

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2319

2009 SENATE STANDING COMMITTEE MINUTES

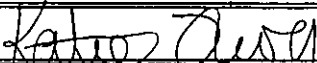
Bill/Resolution No. 2319

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/12/09

Recorder Job Number: 9296

Committee Clerk Signature 

Minutes:

The committee was called to order by Senator Dever and roll was taken. All committee members were present.

Alvin Jager: See attached testimony #1.

Senator Cook: This bill doesn't do anything about the number of precincts for Election Day.

Alvin Jager: No it doesn't, not in either bill. There is a bill that passed in the house that says that a county may have more than one

Senator Cook: Precincts that are open on Election Day.

Alvin Jager: We have, but it was defeated on the house side. The number of precincts is decided by the county, what this bill does says that they can have a vote center open on Election Day. It allows for a resident to be able to vote more than one vote center, not just the one in their precincts. In Starke County they had 5 or 6 vote centers.

Senator Cook: In Marion ND there was no precinct, they had to go to Lamoure.

Alvin Jager: This is a situation throughout the state. If there was a polling location set up for each city we would have voting centers with 5 workers \$10,000 worth of voting equipment for a handful of people.

Senator Dever: Current law says that each county must have at least one precinct.

Alvin Jager: That is not a vote by mail issue. One polling location can accommodate several precincts.

Senator Horne: During Election Day is it lawful for a city to have all voting in the same location. In Minot we can have all voting in the same area?

Alvin Jager: They wouldn't have to be in 4 different places. It can be expanded to have more people. They show identification and then they are given ballot for their precinct. The voters in early voting could come in and get ballot. The same applies to Election Day voting. The county can make that decision. It doesn't make a difference where you live in Ward County; you wouldn't have to be concerned with where the voting place is, you can go to any and get the ballot for your area.

Senator Dever: The idea of processing absentee ballots the day before, is that part of an early voting process?

Alvin Jager: When ballots come in they have to match the signatures and it would be nice to have a head start. Matches because of an early voting precinct the person comes in, shows their identification. Scanner and ballot are secure; in absentee voting it would allow the voters presence to be there just the day before.

Senator Dever: Having more than 1 location for early voting, was it set up at 1 because for security purposes.

Alvin Jager: I think it would accommodate early voting. They had their early voting set up at the Doublewood and 21,000 people voted early. Had they had the option of going to West Fargo could have something south of the interstate and it would have dispersed it more.

Senator Dever: They could justify 4 or 5 location do you think that if they tried for a larger number do you see that being problematic?

Alvin Jager: I think the potential for that is low. Each place needs voting equipment, people to staff it. It would be self defeating.

Dannette Odenbach: See attached testimony #2

Senator Dever: Are the county auditors the county election officials?

Dannette Odenbach: Yes.

Paul Murphy was unable to be at the hearing but sent testimony on the issue. See attached testimony #3.

Senator Dever: Close the public hearing on 2319

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.2319

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 02/12/09

Recorder Job Number: 9306

Committee Clerk Signature

Kate Owe

Minutes:

A motion was made to consider the amendments by Senator Nelson with a second by Senator Cook. The motion passed 5-0. A motion was made for a do pass as amended by Senator Nelson with a second by Senator Oehlke. The motion passed 5-0 with Senator Nelson carrying the bill.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2319

Page 1, line 2, after "16.1-12-02," insert "16.1-12-02.1,"

Page 10, after line 23, insert:

"SECTION 10. AMENDMENT. Section 16.1-12-02.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02.1. Applicant's name placed upon ballot - Affidavit to accompany petition. Upon receipt by the secretary of state of the certificate of nomination provided for in section 16.1-12-02 accompanied by the following affidavit, the secretary of state shall place the applicant's name upon the general election ballot. The affidavit must be substantially as follows:

State of North Dakota)
) ss.
County of _____)

I, _____, being sworn, say that I reside at _____, in the city of _____, state of North Dakota; that I am a candidate for nomination to the office of _____ to be chosen at the general election to be held on _____, _____, and I request that my name be printed upon the general election ballot as provided by law I have identified my ballot name below. I understand that nicknames are allowed as part of my ballot name, but titles and campaign slogans are not permissible. I have reviewed the requirements to hold office and I certify that I am qualified to serve if elected.

Date _____ Ballot name requested

Subscribed and sworn to before me on _____, _____, _____
Candidate's signature

Notary Public
My Commission Expires _____

NOTARY SEAL"

Re-number accordingly

Date: 2-12
Roll Call Vote #: _____

2319

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendments

Motion Made By Nelson Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Dick Dever	X		Dwight Cook	X	
Dave Oehlke	X		Carolyn Nelson	X	
Robert M. Horne					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-12
Roll Call Vote #: 1

2319
Carried
Nelson

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass AS Amended

Motion Made By Nelson Seconded By Cook

Senators	Yes	No	Senators	Yes	No
Dick Dever	X		Dwight Cook	X	
Dave Oehlke	X		Carolyn Nelson	X	
Robert M. Home	0				

Total Yes 5 No 0

Absent _____

Floor Assignment _____

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

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2319

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Seante Bill 2319

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 3/6/2009

Recorder Job Number: 10356

Committee Clerk Signature

Minutes:

Chairman Grande: Open the hearing on SB 2319. Clerk read the title.

Al Jaeger, ND Secretary of State: This bill and the one to follow are election bills that the Secretary of State's Office have worked on and will be talking about in the next couple of minutes. Before I start though I just want to make a couple comments that the election process in the State has gone exceedingly well. Our goal all along has been that the results of the election are the news the next day and not the process of the election. I think we have been rather successful in that and not only at my office with excellent staff, (don't know the name) Oliver, Jim Silvergram, Steve Burchess, Alan Bach, and our county auditors because without them we wouldn't be able to do this and of course the election workers and what have you. It has gone quite well. Also, I wanted to just comment on the fact that ND certainly has a place in the national scene. We are recognized and involved in a lot of things in the national level. For instance, my deputy, Jim, is on the executive board for the National Association of State Election Directors,

he is the regional representative on that board. Just last week he was in Florida for a meeting of the United States Election Assistants Commission Standards Board. He, along with Mike Montplaisir the county auditor from Cass County are States Representatives on that board. There is a little over a hundred members on that board and Jim was elected to the Executive Committee of that particular board and he just returned yesterday from Arkansas where he said we have are on the advisory committee from the vendor that has our election equipment and election systems and software. So we are definitely in the national level at the table and we are able to influence and pick up stuff and what have you.

Testimony. See Attachment # 1.

Chairman Grande: I have a question here, it just kind of struck me, I am sorry. This absentee ballot that is being done by signature stamp; there is absolutely no way to figure out who voted?

Al Jaeger: It can only be put upon if it is witnessed. Someone has to sign and witness that just the same as now if somebody puts down and "X" which is in current law. If somebody were to sign and put down an "X", Madam Chairman, that has to be witnessed by a disinterested person.

Chairman Grande: But since it is an absentee ballot and it gets mailed out to someone's house we have absolutely no way of knowing that that person voted or if the uninterested party voted.

Al Jaeger: I understand your point but the thing is is that this is a very rare situation and it is to accommodate somebody with a disability and so it is really rather rare that it is used but we have run into the occasion and so that is why it has been put into that.

