

2009 HOUSE JUDICIARY

HB 1576

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1576

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7740

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1576.

Rep. Al Carlson: Sponsor, support, explained the bill. On page 2 of the bill, lines 27-29 says that the affiant will ensure that his vote is counted if he brings proof of identity to the county auditor's office within 3 days. Their ballot should not be counted if they cannot be verified to be living within the precinct. There has been discussion whether early voting should be 15 days or 7 days as the timeframe. I don't think it should be long of a timeframe. Once again, it changes not only the way of people's voting habits, but also changes the way people campaign. Let's face it, all the people in this room are politicians that live by running by election or reelection and getting our message out to the voters. We've always had early voting, it's called absentee ballot. That process is still in place. The last part of the bill, on the last page, Section 3. We did not have the record turnout of voters with the early voting polling places. If we did it to save money, I don't believe that it saved any money. If we're doing it to get a record turnout, we didn't accomplish that either. Those are the things we should look at election law.

Rep. Delmore: When you look at those affidavits being verified within 3 days after the election. In some races, that will have a considerable effect on when election returns are able to be used. Do you see a complication with that?

Rep. Carlson: It could slow the process down, but on the other hand look across the river. I guess those folks who live on the border with Minnesota, possibly have more of an understanding what is happened to the provisional ballots. When they had 85 precincts in which there were more votes counted than there were registered voters. I am not a fan of voter registration but I do want to make sure that they are accurate ballots. I do think that could create some time lag there, but again it would only be in very few races, where the outcome is determined by a handful of votes. In most cases, that would not have an effect on 90% or more of our elections.

Rep. Delmore: Moving from 15 to 7 days, would there be something wrong with letting it be a local control decision. It's something that we as a body talk about a lot, unless it's convenient for us to mandate something else. There may be districts, would you agree, where a longer time period might be more beneficial.

Rep. Carlson: I couldn't argue that point. I could look at that and say "yes". On the other hand, you have early voting in all of our counties at the courthouse. Am I right in that, at least in most counties? We've already had a lot of it in our counties. So if you go to the early voting precinct, it's nothing new, but it's a different procedure rather than walking in with your driver's license or ID. Now early voting is a perfect instance to have the voter registration because you have a lot more time, obviously to verify that person's ballot before you put it in the ballot box. Again, it's not in every town, but even a work situation where the person in the rural area has to drive a long distance when he goes to find a voting precinct and there isn't one, because it was all vote by mail.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Al Jaeger, Secretary of State: Opposed (attachment). County auditors should make the decision as to early voting precincts or not.

Rep. Delmore: How far before the election can we absentee vote.

Al Jaeger: Absentee voting starts 40 days before the regular election Tuesday.

Rep. Delmore: The 40 days for absentee voting allows time to vote before they leave for the winter.

Al Jaeger: As I testified that in 1997, when the reason for voting absentee was removed, things changed a lot. Political parties wanted their voters, never to vote early. This two week time does catch a lot of people that are snowbirds and what have you, and allow them not to have to go through the absentee process. That does help. It's much better for the process to have the people come in and vote; for an election board to see their ID, than it is doing it absentee.

Rep. Boehning: Can you recast an absentee ballot, if at any time can you go back and say I changed my mind on a candidate, can you get your ballot back and recast it.

Al Jaeger: No.

Rep. Kretschmar: How many counties used early voting precincts?

Al Jaeger: I believe it was six.

Rep. Kretschmar: Do you have figures in your office that would reflect the percentage of voters who voted in those counties as against probably a larger county that does the absentee voting, that didn't have the early voting.

Al Jaeger: We have statistics down to how many people voted every day at the early voting precinct, how many people voted absentee, how many people voted by mail, by day, etc. because we're able to track that information.

Rep. Kretschmar: Do you have the percent out? For example, the people in Cass County that voted.

Al Jaeger: Yes, we do.

