

2011 HOUSE POLITICAL SUBDIVISIONS

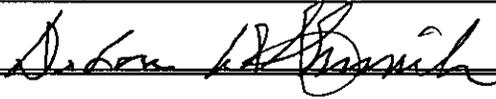
HB 1283

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1283
February 3, 2011
Job # 13885

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to canvassing of absentee ballots.

Minutes:

Testimony 1, 2

Chairman Johnson: opened the hearing on HB 1283

Rep. Kasper: I served on the canvassing board in Cass County last year and we had a real battle about this law and I want to tell you why I think it needs to be changed. This bill deals with canvassing of absentee ballots. If the committee would look at line 15; this line deals with any envelop without a postmark or other official marking by the US Postal Service or other mail delivery system or with an illegible post mark or other official marking and containing an absentee voters ballot must be received by mail within 2 days after the election to be canvassed and counted. The law says if you have an absentee ballot like that and it is received within two days after the election that absentee ballot that you can't tell when it was mailed; must be counted. That is a key to why I introduced this bill. Now if we jump up to line 7, in the case of a district if an the envelope postmarked or otherwise officially marked by the US Postal service or other mail delivery service within two days after the election. If you can read the post mark it must be before the date of election. In my office in Fargo I have a post office collection spot across the street. What it says is any mail delivered after 5:30PM will not be picked up until the next day. So if the election is November 2 I could drop that letter in there on November 1; not realizing it is not going to be picked up. I mailed the ballot on time, but the post mark becomes the day of election and therefore it is not counted. So what I am saying is we should look at the idea of an absentee ballot being mailed on Election Day with the postmark on Election Day. What the amendment says is if you have a postmark on the day of election or before on an absentee ballot it must be counted if it is received within two days of the date of election. Identical to the envelope that you have an illegible postmark on no post mark where you have to count it I am saying the same thing. What is the difference if an individual goes to the poll on Election Day and votes or if they drop their absentee ballot in the post office on Election Day and votes? The concern is that we could have double voting; but our election officials could identify that if you have an absentee ballot and someone has registered at the polls you know you have a double vote. This is a clarification of an ambiguity in our state law that allows an envelope with no postmark to be counted even if it were mailed on Election Day, but an envelope with a postmark on Election Day is not counted. In this area we had 9 or 17 absentee ballots that fell into this category. We had a lengthily debate and our

committee voted to count those ballots with a postmark on Election Day. It did allow voters to have their votes counted. I believe it is this legislative body's responsibility to set the policy. We should be determining how our vote is counted and our elected officials who we delegate the authority to then to carry out the wishes of this elected body.

Opposition:

Al Jaeger, Secretary of State: (See testimony #1). (Handout #2) We understand the point Rep. Kasper is trying to make reference to existing law; however, that does apply to a rather unique situation. I think it is important to point out that the understanding that a ballot needs to be somehow marked the day prior to the election and transmitted electronically prior to midnight is long standing in state law and instructions are very clearly given. On the very last page of the handout #2 it says in three or four places what the timely submission of the ballot might. The federal congress has passed a law called MOVE which is the military overseas voting act. What he is eluding is to allow ballots if they arrive prior to the canvassing board to be counted, but if a ballot is postmarked on the day of the election a long standing practice would be that that isn't allowed. The people in the various towns where some mailing may need to be done are very aware of when the mail goes out every day. We have a concern with changing something that has been in existence for a long time and serves its purpose very well.

Rep. Zaiser: I think maybe we need clarification on the law.

Al Jaeger: In Senate bill 2254 in section 14, which is on the attachment we put that language in law precisely on canvassing. That bill has been heard by the Senate committee.

Michael Montplaisin, Cass County Auditor: I was also at the canvassing board meeting following the last election and was a little surprised by the actions that the canvassing board took because it has been very clear and a long standing tradition that the canvassing board; while always wanting to make sure every legitimate ballot counts, always being very mindful of what the law says and not wanting to count those ballots that were postmarked election day or after. Some of the ballots that were counted that day were even signed on Election Day so we know they weren't dropped in a can the day before the election. Subsequent to the canvassing board action and the state canvassing we did have a recount in Cass County and District 45 and when we did the recount I challenged those ballots that were dated the day of the election. The recount board upheld that challenge and did not count those in that recount. The unintended affect I think f Rep. Kasper's bill on line 11; it talks about received within two days after the election. I happen to have a son who lives in Arizona and I get mail from him and typically it takes about seven days. We also see that with ballots. Within the city of Fargo it might take 4-5 days for a ballot that was mailed in Fargo to get to the courthouse. I think the unintended effect of this bill would be that those ballots mailed Friday, Saturday, or Monday may not get to the courthouse two days after the election.

