

2011 HOUSE POLITICAL SUBDIVISIONS

HB 1299

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1299
January 28, 2011
Job # 13634

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to voting in the primary election.

Minutes:

Handout #1 & 3, Testimony #2 & 4

Chairman Johnson: Opened the hearing on HB 1299.

Rep. Mock: What this bill is a response to what happened in 2010. I have Mr. Bjornson drafting an amendment. There were two solutions and after hearing some late concerns from county auditors maybe there is a better way of approaching this and still accomplishing what I hoped to accomplish without causing any undue burden. During the 2010 primary election the libertarian party of ND petitioned to have a spot on the ballot. (See Handout #1). Went over the ballot. The situation arose when the libertarian party had a few nominated candidates. They had the party column on the primary ballot, but as you will notice they had candidates for the US Senate, in the case they had a State Senator and they had a Tax Commissioner candidate. There also should have been a Public Service candidate so there were three statewide candidates and one local candidate. The Libertarian Party had nominated local legislative candidates in three races in as many districts. So in two districts they had one House candidate in each district. In this case it was a Senate candidate. ND primary law is an open primary system. We don't have party registration. If Rep. Klemin felt implied to vote on the Democratic Party column for the primary nothing is stopping him from doing so. The only rule we have relating to that is that you cannot cross party lines. So in the case of a certain mother of mine during the primary election; when she started voting for then Gov. Hoevan for the US Senate, when she got further down the ballot and wanted to vote for a candidate in another party she had to spoil her ballot. She had to choose; either stick with one party or try again. It was an unfortunate situation for many of the candidates because if you are Richard Ames in this example the Senate nominee in District 25; not only can you have all of your friends only vote in that party and they have to throw away the ballots for an Attorney General candidate for the Congress and in this case Secretary of State. You have to know that 1% of the district population willing to vote for you. So we have two unique thresholds. You cannot cross party lines. This bill sets to change that to allow an individual to cross party lines during the primary ballot. So if you want to vote for the Republican nominated for US Senate and vote for the Democratic nominated candidate for Congress you would be allowed to do that so long as you only vote once in each race. That was one of the

proposed solutions. The other solution was to simply eliminate the minimum vote threshold that a candidate has to make in order to advance to the general election. For a legislative candidate the threshold is one percent of the total district population, which is between 140 and 150 votes. For a statewide candidate the threshold is 300 votes. In the Libertarian case in the June primary of 2010 all of the Libertarian candidates advanced to the general election. They received between 350-600 votes in their respective races. The Libertarian candidates for the legislative office received 8, 6 & 4 votes respectively with Richard Ames receiving 8 votes. Because of the work of their party they were able to secure 7,000 signatures and prove they were a viable party for nominating candidates. Unfortunately the work of the 7,000 signatures went really for nothing because their legislative candidates weren't able to advance to the general election. The problems that our laws are being more exclusive of our candidates than inclusive. I understand the reason for the law is to have only serious candidates running; we don't want unnecessary ballots that are three and four pages long, but 7,000 signature thresholds to partition for a party column it is a task. The one percent for a third party in a district is difficult. In fact 1% for one of the two main political parties is difficult and we have a colleague running for reelection in District 18. His reelection was unable to get 1% of the votes and did not move forward as the nominated candidate. He had to host a write in campaign and unfortunately he was not reelected. We have a system where we are not making it easy for candidates who have been nominated and whose parties have worked hard to put them on the ballot to advance to the general election and give voters the choice for as many qualified candidates as we can. This is one of the solutions. I have heard from County Auditors that this would result in more spoiled ballots; it would make for a more complicated process and I understand that. Maybe this is not the ideal solution; however ND is the only state in the under that has the minimum vote threshold. No other state in the union requires you to receive 1% or any other number of votes before advancing. It is simply the top vote precipitant in that parties column. The amendment Mr. Bjornson is drafting would change this bill to do that; unfortunately it is now here. Hopefully we will have it here before the close of this hearing. (See proposed amendment # 2 11.0310.01001). With the 1% threshold there was another unique situation; Because ND is the only state who does not have a system that kicks out candidates; we have to manually pull them. It was a clerical over site, but Richard Ames was nominated and received a certificate even though he was not nominated. It was a mistake that was made. Our system is not set up to allow for the candidates.

Rep. Shirley Meyer: Were you going to walk us through this amendment?

