, 245 NW 483.

A resident of a certain county or political subdivision of the state may become a nonresident by performance of an act indicative of an intention to abandon his then residence and to establish a residence elsewhere, accompanied by a then present intention to accomplish such purpose. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117.

To effect a change of domicile the fact of physical presence at a dwelling place and the intention to make it a home must concur; if they do, even for a moment, the change of domicile takes place. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

A schoolteacher and his wife did not lose their residency by moving from Killdeer to Grand Forks for one year so that the husband could secure a graduate degree at the university; there was no showing of intent permanently to change residence and the husband and wife were entitled to absent voters' ballots for voting at a bond election in the Killdeer Public School District. *Mittelstadt v. Bender* (1973) 210 NW 2d 89.

**Synonymous with Domicile.**

The term residence within the purview of this statute is synonymous with domicile. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117; *Anderson v. Breithbarth* (1932) 62 ND 709, 245 NW 483; *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

**DECISIONS UNDER PRIOR LAW**

**Inapplicable Statute.**

Section 14-10-01, which, prior to July 1, 1971, provided that minors were males under twenty-one and females under eighteen, did not apply to former section 39-17-03 of the unsatisfied judgment fund law as an aid in determining residency; males and females eighteen and older were to be treated uniformly in determining their residency for recovery from the unsatisfied judgment fund. *Tang v. Ping* (1973) 209 NW 2d 624.

**Collateral References.**

Domicile ⇌ 1-11.  
25 Am. Jur. 2d, Domicil, §§ 1-102.  
28 C.J.S. Domicile, §§ 1-19; 77 C. J. S. Residence.

Domicile while in itinere from old to new home, 5 ALR 296; 16 ALR 1298.

Separate domicile of married women or divorced women as affecting citizenship, domicile, residence, or inhabitancy of children, 53 ALR 1160.

Separate domicile of wife for purposes other than suit for divorce, separation or maintenance, 75 ALR 1254; 90 ALR 358; 128 ALR 1422.

Voting or registering to vote in certain place as affecting question of domicile or residence for other purposes, 107 ALR 448.

Diverse adjudication by courts of different states, as to domicile of decedent, as regards taxation, probate of will, administration, or distribution of estates, 121 ALR 1200.

Public officer or employee, change of domicile by, 129 ALR 1382.

Venue statute, residence or domicile of student, teacher or inmate of institution for purpose of, 132 ALR 509.

Death of parent to whom custody has been

awarded by decree of divorce as making child's domicile that of surviving parent, 136 ALR 914.

Armed forces, domicile or residence of persons in, 148 ALR 1413; 149 ALR 1471; 150 ALR 1468; 151 ALR 1468; 152 ALR 1471; 153 ALR 1442; 155 ALR 1466; 156 ALR 1465; 157 ALR 1462; 158 ALR 1474.

Separate domicile of mother as affecting domicile or residence of infant, 13 ALR 2d 306.

Acquisition of domicile by sending wife or family to new home, 31 ALR 2d 775.

Domicile of infant on death of both parents; doctrine of natural guardianship, 32 ALR 2d 863.

Mental incompetent, change of state or national domicile of, 96 ALR 2d 1236.

What absence from United States constitutes interruption of permanent residence so as to subject alien to exclusion or deportation on re-entry, 22 ALR 3d 749.

Construction of phrase "usual place of abode," or similar terms referring to abode, residence, or domicil, as used in statutes relating to service of process, 32 ALR 3d 112.

Requirements as to residence or domicil of adoptee or adoptive parent for purposes of adoption, 33 ALR 3d 176.

Students: residence of students for voting purposes, 44 ALR 3d 797.

What constitutes residence or domicil within state by citizen of another country for purpose of jurisdiction in divorce, 51 ALR 3d 223.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 ALR 3d 641.

Domicile for state tax purposes of wife living apart from husband, 82 ALR 3d 1274.

Who is resident within meaning of statute prohibiting appointment of nonresident executor or administrator, 9 ALR 4th 1223.

### 54-01-26. Residence — Rules for determining.

#### Distinction Between Legal Residence and Physical Residence.

A person may have two or more physical residences, as distinguished, from that person's legal residence that is the person's domicile. Domicile is synonymous with residence "in law." *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

#### Domicile.

Since domicile and legal residence are synonymous, the statutory rules for determining the place of residence are the rules for determining domicile. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

Domicile is a question of fact. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

To find a change of domicile, the fact of a physical presence at a residence must concur with the intent to make that place the legal residence, "the union of act and intent." The person's intent must be determined from the person's conduct and declarations. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

#### Intent of Party.

Wife's intent as to residency in this state was not negated by her employment in Nebraska, her Nebraska driver's license and her Nebraska vehicle registration. *Habberstad v. Habberstad*, 444 N.W.2d 703 (N.D. 1989).

#### Occupancy.

The concept of residency relative either to the notion of homestead or legal residency does not contemplate actual and continuous occupancy of the property. Indeed, it is recognized that neither the fact of removal from the property or the length of time away will defeat an established homestead or place of legal residency unless such removal is coupled with the requisite intent. *In re Lippert*, 113 Bankr. 576 (Bankr. D.N.D. 1990).

#### Question of Fact.

Legal residence is a question of fact to be determined by the fact finder and to be reviewed according to the clearly erroneous standard of Rule 52(a), N.D.R.Civ.P. *Habberstad v. Habberstad*, 444 N.W.2d 703 (N.D. 1989).