Rep. Shirley Meyer: How often have you had in the past ineligible postmark and are those always counted?

Michael Montplaisin: We frequently have postmarks that you can't quite make out and that is why the provision is in the laws. If you can't make it out you give the benefit of the doubt to the voter in counting those ballots if they came in within two days following the election.

Rep. Koppelman: If the canvassing board receives a ballot before they meet and count the ballots, if the postmark is eligible the ballot is counted. If you can tell when it was mailed and it was mailed on Election Day, even though it reached them before that, they don't count. Is that right?

Michael Montplaisin: That is correct. If a ballot is eligible postmark comes in within two days following the election we will count that. If it comes in with a postmark on Election Day we will not count it. Right now if a ballot comes in with a postmark on the day before the election and if it is received up to a week later; we would count that.

Rep. Koppelman: Is there a better way to try to solve the problem of voting by mail or ballot on Election Day when one counts and one does not count if mailed? Is there a better way to do this?

Michael Montplaisin: I can't think of a way of resolving that. We don't get very many ballots that you can't tell the postmark. When it does happen the law has a safety value for those kinds of things. It doesn't currently have a safety value if I take my ballot to the post office at 3PM the day before the election and the post office simply doesn't stamp it until the next day. I think we cover the vast majority of situations. The changes that are proposed in this law I think would disenfranchise a lot of people who the post office simply didn't get the ballot to the courthouse fast enough.

Rep. Klemin: I see your point on two days in Section 1, but what if was just received before the canvassing board meet. We did not specify time; what then?

Michael Montplaisin: That would take out part of the problem because then you wouldn't be disenfranchising those who cast their ballot before election days that we didn't get it.

Rep. Klemin: It seems inequitable because you count it if you can't read the postmark, but you don't count it if you can read the postmark. As long as they are both there before the canvassing board meets then what difference does it make?

Michael Montplaisin: That is a decision this board has to make. It does give us a standard. When we send out absentee ballots we are very clear about when they have to be postmarked. We try to tell people to mail it as soon as you can. If you are allowing people to mail them on Election Day; could they know the results before they mail it?

Rep. Mock: In Grand Forks our post office cuts off at 9PM and being from Cass County are you aware of this? Does Cass County accept mail after the poll has closed?

Michael Montplaisin: I believe they would accept it; our polls close at 8PM. There were a lot of instances brought up. I think voters are smart enough to take that into account.

Jim Silvure, Deputy Sec. of State: The reason the benefit is given to the voter if the postmark is illegible is because a postmark or a date stamp is not something that is physically affixed or stamped on by the voter themselves. However, submitting their ballot on Election Day or after is a physical action of the voter themselves so therefore that's why grace is given to illegible postmarks.

Rep. Hatelstad: what is the difference between me walking into the polling place, signing my name and voting at 9AM or walking into the post office and throwing my ballot in at 9AM?

Jim Silvure: In the situation that you described there really would not be a difference; there would be a difference however if a person were to deposit their ballot in the mailbox after the polls would close or something like that.

Rep. Hatelstad: In either case; whether I do it at 9AM or 9PM at night you are not going to count my ballot, yet if I go into the polls and do it at 9 the same time so you screwed me in one situation, but not in the other.

Jim Silvure: Whether we did that as election officials or whether the law does that is the debatable question. As Mr. Montplaisin said we agreed that it is a policy decision of the legislature. We are just here telling you why it is that way.

Rep. Devlin: As I recall talking to some of the people involved in writing this particular law; their concern was with the ballots that were counted on Election Day. In the big cities you can drop them into the mail late in the evening and they would still be counted after the polls are closed. What Mr. Jaeger was referring to mischief; you could have a political party saw that their candidate was losing by four or five votes and the election is over, they could all of a sudden get 10 people to the polls with their mail in ballot and drop it in and they would still be counted. That is why they put it a day before the election.

Jim Silvure: That is the mischief Sec. Jaeger was referring to there.