Chairman Grande: That is what concerns me. We have a disabled person with an uninterested party trying to vote we don't know that that person ever got their opinion stated. I just feel that is a real disservice to that handicapped person because that person has no idea if that person checked the right box for them. We will never know and there is not a solution. I am just throwing out the fact that this type of thing I find really a disservice to the disabled.

Al Jaeger: The thing is that they might be able to mark the ballot they just can't sign their name. Like with an "X" and people are just not able to sign their name but they can use an "X". The thing that it would be is that it is so rare is that if something did come in with a signature stamp and somebody did sign it, I imagine there are checks and balances in that.

Chairman Grande: So we have somebody who can't read, who is not going to have any idea who marked what box there was and all they got was an "X" and somebody else's signature. Do you see where I am going and does anyone else have a concern here?

Rep. Kasper: Chairman Grande, I find it highly unlikely that an illiterate person would have a stamp and go out would even have the money to buy the stamp or know how to use a stamp as opposed to their some type of a scrawl. I have the same concern you do.

Al Jaeger: Jim said it was for a totally different situation and as I recall we had a very specific situation coming out of Grand Forks County where somebody that legally uses a signature stamp and without it would have been denied the right to vote and so this is very rare but it is just to allow that set of circumstances.

Rep. Winrich: Presumably this disinterested person is someone chosen by the voter and someone that voter trusts. We had a similar situation with handicapped voters who would show up at the polling place and I have served on election committees. They can have a person assist them in voting or a blind person can have a person assist them if they are unable to mark the ballot or something but it is presumed it is someone they trust and brought with them to help them. It is not someone who walks in off the street and says I will witness your signature.

Chairman Grande: Is it not supposed to be the inspector doing that, you are not supposed to have somebody come in and vote with you. So my Mom could have brought my Dad into booth and voted with him. Whoa, I thought you had to have one of the election officials vote with you.

Al Jaeger: I know the answer but I want Jim to come up here and get it specifically right so I am going to have him come up here.

Jim Silrum, ND Deputy Secretary of State: The law specifically says a person may have a person of their choice as long as that person is not their boss or their union boss or candidate. Otherwise they may utilize both election judges of the election board so that both parties are involved. But the law specifically allows the person who needs that assistance to bring a person of their choice so it could be their husband, it could be their wife.

Chairman Grande: We don't have a non-partisan person witnessing this?

Jim Silrum: Not under current law, no, Madam Chair, or long-standing current law.

Rep. Wolf: I guess I don't see it any different than in our family when all four of us, my Dad because he lives with us, my husband, my daughter and I, we all do the absentee's and all of our ballots came at the exact same time and we kind of sat down at the table together and said "Who are you voting for for this?" We filled them out together as a family and we have done that at the polls as well. I don't see any difference in that than this I guess.

Rep. Kasper: I think we are getting into a committee discussion but I would like to respond to Rep. Wolf. You are a family, this is talking about someone that may not know anybody. Think of a nursing home where someone has nobody

left and the social worker may be the trusted person. Now again this may be beyond where we are at but do we know what is going on with the advice from the social worker. Now, do we trust them, maybe, maybe not, you just don't know.

Al Jaeger: The thing I may just point out is the whole absentee voting process. My mother-in-law has macular degeneration and she cannot see the ballot so for years she has voted absentee. Again this was to address a very specific situation where somebody uses a signature stamp and would not have been allowed to vote and so this is not widespread at all. But to deny somebody the right to vote and there are people that use that type of thing and that is what it was designed for.

Rep. Karls: I have worked the polls and also sat on the canvassing board many times and out of maybe two or three hundred ballots you might have one with the "X". In this last particular case it happened to be a relative and they didn't do it right. The "X" was on one with the signature but it wasn't on the other part and we had to deny that because it has to have the "X" and the signature of the witness and it wasn't followed. But it is very rare, in Bismarck at least.

Al Jaeger: Continued with Testimony.

Rep. Kasper: I have a concern with Lines 11 and 12, right where you are at. That has to do with protection of privacy of election results. If we start looking at

ballots the day before the election is held there could be some slip whether it is intentional or not, of what is going on with the number of ballots being cast and who they are going to. I have a real concern that we are going to look at the ballots on the day before the official election starts regardless of how intense it is to get these ballots open.

Al Jaeger: I guess I don't quite agree with your assessment of the situation because to be able to process the absentee ballots you have to have an election board that means you have an inspector, you have two judges, you have the clerks, you have everybody there that processes them. The thing is that the

ballots envelopes are opened, the secrecy envelope is removed, the secrecy envelope is opened, the ballot is immediately put into the scanner and then in the next part it says that none of the votes can be tallied until the close of the polls the next day. So there is no opportunity for anybody to make any kind of tally or even take a chance to look at them to say how the race might be going. It would be virtually impossible.

Rep. Kasper: That may be true with most people but let's say you are up in the middle of nowhere in ND where there are two people on this little board. First of all they are coming in day early so that they can, so now you are having an additional expense to the county, number one and number two, how do we know that these people are going to automatically follow the rules that you are saying.

You don't. You expect them to and you think they will and maybe 99.9 % out of 100 % they might but on the same token there may be a little peek here and a little peek there and at coffee or dinner that evening, they will say, "You know what you will be surprised at what is going on down there." I am saying it could happen and that is what I am concerned about.

Al Jaeger: As I said earlier to process these you need an election board made up of five people and that board has political balance in it so it can't even be done without five people. Those five people also cannot open the box. The fact is that under any set of circumstances you can find something that could possibly go wrong someplace. You can keep on with that as long as you want but the likelihood of it happening seems to be very remote and the fact is the cost of it costing the counties more money, for instance, in the case of Mercer County, whose vote was by mail this time, they did everything on Election Day and they were not staffed properly and that is why you didn't know the results of a certain race until about ten or eleven o'clock the next morning. Had they been able to start processing these with their election board the day before the results would have been known easily by that evening. I understand what you are saying but I don't agree with it happening.

Rep. Kasper: Isn't this moving more toward the desire of someone in the State of ND to get to mail in balloting as opposed to people showing up at the polls to vote, isn't that really where this is headed?

Al Jaeger: No. Right now voting by mail is an option but the counties, it is something that they decide it is not a statewide thing, it is not a push from our office to do it. It's specifically for a county decision and the fact is that in 1997 when the Legislature needed the reason for needing an absentee ballot, both political parties have aggressively promoted absentee voting, voting by mail, or whatever you want to call it. This is nothing towards that, the fact is that is if it is going to be promoted aggressively processing absentee ballots is very labor intensive and it is very costly. But by allowing the counties to have a precinct that can specifically count absentee ballots which is something that this Legislature authorized a couple two, three sessions ago. It really makes a lot of difference in terms of the higher processing. The fact is that it is being done and people are voting absentee, that is being done already and this is to make sure that the process is done right and that there is plenty of time to take care of things and so that the integrity that we have in our elections is maintained.

Rep. Nathe: Just so I am clear, I am just a little fuzzy on when they do this say the day before they take the ballot and they open up the envelope and the judges are there and they take the ballot and they put it in the machine and machine

takes it and then that is it. Then is there a button or is there some vote thing in that machine to get those results?

Al Jaeger: Yes. It is all secure and the scanner cannot be tampered with or anything and there are safeguards there and when the polls close on Election Day that is when the tally is. It would be virtually impossible to process these and have any clue in terms of what is on the ballot or anything like that.