Rep. Kretschmar: Quite a long number of years ago, probably in the late 60's or early 70's there was a scandal in my county; when the county auditor and another one of the courthouse officials were opening up and changing the absentee voting ballots. Then the people could come in and demand their ballot back. Then they were able to testify that their ballot had been changed and one man said, I wrote it with a pen and this one was with a pencil. So that did happen.

Rep. Koppelman: Do you have any concern that there is a slippery slope here. Let me explain what I mean. I listened to your testimony here. I'm hearing comments like "when the reason was removed for why you wanted to vote absentee" which I supported. Now we're saying things like the amount of time is good, why don't we do more. Up until the last election, there wasn't any early voting other than absentee voting at the auditor's office or at the county courthouse. Now you're saying that you're getting the objection that why can somebody vote absentee for 40 days out, and why can't they vote early voting 40 days out. Are we coming to the point where, as soon as the ballots are printed, let's start the voting process and maybe elections go six months. Are there any restrictions.

Al Jaeger: To answer your specific question, are we going down a slippery slope, absolutely not. In terms of six months, the laws are set up to allow for 40 days. I would like to remind the people that one of the things that the 40 days is used for is the military. The military would like us to have 45 days because of the transit time for ballots. This body helped us out on that, because now, for those people in the military, we can fax, email and do a lot of things to accommodate those particular voters. I fail to see how we're going down a slippery slope,

because if people have always been able to vote 40 days ahead of time, if you don't have a problem with the reason being removed, and think that's just fine, I fail to see what the problem is with a vote by mail. I definitely don't see what the problem is with the early voting precinct. If anything, with an early voting precinct, you actually see a body and see their identification. So the security and the things that you have in the system are there. You know, by law, I am the state's chief election officer and frankly I'm not going to put my reputation on the line, to suggest anything to this body that I don't feel can be done in terms of an honest election, that every eligible vote is counted, I'm just not going to do that. I have a responsibility statewide for that vote. I don't see a problem with what we're doing now. It worked well. Our goal has always been that the news the day after the election is about the results. We have gone through a couple of election cycles with our new voting system and as I recall, the news the next day has been about the results. In those cases where the vote by mail was used this last time, if you had a concern and we have in the two bills that have been introduced in the Senate side, we have to allow for the process, just like you would in the early voting precinct, our one bill allows the county to start processing the absentee ballots, the vote by mail the day before. They are taken out of the envelopes and scanned, but nothing happened to the ballot until the polls closed on Election Day. The security is there. I'm struggling somewhat in the sense that we have a system that's working exceedingly well and I have yet to have anybody prove to me that something is broken and needs to be fixed.

Rep. Koppelman: My second question is in regard to section 3 of the bill. You didn't give me a lot of specifics there, you just kind of referred back to your testimony on another bill; which would have eliminated vote by mail, except in primary elections, and of course, last time was the first time we had a general election. As I recall the discussion on that bill, Rep. Delmore asked some questions about voters becoming disenfranchised because of showing up at the

poll and not knowing where to go to vote, that there was only one voting place in the county and they might have to drive 50 miles. I'm hearing people say that people thanked us for it, people liked it. I heard some of the same kinds of comment about vote by mail, that it was popular. What could be more local control than asking the people that decide if they want to do early voting next time? What do you say to that?

Al Jaeger: The way you phrase it, it sounds good. The mechanics and logistics of it; I hate to see things change down the road and once you have an election, elections are held once every two years. Things change during that period of time, the processes. The way it's structured, you could have an election in June done one way, and then you have to do something different in November. I think you have to give credit to the people who elect county commissioners and what have you. They are there, they are the local control. I think you need to allow the flexibility for election officials and county people to make those decisions. The statement about someone driving 50 miles to go to a polling place, I think that one thing should be mentioned; those 21 counties sent out postcards to everyone who lived in those counties informing them of this change. The post offices reported that those postcards, for the majority, ended up in the wastebasket at the post office before the people ever left the premises. The point is that every one of those counties made a concentrated effort to inform their constituents about what would be happening in the election. I think we should allow that process to continue. Fifty years ago, we have had over 2,000 precincts and somehow we managed to educate the people about the reduction in precincts. We have a mobile society. If somebody is really interested in elections and voting, I don't see how on the day of the election, they say "oh, I have to vote, I heard a rumor that this was Election Day". In other words, people have some responsibility to participate. People change precincts all the time. In larger cities whether they drive 1/2 mile or 2 blocks the other way. The whole thing of voting

by mail is to be convenient to the public. In our other bill on the Senate side, it makes it very clear that the county can set up an extra polling location. That's a decision that should be made by the counties. I don't know where each place should be set up.