#### Subsection 3.

##### —Abandonment.

Closely akin to the issue of homestead abandonment is the issue of abandonment of a legal residency. Here too the law looks to action coupled with intent, with intent being the principal focus. As codified by this section, a residence cannot be changed until another is gained and can be changed only by the union of act and intent. *In re Lippert*, 113 Bankr. 576 (Bankr. D.N.D. 1990).



*if we  
check  
to do so*

SECRETARY OF STATE

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 12, 1999

**TO:** Representative Koppelman and Member of the House Judiciary Sub-Committee on HB 1149

**FR:** Al Jaeger, Secretary of State

**RE:** **HB 1149 – Voter Qualifications, Challenging Voters, and Qualifications of Elected Officials – Proposed Amendments**

After our Friday, January 8 testimony on House Bill 1149 and listening to the discussion and questions that were raised at that time, the Secretary of State's office consulted with legal counsel in the Attorney General's to further discuss the provisions and changes being made by House Bill 1149. The following amendments to House Bill 1149 resulted from that discussion and are being offered for consideration by this sub-committee.

These amendments are intended to respond to many of the concerns and questions raised during the hearing of House Bill 1149 and better clarify the content and scope of the voters affidavit outlined in subsection 4 of section 2 of the bill.

**[The following proposed amendments are being offered as an alternative to the present language contained in section 1 of House Bill 1149. However, please note, the Secretary of State's Office believes the present language of the bill is more clear and concise.]**

Page 1, line 11, replace "This" with "Other than as stated in this section, an elector may vote only in the precinct where the elector resides pursuant to section 16.1-01-04"

Page 1, line 12, remove "section does not authorize an elector to vote in a former precinct solely by reason of not voting"

Page 1, line 13, remove "in the precinct where the elector resides pursuant to section 16.1-01-04"

Re-number accordingly

**[The following proposed amendments are being offered to provide clarification to House Bill 1149]**

Page 2, line 1, replace "may use the following" with "may challenge a voter if they know or have reason to believe any of the following"

Page 2, line 2, remove "indicators as a basis for challenging a voter"

Page 2, line 17, remove "b. The age and citizenship of the affiant."

Page 2, line 18, remove "c. The year and election in which the affiant last voted."

Page 2, line 19, remove "d. The precinct or location in which the affiant last voted, if known."

Page 2, line 20, replace "e" with "b"

Page 2, line 22, remove "f. The name and present address of the affiant who has not voted in any"

Page 2, line 23, remove "previous election anywhere."

Page 2, line 24, replace "g" with "c"

Page 2, line 26, replace "h" with "d"

Page 2, line 27, replace "will" with "may"

Page 2, line 28, replace "i" with "e"

Renumber accordingly

from Mr. [unclear]

1149

1-12-99

**58-04-09. Challenge to voter - Duty of judges.** If any person offering to vote at any election or upon any question arising at a township meeting is challenged as unqualified using the indicators in 16.1-05-06, the judges shall proceed in the manner in which judges at a general election are required to proceed, adapting the affidavit described in section 16.1-05-06 to the circumstances of the township meeting.

should be added in

**58-05-16. Vacancies - How filled - Term of office - Powers of person appointed.** If the electors of a township fail to elect the proper number of officers, or a person elected to a township office fails to qualify, or a vacancy happens in any such office from death, resignation, removal from the township, or other cause, the board of township supervisors, or a majority of them, shall fill the vacancy by appointment, and the person so appointed shall hold his office until the next annual meeting and until his successor is elected and qualified.

this is existing law



January 14, 1999

**TO:** Members of the House Political Subdivisions Committee

**FR:** Representative Koppelman and Members of the House Sub-Committee on HB 1149

**RE: HB 1149 – Voter Qualifications, Challenging Voters, and Qualifications of Elected Officials – Proposed Amendments**

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Renumber accordingly

January 14, 1999

TO: Members of House Political Subdivisions Committee

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Page 2, line 2, remove “indicators as a basis for challenging a voter”

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Page 2, line 6, replace “The” with “Except as provided in section 16.1-01-05, the”

Page 2, line 17, remove “b. The age and citizenship of the affiant.”

Page 2, line 18, remove “c. The year and election in which the affiant last voted.”

Page 2, line 19, remove “d. The precinct or location in which the affiant last voted, if known.”

Page 2, line 20, replace “e” with “b”

Page 2, line 22, remove “f. The name and present address of the affiant who has not voted in any”

Page 2, line 23, remove “previous election anywhere.”

Page 2, line 24, replace “g” with “c”

Page 2, line 26, replace “h” with “d”

Page 2, line 27, replace “will” with “may”

Page 2, line 28, replace “i” with “e”

Page 2, line 31, overstrike “will” and insert immediately thereafter “may”

Page 4, line 13, overstrike “the above residential address is my address for” and insert immediately thereafter “I reside at the residential address provided above”

Page 4, line 14, overstrike “voting purposes”

Page 5, after line 25, insert:

**SECTION 5. AMENDMENT.** Section 58-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**58-04-09. Challenge to voter--Duty of judges.** If any person offering to vote at any election or upon any question arising at a township meeting is challenged as unqualified using the criteria provided in section 16.1-05-06, the judges shall proceed in the manner in which judges at a general election are required to proceed, adapting the affidavit described in section 16.1-05-06 to the circumstances of the township meeting.”

Renumber accordingly

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## Applicable Constitutional and Statutory Provisions Relating to Voting and Residency

### Comments Provided by Secretary of State

#### North Dakota Constitution - Article II - Elective Franchise:

##### Section 1.

Every citizen of the United States, who has attained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector. When an elector moves within the state, he shall be entitled to vote in the precinct from which he moves until he establishes voting residence in another precinct.<sup>1</sup> The legislative assembly shall provide by law for the determination of residence for voting eligibility, other than physical presence. No elector shall lose his residency for voting eligibility solely by reason of his absence from the state.