Rep. Nathe: If someone were to get the tally and you can on the next day on Election Day, another judge would be able to see that on the machine?

Al Jaeger: No. Nobody sees it. Nobody sees the tally until the polls close.

Rep. Nathe: And all the judges are there when they turn that on.

Chairman Grande: When they turn that on it comes out as a ticker tape inside. You never can see the results in the machine. That only thing that comes in is the ticker tape type-thing in the machine and nobody can read it until the machine is done, open and once it's open it can't be used. Everything is locked inside, you can't get the tape, you can't get the ballots. Inside there is that tally roll and the only thing you see is the number of people who have voted.

Rep. Nathe: I only brought up that question because of the fact that if someone wanted to sneak a peek the night before.

Chairman Grande: It would break the seal of the machine.

Al Jaeger: If the machine was tampered with, we would know. The safeguards are on the equipment so that we would know.

Chairman Grande: That I can agree to because my son has worked the polls and he is meticulous on this and he was very clear how the tallies could not be done until the election closes. It was big deal to him.

Al Jaeger: Continued with testimony.

Rep. Karls: You said that the early voting election boards are appointed by the political parties which would be the judges? Now in our early voting precinct in Burleigh County they covered 32 precincts, the parties had no part of appointing those election workers.

Al Jaeger: The information I dropped off at your desk yesterday. Since we had visited about that you had raised that question with me yesterday and the law is very specific that the election board has to be politically balanced. I don't recall the section number off the top of my head but I put it on your desk and it is highlighted. It is in the law that is the way it has to be. How your county auditor handled it, I don't know. I am just saying that it is very specific in the law.

Rep. Karls: Is it his discretion?

Al Jaeger: No, it is very specific that it has to be politically balanced.

Rep. Karls: Because there are, trying to think how many districts in Burleigh County, six.

Al Jaeger: I don't know how they went and did that but most auditor's know from past experience, you know, with the judges that they have used in previous elections, who the democrats are, who the republicans are, so I would suspect that they would find those people again to use. But it is very specific in there.

Rep. Kasper: On Page 7, Lines 22, 23, 24, and 25 it discusses what Rep. Karls was concerned about and that is current law with the exception for each voting location. It appears to me that it does not state that you have to have a concern about each precinct it simply says that the "county auditor shall appoint the early voter precinct board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party." It says nothing about each political district. So that county auditor has total control as long as he or she gives deference to the parties but certainly does not have to give deference to the districts. That is what the law says and how I interrupt it.

Al Jaeger: That is true but if your county has a multitude of districts you would have an election board that is 15, 20, 25 people. In fact this is the auditor's job to assure the balance. Mr. Jaeger continues with testimony.

Chairman Grande: On Page 8, Line 14, you take out the word "business" is that just to go so we are at the end of the Election Day so that the business day is five and the Election Day is sometimes seven or eight?

Al Jaeger: Right, because it could be open on Saturday and by law business day is Monday through Friday. So that would be the reason for the change there. It is a clarification to make sure.

Chairman Grande: You are thinking Saturday there versus what I was referring to as a longer day?

Al Jaeger: Yes, like here in Burleigh County I know that they had it open on Saturday.

Chairman Grande: Okay. Please continue.

Al Jaeger: Continued with testimony.

Vice Chairman Randy Boehning: Mr. Secretary you were talking before about how costly it is to put another column onto the ballot and the ballots are so expensive. So now we are putting in another 60 days that an independent candidate can get his name on there and get more independent candidates on, that is going to cost more money to run the election and there goes the theory of having the other theory.

Al Jaeger: Actually we don't have that many independent candidates and all the policy would be is that for the office it would just add a line so it doesn't add anything else. The timeline coincides with those of you that go through the political process and have to file for the June primary, that 150 days

approximates the timeline with the deadline for the June ballot.

Vice Chairman Randy Boehning: That is another 60 days and I think you are going to have 150 days for independent candidates to get their names on the ballots. I can see a lot more people running and they are not involved in the two-party process and pretty soon we are going to have independent candidates on every level and then we are going to have long streaming ballots and then we will have all kinds of candidates out there whether it is independent, whether it is libertarian, and the list can go on. So we could end up increasing our ballot size quite a bit.

Al Jaeger: I have lived in ND all my life and I don't know if there has been any independent candidates that have been on the election. So I don't see that this is going to make a difference in the number of candidates.

Chairman Grande: If someone wanted to run in my district as an independent or a third party candidate, how many signatures would they have to get?

Al Jaeger: They would have to get 300 signatures. Actually if it is for a Legislative one it just equates 1% of the population of the district, so it could be a 140 or 150 signatures. It is 1% in the June primary and 2% in the general election but in no event more than 300.

Rep. Dahl: What kinds of candidates are we talking about, could you clarify that in that last subsection, is that Statewide, is that presidential anybody?

Al Jaeger: It would be for Legislative Statewide and that is really all it is.

Rep. Dahl: That is the distinction between Page 10, Lines 5-10, changing that language that specifically states presidential candidates, this last provision would not apply?

Al Jaeger: That is correct. It doesn't exactly apply. One of the things we have tried to do in election law over the years is that we have to be very careful that we just don't identify Republicans and Democrats. So everything in our election law and political party organization which was a chapter that was re-written about six or seven sessions ago where we had the Republican and Democrat party at the table and we wrote that entire chapter to take out anything that is really a party function and the State has no business being involved in it. But the creation of new parties, everybody is treated the same so that there is no favoritism, discrimination or anything like that.

Rep. Wolf: On Page 2 we are eliminating the requirement to put the voter's precinct on the affidavit for a ballot. But on Page 4 we are still leaving it on the envelope. The first line on Line 9 on the envelope will still require them to fill in their precinct. Should that be eliminated as well?

Al Jaeger: The precinct is already on the ballot.

Rep. Wolf: On the ballot or the envelope, this is on the envelope.

Al Jaeger: I think it is on the ballot already so that is why.

Rep. Wolf: The second question I have is on Page 11, I know that nickname would be like for example, Bob Horne is my Senator, on the ballot it said Robert "Bob" Horne and that is a nickname. But we had an incident or if there is a better word to use and we actually had a guy in Minot run, Joe "the coffee" Guy Smith, because he owns a coffee kiosk in Minot and so when he ran for commissioner on the ballot his name was Joe "The Coffee Guy" Smith.

Al Jaeger: If I remember right we were told about that after the fact and we would not have allowed it if we had known about it before the fact.

Rep. Wolf: So is there a better word you can use than nickname to eliminate that in the future?

Al Jaeger: We don't have it too often but we do have the call to make and yes the one in Minot I remember we found out after it was put on the ballot and it was too late but we would have stopped it.

Rep. Winrich: On Page 1 and the change at the bottom of the page there Lines 21-24, in your testimony I understood you to say that when the election official goes out to personally distribute a ballot that person would have to be accompanied by an election judge. Is that correct?

Al Jaeger: Actually, you would have to have two because of the appointed election judges.

Rep. Winrich: Okay, it does have to be two, I was wondering about the use of the plural.

Rep. Kasper: Just want to clarify back on Page 2, Line 17, where you removed the precinct. How do we determine what precinct these absentee voters live in or is that something that is fixed then by the county auditor or who do we know?

Al Jaeger: The County sets the precincts prior to every election and they have to be set by December 31 prior to the election year. When the applications come in through our system the Central Voters File, they will know from the address. They will be able to match up the precinct and that is a relatively easy process.