Chairman Johnson: wouldn't they have had an application for an absentee ballot ahead of time and you would have to figure out who had not gotten an absentee ballot and it would be pretty difficult to track all of that down.

Jim Silvure: With the advent of the central voter file and the data feeds that are given to both political parties relating who has returned an absentee ballot; who has requested an absentee ballot; that information is at the political parties finger tips so it is entirely possible that they could know that information and could call various people saying did you submit your absentee ballot?

Rep. Zaiser: In Fargo they use to post mark mail AM and PM of a particular day; maybe that doesn't exist anymore. If that does exist that could be proven that the postmark was prior to the closing of poll. How would you address that?

Jim Silvure: I cannot answer your question as to what the mail does. I think it adds a level of complexity to the whole process. If the legislative body wants to go down this pathway I

know there are a number of people who request their absentee ballots who receive them in the mail who vote then and then bring them to the polls on Election Day. The current practice under law is that those ballots are spoiled by the election board and the voter is asked to submit a new ballot so if you are going to go down that pathway, maybe you ought to consider the possibility too of saying a voter who receives an absentee ballot would also deliver it to the polling location on election day. I think that is more than what you were asking for.

Rep. Zaiser: Perhaps they could have dropped them in the mail at 10 PM the night before so they wouldn't be postmarked then until the AM of Election Day. It might be moot.

Jim Silvure: our purpose of being here is stating what has been the practice over a number of years and we will carry out the laws that are set forth by this legislative assembly.

Neutral: None

Rep. Devlin: could I ask Jim one more question. On Section 1 Subsection 2 about counting an envelope with a postmark that is illegible; is there something in federal law that you have to do that or is that just something the State of ND does?

Jim Silvure: Currently under the Military and Overseas Voters Empowerment Act of 2009, which was signed by the President prior to our ability to have a legislative assembly to change our laws before the 2010 election it was stated in there that absentee ballots from military and overseas voters need to be granted as much time as is possible for their ballot to be returned and they also they wanted to give military and overseas citizens the opportunity to have their ballot counted even if there was an illegible postmark or date stamp or one that didn't exist at all. What we have come to understand from the Department of Defense, for example, is that sailors who are on board ship at the time when they want to send mail there is not really a postmark or a date stamp that is placed on those envelopes as they are being removed from the ship. In the case a voter may indeed vote well before the day of election, but the date stamp may not be applied at all in that case so therefore there is no way of telling when that voter actually voted so in the MOVE act it was similar language there about eligible postmark and or no date stamp at all as in our current law. So that is a requirement we need to uphold.

Rep. Shirley Meyer: Would you know how much money is in the HAVA account right now?

Jim Silvure: I don't have the exact amount but it is somewhere around \$6 million.

Rep. Shirley Meyer: Could you get that for me?

Jim Silvure: Absolutely.

Hearing closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1283
February 10, 2011
Job # 14344

Conference Committee -

Committee Clerk Signature



Minutes:

Chairman Johnson: Reopened the hearing on HB 1283. This is the one where if somebody mailed the ballot on or before the date of the election currently it has to be postmarked the day before the election. Then when it gets to the canvassing board they have up until the next Friday I believe it is to count ballots.

Rep. Shirley Meyer: they had suggested an amendment on first page line 11 after, but within two days after the election before the canvassing board.

Rep. Klemin: I think what he is referring to here is the provision in 2254?

Rep. Shirley Meyer: that is correct, but he requested it be added in the event that it would be overturned on the floor that that would be added to it. Similar as in 2254.

Motion Made by Rep. Shirley Meyer to move that amendment: Seconded by Rep. Zaiser:

Chairman Johnson: On line 11 it would read on voting in time to be tabulated, but within two days after the election, but prior to the meeting of the canvassing board.

Discussion:

Rep. Klemin: this does not make it consistent with SB 2254 as I see it. The language is crossed out in this. They are both amending the same section of the statute.

Rep. Koppelman: I think the bill as written already deals with that.

Rep. Klemin: The change that to the Secretary of State had is actually dealing with line 18 instead of line 12.

Rep. Shirley Meyer: It was just a note so I may have made incorrect notes before so I am glad they are no longer open to the public.

Chairman Johnson: I think the discussion is on line 18 that would change to what we have a motion to adopt it for line 11 so let take a vote on adopting it. Withdraw motion by Rep. Shirley Meyer: Seconded by Rep. Zaiser:

Chairman Johnson: Is there a motion to amend to say must be received by mail by the proper officer prior to the meeting of the canvassing board and the meeting within two days after the election.