Chairman DeKrey: Thank you. Further testimony in opposition.

Dannette Odenbach, ND Assoc. of Counties: Opposed (attachment).

Rep. Kingsbury: Each early voting precinct had one site. Now if a county decided to have two polling places on Election Day, could a county decide to have two early voting sites?

Dannette Odenbach: Technically they could establish two different sites but have different days available. However, that would create its own set of difficulties.

Rep. Delmore: How do you ensure the integrity of that mail-in voting; to make sure that someone doesn't get a ballot that doesn't belong to them, or that it's not given to the person it's supposed to go to, say someone else filled out the ballot for you differently than what you wanted it to say? Aren't there some ways there too, if we're talking true and pure voting, that the system could be misused.

Dannette Odenbach: By all means. That is a possibility in early voting and in vote by mail. There is nothing we can do to keep that from happening.

Rep. Zaiser: Wouldn't it be easier to beat the system, so to speak, with the vote by mail rather than voting in person.

Dannette Odenbach: How do you mean.

Rep. Zaiser: By fraud, let's say if a person is mentally impaired, and they receive help in completing their ballot. Coercion could be used.

Dannette Odenbach: If the ballot is sent to the voter, they sign the envelope, and the affidavit. The signatures are checked and compared. I guess it could happen that someone coerced another.

Rep. Zaiser: I got comments from both voters and candidates about the timeframe that was allowed for people to send in their absentee ballots. The comments were that that was a long period of time. A lot of things could have happened during that time. If we have this 40 day program, or even a 25 day program, that many of the people would have already voted and if something happened before the election that affected the candidate, what would be your response to that?

Dannette Odenbach: No one has to return their absentee ballot until the day before the election. They have the 40 day window to get the absentee ballot, complete it, and return it; 28% of the absentee voters had returned their ballots by 10/17/08.

Rep. Boehning: In Logan County, on the printout it states that 1642 ballots issued and 750 were returned. What happened to the other 883, did they come to the polls to vote, or not vote.

Dannette Odenbach: Those numbers could have been a keying mistake and check that. That county mailed by vote.

Rep. Boehning: Is there some accounting why they didn't return the ballots back in.

Dannette Odenbach: We can't really track what happens to the ballots after they are mailed out and not returned. There are a number of reasons why they weren't returned. The person ended up voting in person, early voted, forgot to return it, or death.

Chairman DeKrey: Thank you. Further testimony in opposition.

Michael Montplaisir, Cass County Auditor: Opposed (attachment). I am only here to talk about the number of days for early voting. We want to keep the 15 days.

Rep. Delmore: Did you have to pay for the early voting location.

Michael Montplaisir: We paid about \$225/day.

Rep. Griffin: Would there be anything positive gained if the days were moved from 15 down to 7 days.

Michael Montplaisir: It would be less work for us, but we did it to provide a service to the public. Would it be a good thing, I don't think so.

Rep. Kretschmar: What was the last day that you were open for the early voting?

Michael Montplaisir: In the primary election, Friday was the last day; we went from Monday through Friday. In the general election we were open Monday-Thursday and the Monday before the election.

Rep. Kretschmar: If someone from Casselton came to vote, would he be able to do so at the early voting precinct.

Michael Montplaisir: Yes, any eligible voter in Cass County was able to come to the early voting precinct.

Rep. Zaiser: One of the concerns I had with not only early voting system, but at the High Rise, in my district which holds disadvantaged people there with some handicap, whether emotional, mental or physical in some way. A very small percentage of those folks drive. Did you get any comments from those folks and do you know what the voting percentage was from those folks.