Rep. Kasper: The county auditor will put the precinct number on. We will still have the precinct number it is just not going to be required that the voter does it.

Al Jaeger: That is correct because I have no clue what my precinct number is. When the application comes in and it is processed in the County Auditor's office they will know exactly where it is, they will know which ballot to send out.

Chairman Grande: Any other questions? Are we done with that one committee? Anyone else wishing to speak in favor?

Danette Odenbach, North Dakota Association of Counties, Election Reform Program Manager: Testimony. See Attachment # 2.

Vice Chairman Randy Boehning: Any questions for Ms. Odenbach?

Rep. Kasper: Going back to Page 7 of the bill, Lines 22 and thereafter, it appears from the law that there is no requirement that each district party be represented. It is simply equal party representation. Because the auditor has the power so do you see where maybe that should be corrected to require district representation of each party from each district that is part of any early voting.

Danette Odenbach: The section that is referenced on Line 26, 16.105.01, I believe that section is the section that requires political appointment of the judges. My understanding and without being a direct administrator of elections is that when the county (can't understand) Cass County, the auditor worked with

the political representation from the different districts to appoint agreeable representation that would represent all of the districts. DeAnn Backhaus from Cass County is here if you want to ask that question directly of her on how that was done. But to answer your question I don't believe that this section of law or any other section of law requires individual representation for every single district, but overall agreeable representation from the political parties.

Rep. Kasper: I understand that part, however, there could be some districts then that could almost be disenfranchised from the process. Like in Fargo we have seven or eight districts and maybe all of the election judges and various political parties come from two or three districts and the other four or five have no representation. You may have trouble finding some people but on the same

token the districts are equal number and supposedly equal number and equal sizes of people and I am just a little concerned about that.

Danette Odenbach: I don't believe that the political party chairs of those districts would not agree. I don't believe that the officers would overrule that decision but the parties want to have equal representation from all the districts. It is very much a political party decision. So that would be my answer to that and I don't know if you agree with that.

Rep. Kasper: I guess I want to see what the law says on 05.01.

Rep. Winrich: The section of the Century Code that defines a political party lays out the organizational structure and the basic unit of organization for a political party is the districts. The district officers have to be identified to the County Auditor each time the party reorganizes and elects those people. The official contact for a political party for the County Auditor is the district chair. I don't know how other counties operate but I know that in Grand Forks County the County Auditor routinely contacts all the district chairs to fill these positions on an election board.

Danette Odenbach: I would fully agree with that. It would be my understanding from all the comments that that is the way they do operate.

Rep. Karls: I am a district chair and this is my district and my precinct and I was never consulted about the early voting board. But as a compromise we are given

a sheet and we take the training and I take it every time even though I am not working the polls. We are given a printout of every single election board and every single precinct in our county. But I don't think the early voting precinct is ever included. It would be nice to at least see those names to look at them and say, "Oh yeah, I know she is a Republican."

Danette Odenbach: This is the first election, this last November election, that Burleigh County did use early voting. It was a very last minute decision on the part of the Auditor and I can't tell you what the process is in this county because I did not have any involvement in the organization of that. I did work with all the other counties because they used them throughout the year but Burleigh County unfortunately I cannot speak for them. I can find out from the County Auditor if you would like me too.

Rep. Karls: Yes. Thank You.

Vice Chairman Randy Boehning: If we are going to make it a lot easier for a candidate to get onto the ballot at what point do we allow them to have election judges and be represented on the boards?

Danette Odenbach: That is probably not a good question for me to answer I don't really have anything to do with that part of it. But I would guess Jim Silrum could answer that.

Jim Silrum, ND Deputy Secretary of State: If I may I can answer both your question and Rep. Kasper's question all in one. From Subsection 2, 16.1.05.01, it says the election judges for each polling place must be appointed in writing by the district chairs. Representing the two parties that casts the largest number of votes in the State at the last general election. So from the two parties that answers your question in that independent candidates do not represent a party they are independent candidates, they are not officially recognized as a party. To answer Rep. Kasper's question about the appointment of the judges from the districts, the individual districts can mandate according to this law. That even for an early voting precinct, polling locations, that there be judges from their district as long as there is equal representation of that so that we couldn't have ten Democrat judges and one Republican judge for that . It would have to be on an equal number, according to what exists in law regarding how election boards are set up.

Rep. Kasper: Does the law also say that the County Auditor is mandated to notify all of the District chairs of their rights and obligations on the election law?

Jim Silrum: I would have to look at that but I am certain that even if it doesn't our advice and instruction from the Secretary of State's office who is in charge of elections for the entire State is that they are notified well in advance of the forty day requirement that judges must be appointed. Just simply by sending out a

note saying we need to have the election judges appointed prior to the forty days. Once the forty days rolls around, then what we suggest and we advise to all of the counties is that if the district chairs have not appointed their political representation for judges that the counties can put together a list but then match that with the district chairs saying these are the people that we would like to have and we would like to use as judges for an early voting precinct, an election day polling place, whatever and that the district chairs then say yes or no and then provide their input at that point.

Rep. Kasper: Would you provide the committee with those instructions that your office sent to the County Auditors for the last election. All of the complete correspondence with them so that we can see what your correspondence said.

Jim Silrum: Yes we will.

Vice Chairman Randy Boehning: Any other questions for Jim or Ms.

Odenbach? Anyone wishing to testify in favor of 2319? Anyone opposed to 2319? Neutral? We will close the hearing on 2319.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work One SB 2319

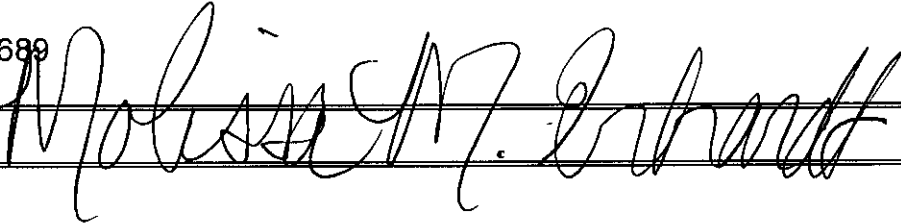
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: 04/02/2009

Recorder Job Number: 11689

Committee Clerk Signature



Minutes:

ROLL CALL. ALL PRESENT.

COMMITTEE WORK ONE:

Chairman Grande: We will discuss SB 2319.

Vice Chairman Randy Boehning: I have some amendments for 2319.

(Handed out amendments, Attachment # 1).

Chairman Grande: You are making it so only the election judges can open the ballots, so the clerks and board members are not able to help them anymore?

Vice Chairman Randy Boehning: Correct. It will go back to the original language.

Rep. Dahl: Why do you want to change it back to the original law?

Vice Chairman Randy Boehning: So we are doing it the same.

Rep. Dahl: Is it consistent with what you did on Page 5?

Vice Chairman Randy Boehning: Yes.

Chairman Grande: So it will say, "On the day of the election the absentee ballot....."

Rep. Winrich: So the part of the amendment that you passed out that says remove Lines 1 – 31 is not valid?

Vice Chairman Randy Boehning: Because Legislative Council did not catch it the other day and we have to make everything the same throughout the bill. On Line 22, "On the day before the election the absentee ballot counting board shall occupy a location designated by the county auditor which must be open to any individual." We want to leave the language on Line 24.

Rep. Kasper: So you are removing the overstrike?