<sup>1</sup> **Comments:** This does not imply that a person may vote within his/her former precinct for as long as he/she wants or until he/she chooses to vote in his/her new precinct. However, it does indicate that a person may vote in his/her former precinct until he/she establishes a new voting residence within his/her new precinct.

Residency is determined based on the rules provided in NDCC § 54-01-26. According to NDCC § 16.1-01-04, a person may establish a new voting residence by residing in a new precinct for at least 30 days, and intending it to be his/her residence.

#### North Dakota Century Code (NDCC):

##### 16.1-01-04. Qualifications of electors.

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.<sup>2</sup>
2. Every qualified elector of the state may have only one voting residence.<sup>3</sup>
3. A person's voting residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by persons convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.

<sup>2</sup> **Comments:** A person who has resided in the precinct at least thirty days next preceding the date of the election, provided he/she meets all of the other constitutional and statutory requirements including those contained in NDCC § 54-01-26, may be considered a qualified elector of that precinct, assuming the person intends that precinct to be his/her voting residence.

This also implies that the person may no longer be a qualified elector of his/her former precinct even if he/she has not yet voted in his/her new precinct. However, if the person does not intend to abandon his/her voting residence in the former precinct and resume his/her voting residence there, the person may be able to continue voting in his/her former precinct.

<sup>3</sup> **Comments:** Persons who claim they have multiple physical residences are likely claiming they have multiple dwellings. However, a person can have only one voting residence.

**54-01-26. Residence ---- Rules for determining.** Every person has in law a residence. In determining the place of residence, the following rules must be observed:

- It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.<sup>4</sup>
- There can be only one residence.<sup>5</sup>
- A residence cannot be lost until another is gained.<sup>6</sup>
- The residence can be changed only by the union of act and intent.<sup>7</sup>

<sup>4</sup> **Comments:** Residence, and thus voting residence, is the place where a person returns when not called elsewhere for work and other temporary purpose. Residence (voting residence) is the place where a person returns in times of rest.

<sup>5</sup> **Comments:** A person can have only one voting residence.

<sup>6</sup> **Comments:** A person cannot lose a voting residence until a new one is gained. However, a person may gain a new voting residence once the person abandons his/her former voting residence and resides in the new precinct for at least 30 days preceding an election, and intends it to be his/her voting residence. **See NDCC 16.1-01-04(1) or Comments in footnote 2.**

<sup>7</sup> **Comments:** A person's voting residence is determined based on the actions of the person in relation to, or in context with, his/her intent, stated or otherwise manifested.

Sometimes, a person's actions and intent clearly coincide, making the place of his/her voting residence much more evident. However, often times, a person's actions and intent do not appear to clearly coincide, making the place of his/her voting residence unclear and questionable.

Election officials and members of election boards are not authorized by law to determine whether a person's actions and intent clearly coincide when determining whether or not a person is a resident of a precinct, and thus qualified to vote at that precinct. However, election officials, members of election boards, and challengers, are authorized by law to challenge a voter when they know or have reason to believe a voter is not a qualified elector or resident of the precinct.

Determining a person's voting residence generally requires findings of fact which may only be determined through an investigative process and potentially through court proceedings.

**16.1-01-05. Voting by qualified elector moving from one precinct to another.** Where a qualified elector moves from one precinct to another precinct within this state, he is entitled to vote in the precinct from which he moved until he has established his new voting residence.<sup>8</sup>

<sup>8</sup> **Comments:** *Once again, this does not imply that a person may vote within his/her former precinct for as long as he/she wants or until he/she chooses to vote in his/her new precinct. However, it does indicate that a person may vote in his/her former precinct until he/she establishes a new voting residence within his/her new precinct.*

*Voting residence is determined based on the rules provided in NDCC § 54-01-26. According to the NDCC § 16.1-01-04, a person may generally establish a new voting residence by residing in a new precinct for at least 30 days, assuming the person intends to establish his/her voting residence in the new precinct..*

## Applicable Comments from the Secretary of State and from Attorney General Correspondence Relating to Voting and Residency

### *Comments Provided by Secretary of State*

All too often it is assumed that persons may vote within their former precinct for as long as they want or until they choose to vote in the precinct in which they live. When a person gains a new voting residence, that person has lost his/her former voting residence and therefore relinquished his/her right to vote in his/her former precinct. According to the NDCC § 16.1-01-04, a person may generally establish a new voting residence by residing in a new precinct for at least 30 days, assuming the person intends to establish his/her voting residence in the new precinct.

Remember however, according to the rules provided in NDCC § 54-26-01, voting residence is determined by the union of a person's act and intent. Often, a person's actions, and intent, stated or otherwise manifested, don't coincide, making it difficult to clearly determine a person's voting residence and therefore whether or not the person is a qualified elector.

A person's intent is unclear when he/she lives in one precinct but continues to vote in another precinct. It is difficult for anyone, other than the individual or a court, to determine that individual's intent in a final and binding manner. Determining whether a person's intent coincides with his/her actions and therefore whether he/she is a resident of a precinct is beyond the scope and authority of election officials or members of election boards. Rather, it must be left up to a court or other authorized officials to determine.