Michael Montplaisir: We didn't get a lot of comments from those folks and I haven't looked at any percentages whether those people either increased or decreased. We tried to let everyone know way in advance what the new voting locations were. When we look for voting locations we are looking for several things. We look for room with about 2500 sq. ft. because we know that we're going to have to handle more people. We look for parking space for 30 vehicles. If we can handle enough people through there with 30-40 parking spaces. When we

first looked around there was a problem in finding a place during the primary. In the general election, we didn't have any lines because we added more equipment.

Rep. Zaiser: The small number of folks on disability with a driver's license, much less a vehicle, could you find me some numbers in terms of what percentage of the folks at the high rise voted.

Michael Montplaisir: Okay.

Rep. Koppelman: Are there no polling places at schools in Cass County.

Michael Montplaisir: There are two schools that were available. The Fargo schools didn't allow it. They were concerned about the security of their students. We did use one school in West Fargo, that one was an elementary school and worked out well because the entrance to the polling place was on a different side of the building from where the classes are. There was also a parking lot there as well. The other one that we used was Northern Cass School; it is simply the only school out there. We're serving four different communities and those four communities came together and built a school out in the middle of nowhere. Those were the only two school utilized.

Rep. Koppelman: With regard to the lines, you said that there were some long lines, that's why we extended early voting. Has this really been a problem, in your experience?

Michael Montplaisir: We have had lines in some precincts in the past. We're very concerned about that. I don't think that if a person has to wait 20 minutes, that's unreasonable. If they have to wait for 30 minutes before they get to the clerk's table, I have some concerns. I spent a lot of time on Election Day going around to the different polling places and seeing what the problems were. I ran into a polling place where people were lined up outside, so we put in more clerks and equipment. Part of the problem we found was that the clerks weren't familiar with the poll books, and once we brought in new clerks, the lines were gone in short order. We

need to be able to manage the polling places; it makes it better for us to see what needs to be fixed a lot quicker.

Chairman DeKrey: Thank you. Further testimony in opposition to HB 1576. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1576

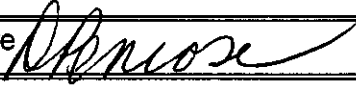
House Judiciary Committee

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Hearing Date: 2/4/09

Recorder Job Number: 8685

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1576.

Rep. Klemin: Explained the amendment. I move the amendment.

Rep. Koppelman: Second.

Chairman DeKrey: Voice vote. Motion carried.

Rep. Kretschmar: I move to amend the bill to delete page 4, section 3.

Rep. Griffin: Second.

Chairman DeKrey: Voice vote. Motion carried.

Rep. Delmore: I move to amend that we strike Section 2.

Rep. Wolf: Second.

Chairman DeKrey: Voice vote, chair is in doubt, roll call vote. **6 YES 6 NO 1 ABSENT,**

motion failed. We now have the bill before us as amended by Rep. Klemin and Rep.

Kretschmar. What are the committee's wishes?

Rep. Koppelman: I move a Do Pass as amended.

Rep. Hatlestad: Second.

Chairman DeKrey: Clerk will call the roll ON HB 1576..

6 YES 6 NO 1 ABSENT

PASS OUT OF COMMITTEE WITHOUT RECOMMENDATION

CARRIER: Rep. Koppelman

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1576

Page 2, line 28, replace "proof" with "verification"

Page 3, line 8, remove "The county auditor shall"

Page 3, remove line 9

Page 3, line 11, after "verified" insert "through the execution of an affidavit as provided under subsection 4"

Renumber accordingly

VR
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1576

Page 1, line 1, replace the comma with "and"

Page 1, line 2, remove ", and section 16.1-11.1-01"

Page 1, line 3, replace the comma with "and"

Page 1, line 4, remove ", and mail ballot elections"

Page 2, line 28, replace "proof" with "verification"

Page 3, line 8, remove "The county auditor shall"