Vice Chairman Randy Boehning: Actually I want to leave it as it is in the bill. Leave the overstrike on person and the individual underscored.

Rep. Dahl: You want to change the first part of the bill back and you want to keep the change here.

Vice Chairman Randy Boehning: Then everything would be the same in code and because otherwise you would have one thing in code where it would be referring to person versus individual.

Rep. Kasper: So how is that going to read?

Vice Chairman Randy Boehning: “On the day of the election the absentee ballot counting board shall occupy a location designated by the County Auditor which must be open to any individual for the purpose of observing the process.”

Rep. Karls: Does that mean when our county gets 5,000 absentee ballots they can't touch them until the day of the election and then distribute them to 38 precincts?

Vice Chairman Randy Boehning: Correct.

Chairman Grande: I don't know if that is correct. I think that what it is going to do is go back to the current way they are doing it. I think they are going out to each of those places but they are not being opened until the day of the election. Because it is not changing the procedure but this amendment takes procedure back to the way it is currently being done. The County Auditor could say it is going to be here, here and here. The absentee ballot counting board shall occupy a location designated by the County Auditor so the County Auditor can have it anywhere he wants. But this is the absentee ballot County board and you only have those in one location typically anyway.

Rep. Karls: Are they going to be physically opening any envelopes and doing that part?

Chairman Grande: However, they currently do it that is what they will do.

Rep. Karls: This election we did not see the absentee ballots in the actual precincts.

Chairman Grande: So that is where they are saying the County Auditor is going to have one board and ours is down at the Court House and they just go in and that absentee ballot board opens them and counts them and stamps them and is done with them. This is just saying we have to do it on Election Day.

Rep. Dahl: Rep. Boehning what is the heartburn with the changes in the bill?

Vice Chairman Randy Boehning: When we start counting ballots and opening ballots up the day before the election there are things that can go wrong and I guess I don't want to have the ballots opened up the day before. Election Day is drug out now for two weeks, three weeks, four weeks, five weeks, and whatever it is already and why don't we start counting them on the day we get the absentee ballots yet. That will be the next step. I don't want the ballots counted until Election Day and I think that is fair and that is fair to all the elector's out there that are casting a ballot. We are seeing a lot of stuff around the country where shenanigans are being pulled and not saying they will happen here but I want to prevent that from happening here. Continued with attachment.

Rep. Meier: How many signatures do they need to get on the ballot?

Vice Chairman Randy Boehning: I do not know.

Chairman Grande: Some kind of percentage off of the previous general Presidential Election.

Vice Chairman Randy Boehning: It is like one or five percent, it is really a low number. Continue with attachment.

Rep. Wolf: I just want to make sure that I am reading it right, Lines 21 – 23, are we removing the language that says or are we leaving this alone in the amendments that says these votes cannot be tabulated until the close of the polls on Election Day. Are we leaving that language in this bill?

Vice Chairman Randy Boehning: That is being left in there.

Rep. Wolf: So we are already saying you can open them, you can put them into the machines, but you cannot tabulate them until the close of the polls on Election Day, correct?

Vice Chairman Randy Boehning: Correct, the votes on these cast ballots cannot be tallied and the tabulation reports may not be generated until the polls have closed.

Rep. Wolf: If we are leaving that in there, I don't understand what the heartburn is about letting them being opened before Election Day. It eases the pressure on the poll workers. Absentee ballots are on the increase. Every year and every election more and more people are voting absentee and we want to know when

the poll closes at seven or 8:05, we want the results. To let these be opened and

put into the machines, and if I remember the testimony which was a long time ago but they are in a box that is locked and if it is tampered with there is evidence of tampering. I guess don't see the heartburn with it, it alleviates the pressure on these people who are volunteers. Who are paid a nominal amount of money to work at these polls. Most of them are elderly and to put the undo pressure on them and to let them open them and put them into the machines I don't see an issue with it.

Vice Chairman Randy Boehning: When they open the envelope and they take it out are they going to push it in the box right away or do they take it and look at it when they stick it in to the machine.

Rep. Wolf: With 5,000 ballots I don't think anybody is going to remember what ballot says what if they happen to see that they voted for John Smith, if it went through the machine they are not going to be able to know what it says. The political parties do pick these people to work there. I don't think one party has a priority over the other party.

Rep. Kasper: Rep. Boehning's concern is very legitimate. You may not count the numbers but you can see a trend. So if you are opening the ballots the day before the election and the political parties appoint the people and you are looking at the ballot as it is being put in and you are looking at a race that is tight you could see a trend, which could then alert the political party to get on the

phone and say "Hey, we are really behind according to absentee or we are way ahead," whatever the case might be and this gives an opportunity for that election to be corrupted. Why do we want to do that when we can prevent it by only allowing the ballots to be opened on Election Day. The County Auditor can hire more people. If you have 5,000 absentee ballots that 's about ten people opening 500 for the day. That is about 50 an hour that is not a big job. It is easy to be accomplished.

Rep. Dahl: Sort of using that argument if they are already opening them on Election Day, they could do the same thing. If you are opening them in the morning you would still have time to do exactly what you suggested.

Rep. Kasper: You could but you are there working and you would have hardly any time left to marshal the forces so to speak. I agree with Rep. Boehning.

Rep. Winrich: I have worked a number of times on the "Get out the vote efforts" and I have also served on election boards and I think Rep. Dahl is exactly correct. If you notice this trend on Election Day a simple cell phone call to headquarters will start the process to "Get out the vote" if that is necessary. So I see very little effect for this and also I think Rep. Wolf's point is well-taken that Election Board workers are basically volunteers. There is a tremendous effort to recruit them. It is hard to find them in most precincts. They do a lot of work, they are sworn in at the beginning of the process they are sworn officials of the State

at the time that they are serving on the Election Board. I see very little difference between giving them access to the absentee ballots and having the County Auditor in custody of the absentee ballots who is also a sworn official of the State in those circumstances. I guess I would resist these amendments.

Vice Chairman Randy Boehning: Move for a Do Pass As Amended.

Rep. Amerman: I have a question on a different section. Are we removing all of Section 9, current law and the new language? Can you tell me what exactly that does and why?

Chairman Grande: If he removes Section 9 all it does is leaves Section 9 as current language but it is not necessary if they don't want the changes. It would just revert back to current law.

Rep. Amerman: But it takes the whole Section out?

Chairman Grande: It takes it out of the bill but not out of law.

Vice Chairman Randy Boehning: By removing that Section we are not repealing that Section. Instead of removing the overstrikes and the overstrikes, we just take that Section right out of the bill and then it stays the same.

Chairman Grande: The amendments have been moved by Rep. Boehning and 2nd by Rep. Kasper. Continue the discussion. The issue on Section 4, the opening of them and clarifying signatures and preparing them to be scanned I

think is something that can happen ahead of time. Scanning them in and

tabulating is where the problem is. I am just trying to get my hands around the language in Lines 16-21. That is where they are talking about the Judge checks the signatures, make sure it is a qualified electorate, they shall take out the ballot, contained there within without unfolding it and then they shall deposit the ballot in the proper ballot box and show in the poll book of the election. So at this point when I still get through Line 21 nobody has looked at that ballot but they have made sure it is the proper ballot by at least checking the signatures and then they are getting it in the poll book so that person cannot turn around and vote again later. I think that is a good process and we need to be able to do that.