Rep. Mock: Went over the amendment. It simply eliminates the minimum vote threshold for candidates.

Rep. Shirley Meyer: This amendment eliminates the cross over provision.

Rep. Mock: The bill as it is written allows for cross over primaries. The amendment would maintain the party ballot and it would simply eliminate the minimum vote threshold.

Rep. Koppelman: It is your opinion that candidates in the primary election should be chosen not by members of their own party, but by the public at large so that others can come and influence that nomination?

Rep. Mock: It is my understanding that that is the process it uses to be. It uses to be where you could vote for different parties, as long as you just voted for one. We already have what is called an open primary. There is nothing stopping an individual from voting in a primary that is not of their political affiliation.

Rep. Koppelman: You think the system was better before? Why?

Rep. Mock: I actually I have never worked with the old system. My proposal is to do something that had already been tried and experienced in ND as opposed to eliminating the threshold. There are concerns that eliminating the threshold would be more difficult to endure than allowing a cross over primary. That was the reason I chose this option. However, after listening to some county auditors and concerns about spoiled ballots I fully understand that. The intention is not to make the primary process complicated. It is to allow for third party that has partitioned to be on the ballot their fair opportunity to advance to the general election. That is why I would encourage the full consideration of the proposed amendment.

Rep. Klemin: On the ballot then, if there is an open position law and look at the sample you had; there is nothing under there for State Representative in District 25? If somebody writes in their name and votes for themselves and gets one vote and they are the highest number do they then advance to the general election?

Rep. Mock: In this case if there was someone, a Libertarian Party in this example, and someone had gone through and did the write in process just as we currently have. If they partition to have the ballot; if there is no nominated candidate, if they wanted to write in a name and they were the top vote reciprocate I know the Secretary of State's office would know more how the write in process and the variations of names that come in. Many times you would get a dozen or so names. The top reciprocate would advance to the general election. In Rep. Owens case that was how he had to move forward was through write in.

Rep. Klemin: If there is one vote and that is all there is in that Libertarian portion of this ballot, that person would then advance to the general election.

Rep. Mock: Unless there is a tie the top vote reciprocates, whether it is one or a hundred would advance to the general.

Rep. Klemin: there are two positions there so there could be two people each writing in their own name in and each only getting one vote and they would both advance?

Rep. Mock: Yes if they are both qualified electors and eligible to hold that position my understanding is that would be possible.

Rep. Klemin: If there are three write in candidates and they all get one vote what happens?

Rep. Mock: There would be a tie breaker which is a coin toss in ND.

Rep. Klemin: This could go on and on if there were 10 of them.

Rep. Mock: I would defer that to the Secretary of State's office. I am sure we have had a tie or two in the history of ND. If the party has done the work and the petition to make 7,000 signatures and to have his party on the ballot whether you are Republican or Democrat, or a third party you have the right to move your candidate to the general election. At that point the person has the chance to campaign and if they want to post a write in campaign they certainly can. ND is the only state with a minimum vote threshold. I don't know if this is a problem in other states.

Rep. Klemin: What were the numbers on this ballot?

Rep. Mock: Mr. Ames got 8 votes; the other two Libertarian candidates in different districts received 6 and 4.

Rep. Klemin: So someone writing their name in and getting one vote is not unlikely at all.

Rep. Zaiser: Maybe we should just go to a general election.

Rep. Mock: There are certainly a lot of valid reasons to maintain the primary as we all know candidates do go through the nomination process if they are running on the party ballot. If they are the nominated candidate any other candidate can simply run a campaign to receive a nomination. The endorsement does not the nomination. The nomination by the people is the nomination. That is the reasons for the primary and also the primary ballot will happen it does also have other elections on there.

Rep. Zaiser: Is there any distinction on the ballot or any advantage for being nominated by your party in terms of when it comes to the ballot say for instance John Jones worked extraordinary hard and got 300 votes at the convention and then he took it easy during the primary and some guy came along who had a famous name and they were on equal footing and he defeated him. Is there any way of distinguishing the endorsed candidate from that particular party?

Rep. Mock: No. ND use to indicate the encumbering on the ballot but they eliminated that.