However, election officials and members of election boards are equipped by statute with a procedure for questioning the voting residence of a person offering to vote. That procedure is provided in NDCC § 16.1-05-06. State law permits an election official, member of an election board, or challenger to challenge a person whose voting residence is questionable. A challenged person must either complete an affidavit, swearing that he/she is a resident of that precinct, or stand aside unless the challenge is withdrawn. A person offering to vote, who completes and signs an affidavit, must be allowed to vote. A person offering to vote who cannot, or refuses, to complete an affidavit may be denied the right to vote. NDCC § 16.1-05-06

Since residency relies on the union of a person's action and intent, and the law seems to provide little guidance for determining a person's intent, it seems the only effective and authorized method for questioning a person's voting residence, according to current law, is through the challenge procedure provided in NDCC § 16.1-05-06.

May 24, 1995 Opinion from Attorney General Heidi Heitkamp to Senator Rolland Redlin:

The act of voting does not make a person a resident. Rather, a person must be a resident prior to voting.<sup>9</sup>

<sup>9</sup> **Comments:** *This is an important statement considering what seems to be the current practice of allowing a person to continue voting in his/her former precinct even if he/she no longer appears to live in that precinct.*

*Continuing to vote in a precinct in which a person no longer resides does not make a person qualified to vote in that precinct. In other words, a person's action of voting in an incorrect precinct does not legitimize his/her voting in that precinct. Rather, the person must continue to be a resident of the former precinct in order to vote in that precinct.*

*In the same context, the act of voting for the first time in a precinct does not necessarily legitimize a person's ability to vote in that precinct. Rather, a person voting for the first time in a precinct must be a resident in the precinct prior to voting in the precinct.*

April 23, 1993 Opinion from Attorney General Heidi Heitkamp to Jerry Renner, Kidder County State's Attorney:

Thus where a person moves out of a township and sells all property in the township, including his house, it would appear that the person intended to give up the residency in the township and gain a new residence elsewhere. However the person's actual intent as expressed in his other actions must also be considered. In that regard the fact that the person does not vote in the new township, but returns to the old township to vote weighs on the side of a conclusion that there is not intent to acquire a new residence. Because there is a presumption against the change in residency, ... the fact that he continues to vote in the township could support a conclusion that there has been no union of action and intent and that he has not acquired a new residence.

As a practical matter the question you present will most likely be raised at the polls or when a voter applies for an absentee ballot. In either case if there is a question as to the person's residency the person should be asked to sign an affidavit such as that provided for in N.D.C.C. § 16.1-05-06. The affidavit will state that the person is in fact a resident of that precinct. If the affidavit is completed the individual must be allowed to vote.<sup>10</sup>

<sup>10</sup> **Comments:** *This passage displays well the complexities that may exist when determining the qualifications and voting residence of a person offering to vote. The most important point being made is that, given all of these complexities, election officials, members of election boards, and challengers must rely upon the challenge procedure provided by North Dakota law to determine the qualifications and voting residence of a person offering to vote. By asking a person to complete and sign an affidavit, an election official, member of an election board, or challenger is placing the responsibility back on the voter to affirm his or her qualifications and voting residence.*



## Suggestions of The Secretary of State Pertaining to Residency and Voting

### Determining a Voter's Residence:

- Voting residence is not always black and white, and cannot always be easily or clearly defined under the current statutes.
- Voting residence is not based upon a person's taxable valuation as many would like it to be. In other words, a person can't necessarily vote in a precinct simply because it is where he/she has the most taxable land or property. A person's property or land may be a factor when determining a person's intended voting residence, however it is certainly not the only factor.
- It is incorrect to assume that a person can continue voting in his/her former precinct for as long as he/she wishes or until he/she chooses to vote in the precinct in which he/she lives.
- A person who is no longer a resident, as defined by NDCC 54-01-26, of his/her former precinct, cannot continue to vote in his/her former precinct.
- A person's voting residence must be determined according to the rules provided in NDCC § 54-01-26.
- A person can have only one voting residence.
- Voting residence depends upon the union of a person's action and intent.
- An election official or a member of an election board is not authorized by law to determine if a person's actions and intent clearly coincide to determine whether the person is or is not a qualified elector and therefore eligible to vote. An election official or member of an election board is not in a position of acting as "judge and jury" in these complex situations. These determinations must rest with a court of law or other authorized officials to decide.

Nevertheless, if an election official, members of the election board, or challengers know or have reason to believe a person is not a qualified elector in that precinct, they are authorized to challenge the voter through the challenge procedure provided in NDCC § 16.1-05-06 and have the voter complete and sign an affidavit.