I don't have a problem with checking that off and getting that stuff done ahead of time because that is a huge time-saver if they can do that ahead of time. The tough part comes in when the vote from these cast ballots may not be tallied and the tabulation reports may not be generated. As long as they are not being scanned and counted at that point I guess that language is not a bad thing. As long as they are not being tallied until the end of the day and meaning they are not scanned they are not doing anything with them but let's get the verification process out of the way. I don't mind having the verification process as long as I am assured that nobody has opened and counted that ballot. I think that it is okay to check signatures ahead of time.

Rep. Dahl: Which is in current law.

Chairman Grande: I am not sure that we have to overstrike any of this as long as they are not opening them up.

Rep. Dahl: Are we over striking anything or just adding that language to be consistent with what is on Line 11 that if you are opening ballots on the day before Election Day it just clarifies that you can't tally those until the close of the elections.

Chairman Grande: Does tally mean they cannot be scanned?

Rep. Dahl: I don't think so. I think you put them in the machine but you don't know what they say. On Election Day when you put your ballot in the scanner you can see a number counting but that is just the ballot, it doesn't show you a tabulation.

Chairman Grande: I understand that but what I am saying is are they just dropping that sealed envelope in so that there is a packet to be scanned later or are they being scanned right then and there.

Rep. Winrich: When you go to vote with the machines that we have now in ND you end up with your ballot. It's in a folder and you go to the machine and slide it out of the folder and into the machine. At that point it is scanned and under certain conditions the machine will kick it back to you, if you over vote or something like that. But those ballots are only tallied when the County Auditor or

whoever shows up with the key that operates the machine. You can't tally the ballots by simply pushing a button.

Chairman Grande: I think that everybody agrees that it is okay to get to the process but the disagreement comes with do they scan it before Election Day or after Election Day. I think Rep. Boehning would be okay with checking off the signatures and get that marked off on the Election books so we don't have double voting but at that point that is all the farther he wants to go in that process. He is saying you can do that but you don't scan it until Election Day.

Rep. Winrich: It seems to me that makes the ballots more vulnerable because then they are sitting around and they have been taken out of the envelopes and they are opened up. By putting them into the machine immediately they go into a secure ballot box.

Vice Chairman Randy Boehning: When you get your absentee ballot, you have the outside envelope and then your inside envelope, there are not any signatures on the ballot and all they have to do is verify the signatures on the interior envelope where your ballot is in. They can do that without opening the ballot because there is not a signature on your ballot and everything is on the envelope. So they can verify that but don't open them and don't tally them until Election Day. The ballot would be opened on Election Day and tallied.

Rep. Dahl: I think pulling this back in the big picture there was one county that was really late in counting and kept everyone up and the whole State was waiting. For example, the Insurance Commissioner race no one knew the final results because one county was still counting ballots. I don't think that there is a big sort of problem here. A lot of these folks are older and they are not very efficient sometimes and I think this just moves the process along. I don't think there is a problem with security at least as far as I know.

Chairman Grande: We have the amendments in front of us. All in favor of the amendments say I. Consent: Chairman Grande, VC Boehning, Rep. Karls, Rep.

Kasper, Rep. Meier, Rep. Nathe. Opposed: Rep. Dahl, Rep. Froseth, Rep. Amerman, Rep. Conklin, Rep. Schneider, Rep. Winrich, Rep. Wolf. Clerk will call the roll.

Clerk Erhardt: Roll Call: Yes: 6. No: 7. Absent: 0. Amendments Failed.

Rep. Dahl: Motion for a Do Pass.

Rep. Winrich: 2nd.

Chairman Grande: Motion for a Do Pass by Rep. Dahl and 2nd by Rep. Winrich.

Clerk will call the roll. Any discussion?

Clerk Erhardt: Roll Call: Yes: 10. No: 3. Absent: 0. Carrier: Rep. Winrich.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2319

Page 1, line 2, remove "16.1-07-12.1,", remove "16.1-12-02,", and after the seventh comma insert "and"

Page 1, line 3, remove ", and 16.1-12-02.3"

Page 1, line 4, replace "certificates of nomination by petition for president," with "and" and replace ", and" with a period

Page 1, remove line 5

Page 5, line 11, remove the overstrike over "~~between the opening~~" and remove "beginning on the day before election day"

Page 5, line 12, remove "the", remove the overstrike over "~~judges~~", and remove "clerks and board members"

Page 6, remove lines 1 through 31

Page 9, line 21, remove the overstrike over "~~sign a sworn statement that the ballot was destroyed, spoiled, lost, or~~"

Page 9, line 22, remove the overstrike over "~~not received and shall present the statement to~~" and remove "make the elector's request of"

Page 9, remove lines 24 through 31

Page 10, remove lines 1 through 23

Page 14, line 2, remove the overstrike over "~~When certificates~~"

Page 14, remove the overstrike over lines 3 and 4

Page 14, remove lines 8 through 15

Renumber accordingly

Date: 4/2/9

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2314-SB

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Boehning Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande	<input checked="" type="checkbox"/>		Rep. Amerman		<input checked="" type="checkbox"/>
Vice Chairman Boehning	<input checked="" type="checkbox"/>		Rep. Conklin		<input checked="" type="checkbox"/>
Rep. Dahl		<input checked="" type="checkbox"/>	Rep. Schneider		<input checked="" type="checkbox"/>
Rep. Froseth		<input checked="" type="checkbox"/>	Rep. Winrich		<input checked="" type="checkbox"/>
Rep. Karls	<input checked="" type="checkbox"/>		Rep. Wolf		<input checked="" type="checkbox"/>
Rep. Kasper	<input checked="" type="checkbox"/>				
Rep. Meier	<input checked="" type="checkbox"/>				
Rep. Nathe	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 7

Absent _____

Floor Assignment _____

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

Amendments - Failed

Date: 4/2/19

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2319-SB

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Dahl Seconded By Winrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande		✓	Rep. Amerman	✓	
Vice Chairman Boehning		✓	Rep. Conklin	✓	
Rep. Dahl	✓		Rep. Schneider	✓	
Rep. Froseth	✓		Rep. Winrich	✓	
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper		✓			
Rep. Meier	✓				
Rep. Nathe	✓				

Total (Yes) 10 No 3

Absent 0

Floor Assignment Rep. Winrich

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

REPORT OF STANDING COMMITTEE

SB 2319, as engrossed: Government and Veterans Affairs Committee (Rep. Grande, Chairman) recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2319 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2319

ALVIN A. JAEGER
SECRETARY OF STATE

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

February 12, 2009

TO: Senator Dever, Chairman,
and Members of the Senate Government and Veterans Affairs Committee

FR: Al Jaeger, Secretary of State

RE: SB 2319 – Voting and Election Administration Procedures

Beginning Note: Throughout the bill, the Legislative Council changed all references made to "person" to "individual" and those changes are not noted in the following section by section summary.

Section 1, Page 1, Lines 21 thru 24: If an election official personally distributes and collects an absent voter's ballot outside of his or her office, they must be accompanied by the appointed judges of an election board.

Section 2, Page 2, Lines 17 thru 21: For an individual living outside of the state or country, it provides a space on the absent voter's ballot application form for the voter to indicate his or her status.

Section 2, Page 2, Lines 25 thru 30: If an applicant is unable to sign his or her name, they are allowed to use a signature stamp on the absent voter's ballot application provided it has been witnessed by a disinterested individual.