Rep. Kretschmar: Then I think it could come in more than two days later and still be counted.

Chairman Johnson: I believe what Rep. Kasper said is if it had been postmarked on the day of election if it come in one or two or three days as long as it is in there before the canvassing board meets it would be counted. That is how I understand it.

Do Pass Motion Made by Rep. Maragos: Seconded by Rep. Shirley Meyer:

Discussion:

Rep. Hatelstad: I read on line 9 that means now that a piece of legislation marked on the day of election will be counted?

Rep. Devlin: That was the issue. The reason it wasn't put in there that way originally when they wrote the legislation that in the big cities you could mail things later in the evening and they will still be post marked that day so you could essentially find out the results of the election; make some phone calls and get twelve people in to vote and overturn it. So we are trying to be consistent across the state that everybody has to vote within a certain time table and that is why they put it in that way originally.

Rep. Klemin: The Cass County Auditor also mentioned that this two day provision could have some unintended consequences. Now if it is postmarked before the Election Day it is counted if it comes in before the canvassing board meets even if it is after the two days, but this bill limits it to within those two days.

Vote: 3 Yes 11 No 0 Absent Failed

Do Not Pass Motion Made by Rep. Devlin: Rep. Rep. Klemin:

Vote: 11 yes 3 No 0 Absent Carrier: Rep. Klemin:

Hearing closed.

Date: 2-10-11
Roll Call Vote #: 7

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1283

House Political Subdivisions Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Meyer Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

line 11, withdrawn!

Date: 2-10-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1283

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson		✓	Rep. Kilichowski		✓
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer	✓	
Rep. Beadle		✓	Rep. Mock		✓
Rep. Devlin		✓	Rep. Zaiser		✓
Rep. Heilman		✓			
Rep. Klemin		✓			
Rep. Koppelman		✓			
Rep. Kretschmar		✓			
Rep. Maragos	✓				
Rep. Pietsch		✓			

Total (Yes) 3 No 11

Absent 0

Floor Assignment Rep.

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

Failed

Date: 2-10-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1283

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Devlin Seconded By L. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad		✓	Rep. Shirley Meyer		✓
Rep. Beadle	✓		Rep. Mock	✓	
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos		✓			
Rep. Pietsch	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1283: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1283 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1283

HB1283 #1

ALVIN A. JAEGER
SECRETARY OF STATE

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BISMARCK ND 58505-0500

February 3, 2011

TO: Rep Johnson, Chairman, and Members of the House Political Subdivision Committee

FR: Al Jaeger, Secretary of State

RE: HB 1283 – Relating to Canvassing of Absentee Ballots

Section 1, Page 1, Line 9 – the "on or" before would alter long standing policy, law, and procedures related to submission of a ballot by a voter. That is, an absentee or vote by mail ballot must be submitted prior to the day of election.

This requirement is addressed in N.D.C.C. § 16.1-07-05(2), which states:

"To return a voted ballot and other required documents by electronic mail, the eligible voter must have access to the technology to scan the documents, save the documents in a secure format approved by the secretary of state, and return the documents as an electronic mail attachment directly to the electronic mail address assigned by the auditor, clerk, or business manager for that purpose prior to midnight in the voter's county of residence on the day before the election."

Although the section of law already includes text regarding the submission of the ballot, to ensure it is clearly stated in the laws pertaining to the canvassing of votes, an additional sentence is being added to N.D.C.C. § 16.1-07-09 in Section 14 of SB 2254 (attached).

Section 1, Page 1, Line 11 – this two day time line is contrary to the required time lines required by the Federal Military and Overseas Voting Act (MOVE) and, which are reflected in the provisions of SB 2120 that has been introduced to enact the needed provisions into North Dakota law.

A copy of the instruction provided to voters is also attached, which indicates in several places the deadline for returning the ballot.

2

Absentee Voting Instructions

Prescribed by the Secretary of State in Accordance With Section 16.1-07-08(3) of the NDCC

Absentee voting instructions should be printed in a conspicuous manner on the return envelope or be provided on a conspicuous insert to be included with every absentee ballot.