## Rely on the Challenge Procedure as Defined in NDCC § 16.1-05-06:

- Absent the ability of an election official or member of an election board to make complex decisions regarding the qualifications and residency of persons offering to vote, an election official or a member of an election board must rely upon the challenge procedure for determining a person's qualifications to vote in the precinct.
- If questions arise as to the voting residence of a person offering to vote, an election official, a member of an election board, or challenger should not hesitate to employ the challenge procedure provided in NDCC § 16.1-05-06 by asking the voter to complete and sign a sworn affidavit.
- **NDCC § 16.1-05-06 states:**
  1. One poll challenger appointed by the district chairman of each political party represented on the election board is entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger from each political party is entitled to be in attendance at each polling place at any one time. If any person offering to vote is challenged by a poll challenger or by a member of the election board, the challenged person, unless the challenge is withdrawn, shall stand aside and may not vote unless the challenged person executes an affidavit, acknowledged before the election inspector, that he is a legally qualified elector of the precinct. The affidavit must include the name and address of the affiant and the address of the affiant at the time the affiant last voted. Written notice of the penalty for making a false affidavit and that the county auditor will verify the affidavits must be prominently displayed at the polling place in a form prescribed by the secretary of state. Any person who falsely swears in order to vote is guilty of an offense and must be punished pursuant to chapter 16.1-01. The county auditor shall verify randomly at least ten percent of the affidavits signed in the county, and shall report all violations to the state's attorney.
  2. In addition to the poll challenger, not more than two poll checkers appointed by the district chairman of each political party represented on the election board may be in attendance at each polling place, provided such poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. The poll challengers and poll checkers must be qualified electors of the district in which they are assigned.
  3. No poll challenger or checker may be a member of the election board.
- **Who May Challenge?**
  - A poll challenger appointed by a district political party or member of the election board (Inspector or a Judge)
  - A poll challenger or a member of an election board may NOT ask persons offering to vote for proof of identification, beyond verifying the person's name and address, in an attempt to determine the eligibility of a person whose voting residence is questionable. This is NOT provided for by statute nor is it appropriate. Some voters consider this intimidating and hostile. Instead, the person offering to vote should be challenged.

- **Reasons For Challenging a Voter**

- A poll challenger, member of an election board, or challenger may challenge persons whom they know or have reason to believe are not qualified to vote in the precinct.
- Election officials, members of election boards, and challengers should look for key indicators.
- Key indicators may include:
  - the person's address is located outside the precinct;
  - the person's name cannot be found in the poll book (for those that pre-print poll books);
  - the person lives outside of the precinct but has an address within the precinct;
  - the person asks questions which indicate they don't fully comprehend the qualifications or his/her voting residence.

- **Responsibility of Challenged Voter**

- Either complete and sign a voter's affidavit; or
- Stand aside, unless the challenge is withdrawn.
- A challenge which is withdrawn permits the person to vote without completing or signing an affidavit.

- **What Must be Included in the Voter's Affidavit**

- Name and address of the challenged voter
- Address where the challenged voter last voted
- Notice of the penalty for making a false affidavit
- Notice that the county auditor will check affidavits

- **Completing and Signing Affidavits**

- Challenged voters who complete and sign a voter's affidavit must be allowed to vote.
- Challenged voters who refuse to, or cannot, complete and sign a voter's affidavit may be denied the right to vote.

- **Penalties**

- The county auditor is required to randomly verify at least 10% of the affidavits signed in the county and report all apparent violations to the county state's attorney.
- A county auditor should not hesitate to verify more than 10%, if not all, of the affidavits signed in the county.
- Any person who falsely swears on a voter's affidavit in order to vote is guilty of a Class A Misdemeanor, which carries a maximum penalty of one year imprisonment, a fine of \$2,000, or both.



## SECRETARY OF STATE

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

February 25, 1999

**TO:** Senator Lee and Members of the Senate Political Subdivisions Committee

**FR:** Al Jaeger, Secretary of State

**RE: HB 1149 – Voter Qualifications, Challenging Voters, and Qualifications of Elected Officials**

House Bill 1149 is intended to clarify existing state laws to provide better guidance, procedures and tools for election boards, election officials, and those that hold public office. The bill addresses changes in the following areas:

- Clarifies current law as to how long a person can vote in a precinct where they previously maintained a residence.
- Clarifies current law as to the process of challenging voters.
- Provides for a process of challenging voters when they apply to vote absentee.
- Clarifies existing law as to when an elected position becomes vacant when the office holder ceases to be a resident.
- Strengthens the process of challenging voters in township elections.

The bill does not attempt to resolve the issue of "what is" a person's residency. Rather, it continues to rely on existing laws that already address that issue. We believe the adoption of House Bill 1149 is essential for maintaining the integrity of the election process

### Section 1

The changes in Section 1 are intended to clear up a commonly held misperception that has existed for many years and which has been fostered by the Secretary of State's office, county election officials, and many others. According to this misperception, a voter may vote in his or her former precinct, if the voter no longer resides in that precinct, for as long as the voter chooses and until the voter votes in another precinct.

The source of this misperception is likely rooted in the current language of 16.1-01-05 (appendix A) of the North Dakota Century Code. It is our opinion, the current law (unchanged since at least 1981 – see source footnote) is intended to allow a voter to vote in his or her former precinct during a transitional time. A time when the voter has not yet established another residence or when the voter has not yet met the 30-day residency requirement in order to vote in his or her new precinct. It is incomprehensible that the intent of 16.1-01-05 was to allow a voter to vote at a precinct forever (even if they no longer "lived" in that precinct) until he or she decided to vote in another location. However, that is the way the law has been interpreted over the years.

The changes in this section are intended to clarify that a person can only vote in a precinct if they qualify under the provisions of 16.1-01-04 (see Appendix B). Or, putting it another way, an elector is not authorized to continue voting in a former precinct solely because he or she has not voted in the precinct where the elector now resides as defined in current law.

## Section 2

When determining the qualifications of voters, election officials who are assigned to work the polls are often hesitant and uncertain about when and how to use the process to challenge voters. This challenge process, which is the only process provided by law to challenge the qualifications of voters, authorizes the election inspector and judges to challenge voters whom they "know or have reason to believe" are not qualified to vote in the precinct. When a challenge is issued to a voter, the voter may not vote unless the challenge is withdrawn or unless the voter executes an affidavit, swearing to his or her voter qualifications.

Section 2 is intended to clarify the challenge process by providing better guidance to election officials as to when and how the challenge process should be used and what information must be included in a completed affidavit. The intent, in lines 23 and 24 on page 1 and lines 1 through 10 on page 2, is to provide indicators or signs for election officials to look for when deciding whether or not a voter should be challenged.