Page 3, remove line 9

Page 3, line 11, after "verified" insert "as provided under subsection 4"

Page 4, remove lines 1 through 20

Renumber accordingly

Date: 2/4/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1576

HOUSE JUDICIARY COMMITTEE

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Legislative Council Amendment Number Strike Section 2 Amendment

Action Taken ☐ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey		✓	Rep. Delmore	✓	
Rep. Klemin		✓	Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Vig	✓	
Rep. Dahl			Rep. Wolf	✓	
Rep. Hatlestad		✓	Rep. Zaiser	✓	
Rep. Kingsbury		✓			
Rep. Koppelman		✓			
Rep. Kretschmar	✓				

Total (Yes) 6 No 6

Absent 1

Floor Carrier: Motion Failed

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

Date: 2/4/09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1576

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Koppelman Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin		✓
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl			Rep. Wolf		✓
Rep. Hatlestad	✓		Rep. Zaiser		✓
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar		✓			

Total (Yes) 6 No 6

Absent 1

Floor Carrier: Rep. Koppelman

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

*Move out of Committee
Without Reconsideration*

REPORT OF STANDING COMMITTEE

HB 1576: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (6 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING).
HB 1576 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the comma with "and"

Page 1, line 2, remove ", and section 16.1-11.1-01"

Page 1, line 3, replace the comma with "and"

Page 1, line 4, remove ", and mail ballot elections"

Page 2, line 28, replace "proof" with "verification"

Page 3, line 8, remove "The county auditor shall"

Page 3, remove line 9

Page 3, line 11, after "verified" insert "as provided under subsection 4"

Page 4, remove lines 1 through 20

Renumber accordingly

2009 TESTIMONY

HB 1576

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



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STATE OF NORTH DAKOTA
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January 26, 2009

TO: Rep DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1576 – Affidavits, Early Voting Precincts, and Mail Ballot Elections

Since Section 1 of the subject bill appears to be identical to HB 1516, the same testimony (with applicable line modifications) is provided below:

Under current law, the ballot of a person is placed in the ballot box (scanner) if he or she completes an affidavit under the provisions of N.D.C.C. § 16.1-05-06.

The concern is that the ballot is counted even if it is later discovered that the voter executing the affidavit was not a qualified elector. In that situation, there is no means by which the ballot completed by that person can be identified so that it is excluded from the final tally of votes cast in the election.

To address this concern, the bill proposes to have the affiant's ballot set aside until such time it can be confirmed he or she is a qualified elector. This process is outlined on page 3, lines 4 through 12. However, as proposed, it would be impossible to confirm voter eligibility within three days. The result could be that voters who are qualified electors, according to state law, would have their ballots "rejected as not an elector."

At the request of the Secretary of State, SB 2324 has been introduced. While it does not contain provisions to set aside the ballot, we believe the changes in section 17 of that bill will greatly reduce the likelihood of an unqualified elector being able to cast a ballot.

Since most of the affidavits have been executed by college students, our intent is to work with the respective universities to provide information on student identification cards (which is an acceptable form of ID as established under the provisions of N.D.C.C. § 16.1-05-07 that would result in fewer affidavits being required.

In regard to Section 2, I support the current law for an early voting precinct, which is 15 days.

As I stated in my testimony opposing Section 2 of HB 1180 (copy attached), I support the current law regarding balloting by mail.

I respectfully request the committee gives this bill a Do Not Pass recommendation.

ALVIN A. JAEGER
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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 19, 2009

TO: Rep DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1180 – Early Voting Precinct/Political Purpose and Balloting by Mail

As the state's chief election official, I agree with the intent of Section 1 of this bill.

However, in that same role, I must request you remove Section 2 from the bill. The change in Section 2, while only a few words, is significant in that it would reverse action taken by the 2007 Legislative Assembly to allow balloting by mail in all elections. If Section 2 is allowed to remain in the bill, it would again restrict balloting by mail to the June primary election.