Absentee voting instructions should be labeled as such and should reasonably contain the following core components when applicable and possible:

- Reminder to voter, that after they have voted, to conceal his or her ballot(s) by folding the ballot(s) in some manner.
- Instruction to voter to place his or her completed ballot(s), or the secrecy envelope or sleeve containing his or her completed ballot(s), into the return envelope provided and seal.
- Instruction to voter to complete the voter's affidavit found on the backside of the return envelope.
- Reminder to voter to affix the proper postage if returned by mail.
- Reminder to voter, if returning ballot by mail, that it must be post marked no later than the day before the election.
- Reminder to voter, if returning ballot in person to the County Auditor's office, that it must returned by the close of day on the day before the election.
- Reminder to voter, set-out and emphasized in a conspicuous manner (larger print, underlined, bolded, etc.), that he or she is entitled to complete his or her absentee ballot(s) in secrecy.

For assistance, please refer to the examples of absentee voting instructions provided.

Absentee Voting Instructions for Counties Using Secrecy Envelopes (Preferred)

Instructions to Absentee Voters

N.D.C.C. § 16.1-07-08(3)

Make sure you do the following:

- ⇒ After voting your absent voter's ballot, fold it to conceal your vote.
- ⇒ Place your folded, completed ballot in the provided secrecy envelope or sleeve and seal it.
- ⇒ Place the secrecy envelope or sleeve containing the ballot in the self-addressed return envelope provided and seal it.
- ⇒ Complete and sign the voter's affidavit found on the backside of the return envelope.
- ⇒ If you choose to return your absentee ballot by mail, be certain to affix the proper postage before mailing.
- ⇒ Absentee ballots returned by mail must be post marked no later than the day before the election.
- ⇒ Absentee ballots may be returned in person to County Auditor's office until closing time on the day before the election.
- ⇒ If you happen to make a mistake while voting, you have the right to return your spoiled ballot to the County Auditor and receive a new ballot. (N.D.C.C. § 16.1-13-32)
- ⇒ In the June Election, crossover voting is not allowed between the political parties in the consolidated primary portion of the ballot – this means that you may vote for only those candidates listed under the column heading of one of the political parties in the political party primary section of the ballot – failure to stay within the column will result in the rejection of your votes in this section of the ballot. (N.D.C.C. § 16.1-11-22(4))

Remember, You Are Entitled to Complete Your Absentee Voter's Ballot in Secrecy

1 **16.1-07-09. Canvassing of mailed absent voter's ballots received late.**

2 In the case of congressional, state, county, city, or school district elections, if an envelope
3 postmarked or otherwise officially marked by the United States postal service or other mail
4 delivery system before the date of election and containing an absent voter's ballot is received by
5 the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the
6 ballot must be tallied by the canvassing board of the county, the governing body of the city, or
7 the school board of the school district, as the case may be, at the time the returns are
8 canvassed. Any envelope without a postmark or other official marking by the United States
9 postal service or other mail delivery system or with an illegible postmark or other official marking
10 and containing an absentee voter's ballot must be received by mail by the proper officer ~~within~~
11 ~~two days after the election to be canvassed and counted~~ prior to the meeting of the canvassing
12 board. An absent voter may personally deliver the absent voter's ballot to the appropriate
13 officer's office at any time before five p.m. on the day before the election. Any envelope
14 containing an absent voter's ballot with a postmark or official date stamp on the day of election
15 or thereafter may not be tallied with the ballots timely submitted for the election. Before
16 forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding the
17 ballot shall print the date of receipt on the envelope. Upon receipt, the canvassing board shall
18 determine that the elector was qualified to vote in that precinct, that the elector did not
19 previously vote in that precinct on the date of the election, and that the signatures on the
20 absentee ballot application and the voter's affidavit were signed by the same person before
21 allowing the ballot to be tallied.

22 **SECTION 15. AMENDMENT.** Section 16.1-07-10 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **16.1-07-10. Care and custody of ballot.**

25 Upon receipt of an envelope containing the absent voter's ballot, the proper officer
26 immediately shall attach the ~~written~~ application of the absent voter and file the ballot with other
27 absentee ballots from the same precinct. Before delivering the absentee ballots to the precinct,
28 the proper officer shall package the ballots in a manner so the ballots are sealed securely. The
29 package must be endorsed with the name of the proper voting precinct, the name and official
30 title of the officer, and the words "This package contains an absent voter's ballot and must be
31 opened only ~~on election day at the polls while the polls are open~~ according to the processing