On page 2, lines 16 through 26 add to the law the information that must be included in a voter's affidavit when they are challenged.

On page 3, lines 2 and 3 clarify the duties of the county auditor and state's attorney in regard to the signed affidavits.

## Section 3

Quite often, questions regarding voter qualifications arise when people apply for absentee ballots and the election officials know or have reason to believe they are not qualified electors of the precinct they have applied to vote in. The changes in this section provide election officials with the ability and means to challenge voters who apply for absentee ballots. At the present time, the law does not specifically provide a challenge process for absentee ballots.

Therefore, the changes on page 4, lines 22 through 27 would allow election officials to employ the same challenge process available in 16.1-05-06 when people apply to vote by absentee ballot.

## Section 4

Closely related to the issues and questions relating to the qualifications of voters are those surrounding the qualifications of elected officials, especially those at the local level. Situations arise when an elected official moves and takes up a new residence outside of the

jurisdiction he or she was elected to represent. When this happens, the question arises as to when an elected official no longer is qualified to serve in his or her elected capacity?

Section 4 is intended to address this issue by further clarifying the scope of 44-02-01. On page 5, lines 16 and 17 clarify that positions at all levels of government are considered vacant when the office holder ceases to be a resident.

### **Section 5**

The problems associated with challenging voters also occur at township elections. The changes made in section 5 are simply intended to allow the same challenging indicators and procedures contained in section 16.1-05-06 to be used by township officials during their elections.

### **Summary**

The intent of this bill is not to resolve the issue of "what is" a person's residency for the purpose of voting. Those provisions are already in state law. According to 16.1-01-04 (appendix B), a person is a qualified elector if they meet the requirements in that section of law and the residency provisions found in 54-01-26 (appendix C). Rather, as stated at the beginning of this testimony, the intent of House Bill 1149 is to clarify existing law regarding residence for voting purposes, the challenge process and when vacancies occur in elected positions.

For these reasons, I urge your support of House Bill 1149.

Testimony for House Bill 1149  
Political Subdivisions committee  
Prepared by Ken Yantes  
North Dakota Township Officers Association

Madam Chair, members of the committee, House Bill 1149 addresses a problem which is quite prevalent in townships, who has the right to vote. Our association was involved in discussing the genesis of this bill and we're in favor of this bill. The one area we had amended into this bill occurs on section 5, page 5 of the engrossed bill. In 58-04-09 the judges at a township election are required to decide whether to challenge a voter and their right to vote at any election held in the township. We felt if section 2 of this bill were adopted that township code should reflect that change and so we offered that amendment which is before you in section 5.

Our association feels this bill goes a long way in addressing some of the problems a township faces when deciding who can be challenged or who may be allowed to vote and so we stand in support of this bill.

This bill also deals with vacancies and when vacancies exist what remedies are available.. All of which already exists in township statutes and we have no problem with the bill before you regarding this issue. So Madam Chair..we stand in support of engrossed bill 1149.

16.1-01-05. Voting by qualified elector moving from one precinct to another. Where a qualified elector moves from one precinct to another precinct within this state, the person is entitled to vote in the precinct from which the person moved until the person has established a new voting residence.

Source: S.L. 1981, ch. 241, § 1.

**Cross-References.**

Removal of voter from one precinct to another, see N.D. Const., Art. II, § 1.



**16.1-01-04. Qualifications of electors.**

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14 is a qualified elector.
2. Every qualified elector of the state may have only one voting residence.
3. A person's voting residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by persons convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.

*per title 5  
to  
Presidential  
Electors*

*— See  
Appendix  
D*

Source: S.L. 1981, ch. 241, § 1; 1993, ch. 207, § 1.

**Cross-References.**

Qualification of electors, see N.D. Const., Art. II, §§ 1, 2.

Qualification of electors in municipal election, see § 40-21-01.

Township election, qualified voters, see § 58-04-08.

Unqualified voting, penalty, see § 16.1-01-12.

**DECISIONS UNDER PRIOR LAW**

**Congressional Power.**

As it did in Voting Rights Act Amendments of 1970, 42 U.S.C., § 1973aa-1, Congress can prohibit states from disqualifying voters in elections for presidential and vice-presidential electors because they have not met state residency requirements, and can set residency requirements and provide for absentee balloting in presidential and vice-presidential elections. *United States v. Arizona*, 400 U.S. 112, 91 S. Ct. 260, 27 L. Ed. 2d 272 (1970).

**Collateral References.**

Elections ⇌ 59-94.

25 Am. Jur. 2d, Elections, § 103 et seq.

29 C.J.S. Elections, §§ 14-35.

State voting rights of residents of federal military establishments, 34 A.L.R.2d 1193.

What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime. 36 A.L.R.2d 1238.

Residence of student or teacher for voting purposes, 98 A.L.R.2d 486.

Conviction under federal law, or law of another state or county, as affecting right to vote or hold public office, 39 A.L.R.3d 303.

Residence of students for voting purposes, 44 A.L.R.3d 797.

Mentally incapacitated persons' voting rights, 80 A.L.R.3d 1116.

Congress is empowered, as it did in the Voting Rights Act Amendments of 1970, 42 U.S.C., § 1973aa, to prohibit use of literacy tests or other devices used to discriminate against voters on account of their race in all state and national elections. *United States v. Arizona*, 400 U.S. 112, 91 S. Ct. 260, 27 L. Ed. 2d 272 (1970).