Section 3, Page 4, Lines 4: An election official is required to provide the voter with a secrecy envelope and a return envelope for returning the absent voter's ballot.

Section 3, Page 4, Lines 21 thru 25: If an applicant is unable to sign his or her name, they are allowed to use a signature stamp on the absent voter's ballot return envelope provided it has been witnessed by a disinterested individual.

Section 4, Page 5, Lines 11 and 12: Allows for the processing of absentee and vote by mail ballots beginning on the day before the election day.

Section 4, Page 5, Lines 21 thru 23: Makes it clear that no ballots can be tallied until after the close of the polls on election day.

Section 5, Page 6, Line 22: Allows for the processing of absentee and vote by mail ballots in a central location beginning the day before the election as provided for in Section 4.

Section 6, Page 7, Lines 9 and 10: It allows the county to use more than one voting location for operating an early voting precinct.

Section 6, Page 7, Line 19, Line 23, and Line 30 and Page 8, Line 2 and Line 13: Changes the references from a single polling location to allow for more than one location.

Section 7, Page 8, Line 27 and Line 28: Changes the timeline for sending applications (not ballots) to individuals in counties using the voting by mail process.

Section 7, Page 9, Lines 2 thru Line 16: Removes redundant text for a mail ballot application by just referring to the provisions of 16.1-07-06, which pertains to the absent voter's ballot application.

Section 8, Page 9, Lines 21 thru 23: Clarifies the procedure for obtaining a replacement ballot.

Section 9, Page 10, Lines 5 thru 10: Allows a candidate for the office of President to begin gathering signatures on January 1 of any presidential election year rather than being restricted to just 90 days prior to the filing deadline.

Section 10, Page 12, Line 2: Changes "county" canvass report to "official" canvass report.

Section 10, Page 12, line 5: Removes an obsolete reference to the presidential preference contest.

Section 10, Page 13, Lines 8 and 9: Removes an unneeded reference to the counting of write-in votes, which process is covered in other provisions of election law.

Section 11, page 13: Extends the time in which an independent candidate has to circulate petitions, which circulation beginning date more closely aligns with the 60 day June candidate filing deadline.

Requested Amendment:

We request the inclusion of the attached amendment, as a new Section 10 of the bill, which will result in the renumbering of the present sections 10, 11, and 12.

The amendment makes the affidavit for how an independent candidate's name may appear on the general election ballot the same as the provisions in 16.1-11-10 for an affidavit executed by a political party identified candidate in the primary election in June.

**TESTIMONY TO THE
SENATE GOVERNMENT & VETERANS AFFAIRS COMMITTEE**

Prepared February 12, 2009 by
Danette Odenbach
North Dakota Association of Counties

REGARDING SENATE BILL 2319

Chairman Dever and members of the Senate GVA Committee:

The North Dakota Association of Counties (NDACo) submits this testimony in support of Senate Bill 2319.

Senate Bill 2319 addresses a number of different chapters in the Elections Title of the Century Code. The county auditors appreciate the suggested requirement for appointed election judges to accompany and observe absentee balloting outside of their office, as this eliminates any perceived conflict of interest on the part of an elected official in the conduct of their statutory duties.

In addition, the changes offered in sections 2, 3, 7 and 8, such as expanded information requests on absentee applications, earlier distribution of mail ballot applications, making mail ballot and absentee applications the same, and requiring a secrecy sleeve in all ballot packets are considered good policy changes by the counties.

Large population counties have requested the changes suggested in sections 4 and 5, which would allow absentee ballots to be processed – but not tallied – starting the day before election. The administrative functions of the absentee precinct board are extensive and time consuming, so allowing the extra day for processing will help ensure attention to detail when comparing signatures and initialing ballots, among other tasks.

Section six allows those counties which offer early voting to hold early voting in more than one location at a time. Large geographic distances and/or high population densities can create challenges for counties when administering early voting, and making the ballot as accessible to the voter as possible is paramount for North Dakota's counties.

Finally, although statewide petitions as addressed in sections 9, 10, 11, and the proposed amendment are not a direct responsibility of the counties, the counties do support the changes as proposed.

The North Dakota Association of Counties appreciates your consideration and requests a Do Pass recommendation on Senate Bill 2319.

Regarding 2319

I am Paul Murphy, Foster County States Attorney. I am testifying today in this bill because I feel that the absentee voting procedure faces serious threat of being compromised.

Recently in Foster County I had people telling me that they had witnessed our local auditor helping people vote. This was witnessed at the local nursing home facility, while the auditor was in the middle of a contested election. One that he won by merely 7 votes. Imagine the influence one would have when helping someone vote when they ask "who do you want to vote for: me or the other guy". You may ask "What happened as a result of these incidents?" Nothing happened. The witnesses were unwilling to come forward, go through the whole process of blowing the whistle and following through with telling what happened. So as a result, the results in that election, I believe were in flawed. There were other factors and election misdeeds that went unpunished as well, in the same contest, but the vote influence was by far the most serious issue.

You may be saying that this is an isolated incident, however the process that we have for absentee ballots, currently allows an auditor to influence the outcome, or if they are deceitful enough, to outright decide the winner of a contested election. Perhaps it is the auditor's friend, or someone that he/she can easily manipulate in the office of commissioner so as a result wants that person to be re-elected. Right now, the process allows for assisting the voters in their choice, or even outright replacement of ballots between the time the voter votes and when the ballot is counted.

We have seen that even statewide elections can be very close, take for example the recent Minnesota senate election and how close that was. If even 1 vote per precinct was fraudulent, that race will turn out differently

The technology exists to protect the integrity of the absentee voting procedure and given the popularity of that process, the time is now to protect that. The bill is a good start, but needs to go much further much faster, before another election cycle goes by.

Even if nothing changes in the process of absentee ballots, perhaps the process of sending out absentee ballots by the auditor needs to be changed when that same auditor is in a contested election.

I believe there needs to be safeguards on the absentee process and on the ballots and ballot boxes from the potential of fraud.

Sincerely
Paul Murphy
Foster County States Attorney

ALVIN A. JAEGER
SECRETARY OF STATE

PAGE www.nd.gov/sos



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

March 6, 2009

TO: Rep. Grande, Chairman,
and Members of the House Government and Veterans Affairs Committee

FR: Al Jaeger, Secretary of State

RE: SB 2319 – Voting and Election Administration Procedures

Beginning Note: Throughout the bill, the Legislative Council bill and format drafters changed all references made to "person" to "individual" and those and any other grammatical changes are not noted in the following section by section summary.

Section 1, Page 1, Lines 21 thru 24: The change provides, if an election official personally distributes and collects an absent voter's ballot outside of his or her office, they must be accompanied by the appointed judges of an election board.

Section 2, Page 2, Lines 17 thru 21: The change removes the requirement for a voter to include his or her precinct on the absent voter's ballot application and adds a place on the application where the status of the voter can be indicated as it pertains to a citizen living outside of the United States and to servicemembers and their family members living away from their North Dakota residence.

Section 2, Page 2, Lines 25 thru 30: If an applicant is unable to sign his or her name, they are allowed to affix their signature stamp to the absent voter's ballot application provided it has been witnessed by a disinterested individual, which is the same process as must be followed if the voter signs the application by marking with an X.

Section 3, Page 4, Lines 4: An election official is required to provide the voter with both a secrecy envelope for the ballot and a return envelope for returning the absent voter's ballot.