Balloting by mail was first adopted by the 1993 Legislative Assembly with the passage of HB 1253. The prime sponsor of the bill was Rep. Kretschmar. Co-sponsors currently serving in the legislature are Senators Holmberg, Dotzenrod, and O'Connell. Since then, balloting by mail has been a county decision.

However, balloting by mail was not often used. The reason for this is because of the switching of the method of voting between the June and November election and the resulting voter confusion. For example, when Bowman County used balloting by mail in the June election, the voters liked it and were then disappointed when it wasn't also used in the November election. However, because of the switching back and forth between elections, Bowman County stopped using it.

In 2007, SB 2230 was adopted, which allowed balloting by mail in all elections. It was used by 21 counties in the November 2008 election. As you will hear in testimony to follow, these counties actively encouraged and received input from the public before making the decision to use balloting by mail.

The law requires at least one polling location to be open on election day. It also allows additional polling locations, as was the situation in two counties, i.e., LaMoure and Ramsey.

All indications are that balloting by mail was a success and well received by a vast majority of the voters. Nevertheless, there were lessons learned by all state and county election officials and I am confident it will work even better in 2010. This has been substantiated by a joint study conducted between my office and the North Dakota Association of Counties. Based on the study and feedback received from the counties, a bill being introduced in the Senate includes "tweaks" to improve the process.

(more on the reverse side)

Page two

Whether it is called absentee voting, voting by mail, balloting by mail, etc., I also think it is important for the committee to be aware of the fact that this method of voting through the mail has gained significantly in popularity since 1997. That is the year, the legislature voted to remove the requirement for having a reason for requesting an absentee ballot. Since then, political parties have aggressively promoted and encourage their supporters to vote early.

Except for one thing, whether voting by mail or absentee voting, the processing of the ballot is handled the same. The only difference is that with absentee voting, the voter requests an application or uses a form provided by the political parties, or others, to request a ballot. In the voting by mail process, an application form for a ballot is mailed to the voter by the county. Either way, information about how to obtain a ballot is extensively communicated to the public through local county media, civic presentations, etc.

In 2008, elections in North Dakota were well run. The process of voting was not the news. The news was about the results, as it should be. Because of this, please remove Section 2 and allow the counties and the voters in those respective counties to make the decision about balloting by mail.

Finally, I am providing you with a copy of a letter I mailed to a Boy Scout last November about changes in the voting process to enable voters options in exercising one of their most important rights as citizens.

**TESTIMONY TO THE
HOUSE JUDICIARY COMMITTEE**

Prepared January 26, 2009 by

Danette Odenbach

North Dakota Association of Counties

REGARDING HOUSE BILL 1576

Chairman DeKrey and members of the House Judiciary Committee:

The North Dakota Association of Counties (NDACo) submits this testimony opposing House Bill 1576.

The 2008 General Election had a 64.6% turnout, and of the 321,133 ballots cast throughout the state, just over 11,000 or approximately 3% were cast by voters who executed an affidavit. Almost 10,500 of those affidavits were executed in the 13 counties where there are one or more institutions of higher education; and two of those counties had over 3000 affidavits each.

While the concept of HB 1576 is understandable, the verification process as proposed in the bill creates an administrative impasse, particularly in higher population counties. Additionally, as written, the bill does not clearly define who is responsible for the verification – Page 2, lines 27 through 29 indicates the affiant should deliver proof of eligibility to the county auditor. Page 3, lines 8 and 9 indicate the county auditor shall verify the addresses of each affiant within three days. Regardless who is responsible, it would be virtually impossible for a county to verify over 3000 conditional ballots in three days. The proposed conditional balloting and subsequent verification process would disenfranchise large numbers of otherwise eligible student voters in these counties. Statutorily required affidavit review has shown the issue isn't whether these voters meet the rules for eligibility – age, citizenship, 30 days in the precinct – because they do; the issue is finding a way for these voters to prove their residency without an affidavit.