**Place of Residency.**

The place of one's residence for the purpose of voting is where he has his established home, the place where he is habitually present, and to which, when he departs, he intends to return, must be determined from all the facts and circumstances, and the intention must be accompanied by acts in harmony therewith. *Nelson v. Gass*, 27 N.D. 357, 146 N.W. 537, 1915C Ann. Cas. 796 (1914).

**Presumption of Naturalization.**

A presumption that a voter is naturalized arises from the fact that he has voted. *Kadlec v. Pavik*, 9 N.D. 278, 83 N.W. 5 (1900).

**Law Reviews.**

A Study of Guardianship in North Dakota, 60 N.D. L. Rev. 45, 77 (1984).

54-01-26. **Residence — Rules for determining.** Every person has in law a residence. In determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during his or her life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.
7. The residence can be changed only by the union of act and intent.

**Source:** R.C. 1895, § 12; R.C. 1899, § 12; R.C. 1905, § 12; C.L. 1913, § 14; R.C. 1943, § 54-0126; S.L. 1967, ch. 158, § 103; 1983, ch. 172, § 52.

**Cross-References.**

Divorce actions, presumption of domicile inapplicable, see § 14-05-18.

Residence for poor relief purposes, see chapter 50-02.

**In General.**

Plaintiff must prove three elements to establish defendant's change of residence: (1) abandonment of the old domicile, (2) actual removal to a new domicile, and (3) intent to change from the old to the new and to remain at the new domicile. *Keating v. Keating* (1987) 399 NW 2d 872.

**Burden of Proving Change of Residence.**

There is a presumption against a change of legal residence, and the burden of proving a change of legal residence is on the person alleging the change. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

The burden of proving a change of legal residence is on the person alleging the change. *Keating v. Keating* (1987) 399 NW 2d 872.

**Inmates.**

The rules for determining residence set forth in this section do not support any argument that an inmate in a penitentiary is a resident of the county where he is incarcerated. *Shulze v. Shulze* (1982) 322 NW 2d 250.

**Intention of Party.**

Residence is a question of fact in which the intention of the party enters as an important element. *Wehrung v. Ideal School Dist. No. 10* (1956) 78 NW 2d 68.

Intent to move in the near future without any act of movement does not bring about a change in residence. *Bernhardt v. Dittus* (1978) 265 NW 2d 684.

**Length of Residence Irrelevant.**

A person is not required to reside for any specified length of time in order to acquire residence in the state within purview of general laws. *Burke County v. Brusven* (1932) 62 ND 1, 241 NW 82.

**One Legal Residence.**

Every person has only one legal residence or domicile, as distinguished from the possibility of several actual physical residences. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

**Question of Fact.**

Legal residence, determined according to the rules in this section, is a question of fact, which will not be disturbed on appeal unless it is clearly erroneous. *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

**Subsection 3 — Abandonment.**

A person who qualifies as an elector does not lose his status as a resident by voluntary absence from the county unless he actually abandons his residence therein and gains a residence elsewhere. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117, explained in 62 ND 709, 714, 245 NW 483.

Leaving a place of residence does not constitute an abandonment thereof unless the resident establishes another, and a new residence can be established only by the union of act and intent. *State ex rel. Sathre v. Moodie* (1935) 65 ND 340, 258 NW 558.

A domicile once existing cannot be lost by mere abandonment, even when coupled with the intent to acquire a new one, but continues until a new one is in fact gained. *Northwestern Mtg. & Security Co. v. Noel Constr. Co.* (1941) 71 ND 256, 300 NW 28.

A person having his legal residence in the state, who removes from the place of his domicile with the intention not to reside there any longer and to remove to another state, is

still a resident of this state as long as he remains herein. *Northwestern Mtg. & Security Co. v. Noel Constr. Co.* (1941) 71 ND 256, 300 NW 28.

**Subsection 4 — Domicile of Origin.**

The domicile of origin is determined by the domicile, at time of child's birth, of that person upon whom he is legally dependent. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

**Subsection 5 — Rebuttable Presumption.**

The presumption of continuance of the marriage relation and identity of domicile of husband and wife cannot prevail when the facts are shown to be to the contrary. *Krumenacker v. Andis* (1917) 38 ND 500, 165 NW 524; *Fisher v. Fisher* (1926) 53 ND 631, 207 NW 434.

**Subsection 5 — Separation and Divorce.**

In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife does not apply; after separation, each party may have a separate domicile, depending upon proof of actual residence. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

**Subsection 7 — Act and Intent.**

Moving from one place of residence to another with the intent to abandon the old residence and establish a new residence is in law a change of residence which may be accomplished in one day between townships. *Burke County v. Oakland* (1927) 56 ND 343, 217 NW 643.

A nonresident may become a resident of the state upon the performance of some act indicative of an intention to establish a residence within the state, coupled with an actual present intention to establish such a residence. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117, explained in 62 ND 709, 714, 245 NW 483.

A resident of a certain county or political subdivision of the state may become a nonresident by performance of an act indicative of an intention to abandon his then residence and to establish a residence elsewhere, accompanied by a then present intention to accomplish such purpose. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117.

To effect a change of domicile the fact of physical presence at a dwelling place and the intention to make it a home must concur; if they do, even for a moment, the change of domicile takes place. *Schillerstrom v. Schillerstrom* (1948) 75 ND 667, 32 NW 2d 106, 2 ALR 2d 271.

A schoolteacher and his wife did not lose their residency by moving from Killdeer to Grand Forks for one year so that the husband could secure a graduate degree at the university; there was no showing of intent permanently to change residence and the husband and wife were entitled to absent voters' ballots for voting at a bond election in the Killdeer Public School District. *Mittelstadt v. Bender* (1973) 210 NW 2d 89.