Section 3, Page 4, Lines 20 thru 26: If an applicant is unable to sign his or her name to the affidavit on the absent ballot return envelope, they are allowed to affix their signature stamp provided it has been witnessed by a disinterested individual.

Section 4, Page 5, Lines 11 and 12: Allows for the processing of absentee and vote by mail ballots beginning on the day before the election day.

Section 4, Page 5, Lines 21 thru 23: Makes it clear that no ballots are allowed to be tallied until after the close of the polls on election day.

Section 5, Page 6, Line 22: Allows for the processing of absentee and vote by mail ballots in a central location beginning the day before the election as provided for in Section 4.

Attachment
#1

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Section 6, Page 7, Lines 9 and 10: It provides the county with the option to use more than one voting location for operating an early voting precinct.

Section 6, Page 7, Lines 19, 23, and 30 and Page 8, Lines 2 and 3: Changes the respective references from a single polling location to allow for more than one location as provided above in lines 9 and 10.

Section 7, Page 8, Lines 27 and 28: Changes the timeline from 45 days to 50 days for sending applications (not ballots) to individuals in counties using the voting by mail process.

Section 7, Page 9, Lines 2 thru Line 16: Because the applications are identical, it removes unneeded text for a mail ballot application by simply making a Century Code cite reference to the provisions of N.D.C.C. §16.1-07-06, which is the section pertaining to the format of the absent voter's ballot application.

Section 8, Page 9, Lines 21 thru 23: Clarifies the procedure for obtaining a replacement ballot.

Section 9, Page 10, Lines 5 thru 10: Allows a candidate for the office of President to begin gathering signatures on January 1 of any presidential election year rather than being restricted to just being able to circulate petitions to only 90 days prior to the 60 day general election candidate filing deadline.

Section 10, Page 11, Lines 7 thru 10: As to how an independent candidate's name may appear on the ballot in the general election, the change matches the affidavit requirements in N.D.C.C. §16.1-11-10 for the same type of affidavit executed by a candidate identified with a political party and whose name is to appear on the ballot in the June primary election and which ultimately may advance to the general election ballot.

Section 11, Page 12, Line 28: Changes "county" canvass report to "official" canvass report.

Section 11, Page 12, line 31: Removes an obsolete reference to the presidential preference contest.

Section 11, Page 14, Lines 3 and 4: Removes an unneeded reference to the counting of write-in votes, which is a process covered in other provisions of election law.

Section 12, page 14, Lines 10 thru 14: Extends from 90 to 150 days the time in which an independent candidate is allowed to circulate his or her petitions to have their name placed on the general election ballot.

Attachment
#2

**TESTIMONY TO THE
HOUSE GOVERNMENT & VETERANS AFFAIRS COMMITTEE**

Prepared March 6, 2009 by
Danette Odenbach, Election Reform Program Manager
North Dakota Association of Counties

REGARDING SENATE BILL 2319

Chairwoman Grande and members of the House GVA Committee:

The North Dakota Association of Counties (NDACo) submits this testimony in support of Senate Bill 2319.

Senate Bill 2319 addresses a number of different chapters in the Elections Title of the Century Code. The county auditors appreciate the suggested requirement for appointed election judges to accompany and observe absentee balloting outside of their office, as this eliminates any perceived conflict of interest on the part of an elected official in the conduct of their statutory duties.

In addition, the changes offered in sections 2, 3, 7 and 8, such as expanded information requests on absentee applications, earlier distribution of mail ballot applications, making mail ballot and absentee applications the same, and requiring a secrecy sleeve in all ballot packets are considered good policy changes by the counties.

The counties have specifically requested the changes suggested in sections 4 and 5, which would allow absentee ballots to be processed – but not tallied – starting the day before election. The administrative functions of the absentee precinct board are extensive and time consuming, so allowing the extra day for processing will help ensure attention to detail when comparing signatures and initialing ballots, among other required tasks.

Section six allows those counties which offer early voting to hold early voting in more than one location at a time. Large geographic distances and/or high population densities can create challenges for counties when administering early voting, and making the ballot as accessible to the voter as possible is paramount for North Dakota's counties.

The North Dakota Association of Counties appreciates your consideration and requests a Do Pass recommendation on Senate Bill 2319, as amended and passed by the Senate.



SB 2319

Honorable Chairman Grande and Members of the House Government and Veterans Affairs Committee

I apologize for not testifying in person but am unable to attend this mornings hearing. I am submitting this testimony as a concerned states attorney who is dealing with some suspicious behavior that needs to be stopped involving absentee ballots. As we are seeing in Minnesota, even large races can be decided by handfulls of votes.

It was reported to me during the last county election, that the county auditor was providing assistance to voters in an election where *his* position was being contested. Incidentally he won by 7 votes. It was reported that he would hand deliver the absentee ballots to the voter and help them vote their ballots. No one tracked these ballots, the quantity of ballots he assisted with, the nature of the assistance, or where the ballots were between the marking and the counting of the ballots. When this was reported to my office, I raised my concerns with the Secretary of States office. The response I received was: (paraphrasing) " I spoke with the auditor. He is the chief election official in the county. He needs to be able to do his job." This concerns me for many reasons:

1. This particular audior plead guilty to having the sheriff's office license plate tabs on his personal vehicle;
2. Obtaining information from the potential source of the problem is akin to asking a drug dealer if they are dealing drugs;
3. This particular audior regularly and repeatedly has acted suspiciously regarding ballot boxes concurrent with the election for what reason I am not sure;
4. This auditor had his election brochure remnants stuck in the county copy machine; and other points too numerous to list here.

The particular auditor has a deputy that should have been handling the absentee ballots but that was not done in this case. A response was given that, "there are procedures to contest an election results, avail yourself to them" and the procedures exist, however, finding witnesses willing or able to testify is difficult. To rely on this mechanism solely is similar to stating that if there have been no convictions for manufacture of methamphetamine, there must be no meth labs, or if no one reports elder abuse, it must not be happening. I will state that I have strong suspicions that voters choices may have been compromised, but getting elderly people to testify that they were pressed to vote a certain way, is difficult as they may not remember all the details of their voting, don't want to admit they were coerced, etc.

Safeguards need to be in place to guard against even the *appearance* of voting fraud. I would suggest that amendments to SB2319 be as follows:

- a. That when the auditor position is contested, that the auditor be required to defer any handling of absentee ballots to; the deputy (if available), an adjoining county auditor or a neutral party designated by the contestants for the office.
- b. That the election judge deliver the ballot back to the ballot and place that ballot in a locked and sealed box until the ballots are counted by a neutral party. If this is not done, the auditor would have the opportunity to replace the ballot with one that is marked in support of the auditor.
- c. That all absentee ballots be placed in an inaccessible place to any contestant until they are counted. (oftentimes the entire county courthouse offices are accessible by the auditor).
- d. That the absentee ballot signatures be able to be verified by an election judge to ensure the security of the process by cross checking for forged signatures on the return envelope.

I am not technically adept to know exactly how to accomplish the end result, but I would hope that through technology we could accomplish a more secure system for the voters and the process due to the large increase in use of the absentee voting system. Perhaps the Secretary of State has some ideas for the interim that can be brought forth to improve the system. I look forward to working with the resulting changes to the law and hope that any changes will improve the system.

Thank you for your time.

Sincerely

Paul Murphy

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