According to NDCC 16.1-01-04, subsection five (attached), a person “cannot be considered either a resident or a non-resident based on their presence or absence while enrolled in college, university or other postsecondary institution of learning”. According to NDCC 54-01-26, subsection seven (attached), the residence (which is “where the person returns in seasons of repose”) can only be changed by “the union of act and intent”. The ‘act’ can be quantified by physically moving to a new location. But how is intent clearly established? How should a student prove the union of act and intent prior to voting? Currently, many of them do so by executing an affidavit.

By clarifying these residency laws, most of the affidavit voting would be eliminated. Remaining would be that small percentage of voters who either cannot or refuse to produce a form of identification. If the type of change proposed in HB 1576 were implemented after clarifying the residency laws, it would be much easier for the higher population counties to comply with conditional ballot verification as the numbers of affidavits would be significantly less.

As part of the 321,133 voters in the 2008 General Election, just under 43,000 voters cast their ballots at an early voting site in one of the six counties which offered early voting. Section two of HB 1576 reduces the number of days in advance of the statutory Election Day during which early voting may be offered by the counties from 15 days, to 7 days. With statute limiting counties to holding early voting in a single location, the ability to efficiently process the number of early voters experienced in 2008 will be greatly impaired at a time when the popularity of the convenience of early voting is growing. Voters expect, as with all other aspects of life today, the voting process to be quick and easy. The flexibility of offering early voting in the 15 days prior to Election Day allows counties to respond directly to the needs and preferences of the electorate.

While early voting was a popular voting option in the more densely populated counties, voting by mail was the voting method of choice for the citizens in 21 of the state's more rural counties. The proposed changes to mail balloting in Section three of HB 1576 add onerous requirements for voters to request their county to provide a direct service. The changes would require voters to initiate a petition and go through an election (not through the mail) just to allow the county commission the option of considering the question. The prescribed process is convoluted for the voter and circumvents the administrative authority of the county. Every county which used mail balloting in 2008 sought and evaluated public comment and opinion well in advance of making the decision to implement mail balloting. In the very least, grandfathering consideration should be included for those counties which used mail balloting in 2008 and also for those counties which took advisory votes on whether to implement mail balloting in the future.

We appreciate the committee's thoughtful consideration of this information and request a Do Not Pass recommendation on House Bill 1576.

16.1-01-02.3. Special election costs - Reimbursement. The state shall reimburse each county for the costs incurred by the county for conducting a statewide special election that is not held on the date of a statewide primary or general election. Each county shall submit a detailed statement to the office of the budget which lists all expenses incurred by the county in conducting the special election within forty-five days after the special election. The office of the budget shall submit a request for an appropriation to reimburse the counties to the next regular or special session of the legislative assembly. The legislative assembly shall appropriate the funds necessary for the payment of the special election costs.

16.1-01-03. Opening and closing of the polls. The polls at all primary, general, and special elections must be opened at nine a.m. or at such earlier hour, but not earlier than seven a.m., that may be designated for any precinct by resolution of the governing body of the city or county in which such precinct is located except that in precincts in which seventy-five or fewer votes were cast in the last general election, the governing body may direct that the polls be opened at twelve noon. They must remain open continuously until seven p.m. or such later hour, not later than nine p.m., as may be designated for a precinct by resolution of the governing body of the city or county in which the precinct is located. All electors standing in line to vote at the time the polls are set to close must be allowed to vote, but electors arriving after closing time may not be allowed to vote. The election officers present are responsible for determining who arrived in time to vote, and they shall establish appropriate procedures for making that determination. All determinations required to be made pursuant to this section relating to polling hours must be made, and the county auditor notified of them, no later than thirty days prior to an election.

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. For the purposes of this title, every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode.
3. Except as otherwise provided in this section, an individual's 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 individuals convicted and sentenced for a felony must be limited according to chapter 12.1-33.
5. For the purposes of this title, an individual may not be deemed to have gained or lost a residence solely by reason of the individual's presence or absence while enrolled as a student at a college, university, or other postsecondary institution of learning in this state.
6. For the purposes of this title, a member of the armed forces of the United States may not be deemed to have gained or lost a residence in this state solely by reason of the member being stationed on duty in this state.
7. For the purposes of this title, an individual may not be deemed to have lost residence in the individual's precinct or in the state by reason of the individual engaging in temporary government service or private employment outside the individual's precinct or outside the state.