**Synonymous with Domicile.**

The term residence within the purview of this statute is synonymous with domicile. *City of Enderlin v. Pontiac Township, Cass County* (1932) 62 ND 105, 242 NW 117; *Anderson v. Breithbarth* (1932) 62 ND 709, 245 NW 483; *B.R.T. v. Executive Dir. of Social Serv. Bd.* (1986) 391 NW 2d 594.

**DECISIONS UNDER PRIOR LAW**

**Inapplicable Statute.**

Section 14-10-01, which, prior to July 1, 1971, provided that minors were males under twenty-one and females under eighteen, did not apply to former section 39-17-03 of the unsatisfied judgment fund law as an aid in determining residency; males and females eighteen and older were to be treated uniformly in determining their residency for recovery from the unsatisfied judgment fund. *Tang v. Ping* (1973) 209 NW 2d 624.

**Collateral References.**

Domicile ⇌ 1-11.  
25 Am. Jur. 2d, Domicil, §§ 1-102.  
28 C.J.S. Domicile, §§ 1-19; 77 C. J. S. Residence.

Domicile while in itinere from old to new home, 5 ALR 296; 16 ALR 1298.

Separate domicile of married women or divorced women as affecting citizenship, domicile, residence, or inhabitancy of children, 53 ALR 1160.

Separate domicile of wife for purposes other than suit for divorce, separation or maintenance, 75 ALR 1254; 90 ALR 358; 128 ALR 1422.

Voting or registering to vote in certain place as affecting question of domicile or residence for other purposes, 107 ALR 448.

Diverse adjudication by courts of different states, as to domicile of decedent, as regards taxation, probate of will, administration, or distribution of estates, 121 ALR 1200.

Public officer or employee, change of domicile by, 129 ALR 1382.

Venue statute, residence or domicile of student, teacher or inmate of institution for purpose of, 132 ALR 509.

Death of parent to whom custody has been

awarded by decree of divorce as making child's domicile that of surviving parent, 136 ALR 914.

Armed forces, domicile or residence of persons in, 148 ALR 1413; 149 ALR 1471; 150 ALR 1468; 151 ALR 1468; 152 ALR 1471; 153 ALR 1442; 155 ALR 1466; 156 ALR 1465; 157 ALR 1462; 158 ALR 1474.

Separate domicile of mother as affecting domicile or residence of infant, 13 ALR 2d 306.

Acquisition of domicile by sending wife or family to new home, 31 ALR 2d 775.

Domicile of infant on death of both parents; doctrine of natural guardianship, 32 ALR 2d 863.

Mental incompetent, change of state or national domicile of, 96 ALR 2d 1236.

What absence from United States constitutes interruption of permanent residence so as to subject alien to exclusion or deportation on re-entry, 22 ALR 3d 749.

Construction of phrase "usual place of abode," or similar terms referring to abode, residence, or domicil, as used in statutes relating to service of process, 32 ALR 3d 112.

Requirements as to residence or domicil of adoptee or adoptive parent for purposes of adoption, 33 ALR 3d 176.

Students: residence of students for voting purposes, 44 ALR 3d 797.

What constitutes residence or domicil within state by citizen of another country for purpose of jurisdiction in divorce, 51 ALR 3d 223.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 ALR 3d 641.

Domicile for state tax purposes of wife living apart from husband, 82 ALR 3d 1274.

Who is resident within meaning of statute prohibiting appointment of nonresident executor or administrator, 9 ALR 4th 1223.

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## 54-01-26. Residence — Rules for determining.

### **Distinction Between Legal Residence and Physical Residence.**

A person may have two or more physical residences, as distinguished, from that person's legal residence that is the person's domicile. Domicile is synonymous with residence "in law." *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

### **Domicile.**

Since domicile and legal residence are synonymous, the statutory rules for determining the place of residence are the rules for determining domicile. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

Domicile is a question of fact. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

To find a change of domicile, the fact of a physical presence at a residence must concur with the intent to make that place the legal residence, "the union of act and intent." The person's intent must be determined from the person's conduct and declarations. *Burshiem v. Burshiem*, 483 N.W.2d 175 (N.D. 1992).

### **Intent of Party.**

Wife's intent as to residency in this state was not negated by her employment in Nebraska, her Nebraska driver's license and her Nebraska vehicle registration. *Habberstad v. Habberstad*, 444 N.W.2d 703 (N.D. 1989).

### **Occupancy.**

The concept of residency relative either to the notion of homestead or legal residency does not contemplate actual and continuous occupancy of the property. Indeed, it is recognized that neither the fact of removal from the property or the length of time away will defeat an established homestead or place of legal residency unless such removal is coupled with the requisite intent. *In re Lippert*, 113 Bankr. 576 (Bankr. D.N.D. 1990).

### **Question of Fact.**

Legal residence is a question of fact to be determined by the fact finder and to be reviewed according to the clearly erroneous standard of Rule 52(a), N.D.R.Civ.P. *Habberstad v. Habberstad*, 444 N.W.2d 703 (N.D. 1989).

### **Subsection 3.**

#### **—Abandonment.**

Closely akin to the issue of homestead abandonment is the issue of abandonment of a legal residency. Here too the law looks to action coupled with intent, with intent being the principal focus. As codified by this section, a residence cannot be changed until another is gained and can be changed only by the union of act and intent. *In re Lippert*, 113 Bankr. 576 (Bankr. D.N.D. 1990).