16.1-01-05. Voting by qualified elector moving from one precinct to another. If a qualified elector moves from one precinct to another precinct within this state, the elector is

1. Citizens of other states; or
2. Aliens.

54-01-23. Duty of citizens - Allegiance defined - How renounced. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state. Allegiance may be renounced by a change of residence.

54-01-24. Rights and duties of citizens not electors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

54-01-25. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state who is not an elector.

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 the person 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 the supporting parent's 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 that minor's own act or that of that minor's guardian.
7. The residence can be changed only by the union of act and intent.

54-01-27. Lease of state-owned property. Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held, and must be approved by the industrial commission. For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by

VOTE-BY-MAIL INSTRUCTIONS

★

If you voted in the 2004 or 2006 General Election, you'll receive a **Ballot Application** in the mail the week of April 28.

← This is what your
Ballot Application
will look like.

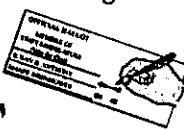


If you do NOT receive a
Ballot Application in the
mail, please:

- ★ Contact your County Auditor
- ~OR~
- ★ Print the application from
the ND Secretary of State's
website:
www.nd.gov/sos/

★

When you receive your **Ballot Application**, just fill it out and return it to your County Auditor no later than 10 da before election (to allow time for mailing the ballot to you). You may return it by mail, fax or in person.



★

When you receive your **Ballot**, simply mark your choices and return it to your County Auditor:

By mail (postmarked no later than the day **before** election)

OR

In person (no later than close of business the day before election)

★ ★ ★ Once you have returned your **Ballot**, **YOU HAVE VOTED!** ★ ★ ★

IMPORTANT MESSAGE FROM YOUR COUNTY AUDITOR

This year, our county will conduct its election **through the mail**. Instructions for voting by mail are on the reverse side of this postcard.

If you do not wish to vote by mail, you may vote in person on Election Day. Contact the county auditor's office or check the official county newspaper for time and location.

Returned ballots will be counted by a county-wide election board on Election Day.

TESTIMONY ON HOUSE BILL 1576

Mr. Chairman and members of the Judiciary Committee, I am Michael Montplaisir, the County Auditor in Cass County. I am in charge of Primary and General Elections for the county. I thank you for the opportunity to express some concerns about House Bill No. 1576.

Cass County operated an Early Voting Precinct for both the Primary and General Elections in 2008. In the Primary Election, we operated the Early Voting Precinct from Monday through Friday, June 2nd through the 6th, which was the week before the June 10th Primary Election. We had 1,927 voters cast ballots during that week. In the General Election, we expanded the Early Voting Precinct to nine days from Monday through Thursday two weeks before the election and then again on Monday, the day before the election. We had 20,744 voters cast ballots during that period. The Early Voting Precinct was very popular with voters. The only complaints I received were that we were not open on Friday and we only had one site. It was a convenience for the voters in Cass County that was greatly appreciated.

The current law allows the county to open an Early Voting Precinct fifteen days prior to the election and House Bill 1576 proposes to decrease that to seven days. The difficulty in running an Early Voting Precinct is finding a suitable location. In the General Election, we were not open on Friday for a very simple reason – there was no room at the Inn. While we were able to find a suitable location - centrally located, large meeting rooms, and a large parking lot - for Monday through Thursday, Friday and Saturday are bread and butter days for motels—they have better opportunities to profit from other events those days. We looked into using a large conference room at the Fargo Dome but we could not compete with football!

Limiting the Early Voting Precinct to seven days before the election would have really restricted the service we were able to provide our citizens this past year. We stretched the building capacity the last few days the precinct was open. Shortening up the number of days will make it very difficult for us to provide the same quality of service to our citizens in future elections.

Thank you for the opportunity to speak with you on HB 1576.