Rep. Kaldor: The reason that I support this concept that it seems to me irrational that a party can establish themselves and get the request number of partitions signed and then not have their endorsed candidate on the general election after they have gone through that process. I am confused by the current law. It seems to me that when there is a primary election and there is no contest in a party I am not so sure we need to go through that action. As Rep. Klemin suggests where you have a situation where you have two write in voters as an example, if they are endorsed by their party and their party has established the prerequisite number of signatures to actually to have their party listed on the ballot, then those endorsed candidates by certification should be eligible for the general election. If someone challenges them in the primary election certainly the person that challenges them, if they receive more votes than a certified candidate, or endorsed candidate, then they go to the general election. If we can accomplish that goal I think we would improve the process. I am not sure this does it yet or not. Certainly the bill as it was originally

formed has significant problems. Crossing from one party to another is a solution that would be broth with problems.

Rep. Koppelman: If your example is correct and we should allow a party that is a bonafied party and has established itself through whatever means we set forth for that to happen should be represented on the ballot. If they nominated someone why if that individual got no votes should they not move forward versus if they got one vote?

Rep. Kaldor: I am not sure I understand your question. If I were whatever, a third party ballot, and I was the endorsed candidate of that party and I received zero votes and another person received one vote they have obviously defeated me.

Rep. Koppelman: When you read the proposed hoghouse it says the number of individuals to be nominated as candidates for a party office by a party having a separate column on the primary election ballot must be that number of individuals that receive the highest number of votes and who total the number of available positions for the office. What if they get on the primary election ballot for a no votes for that person, under this bill they wouldn't advance, as I read it, but if they got one vote they would. Your premise is that the party deserves a representative on that election ballot.

Rep. Koppelman: When there are two candidates in the primary on the Libertarian party and there are two people that want that position and that party has established itself with a column on our ballot and they have nominated one of the two and somebody else comes along and says I want that position and they both run in the primary; neither gets a vote, I think under this bill neither one would advance to the general election. That party ballot would be blank in the general election.

Rep. Kaldor: You may be right. I need to look at the amendment further. The purpose for reforming our law is that you can establish a party gets the request signatures but because our primary is an open primary and we don't register for a party people tend to vote in the two major party ballots because they have a full slate of candidates. Whereas the third party may only have a few candidates. Those candidates are not likely to get many votes; they should be able to move along unless defeated in the primary.

Rep. Klemin: The hypothetical that I talked about was the candidate wrote in his own name in an open position and it was the only vote in that position. I write in somebody else's name and that person gets the highest number of votes, but did not want to run in the general election, what do they do?

Rep. Kaldor: I have a problem with a write in candidate getting established through one vote in the primary election. I think that the candidates that are on the ballot that have been endorsed by that ballot who have been endorsed by their party have a different standard than a write in candidate. As you describe you could put someone into that position that you didn't want or wanted to do harm with the other candidates.

Rep. Klemin: If I did want to screw everything up I could just fill in all these spaces with somebody else's names; then what?

Rep. Kaldor: You are excluding yourself from participating in your own parties election process so there is a risk that you take if you do something like that.

Opposition:

Al Jaeger, Secretary of State: (See testimony #3) Read the testimony. As to the amendment I just saw. ND does have a threshold and it applies equally to all political parties... There are two ways that a candidate can have their name on the primary election. One is through the party endorsement. The second thing is that an individual can go and circulate a petition to have their name on that primary election ballot. To have their name on that primary ballot they need to secure the signatures of one percent of the population of the legislative district. The highest number that we are aware of right now is about 146; as most of you know the population of the various legislative districts averages 13,000 based on the redistricting ten years ago. The threshold then becomes that in order to advance to the general election it is felt that the person that is voted on should at least have to obtain that particular level so that is what the threshold is. Over the years there are Republican candidates that didn't get the 130 votes and they didn't advance. In this particular case the Libertarian party; their legislative candidates got 6, 7, 8 or 9 votes and they did not advance. Rep Mock; I am guessing circulated a letter that was sent to Mr. Ames. LeAnn and I we do a pretty good job and we are right 99.9% of the time. Inadvertently because of our system it kicked out a Certificate of Nominations for Mr. Ames. And between LeAnn and me in signing 140 some certificates his was inadvertently included in there. Had I known about the hoghouse I would have brought up the file. I have a file that thick; the Libertarian Party has challenged the constitutionality of our threshold law. The District court for the state of ND has upheld the constitutionality of our law. The Libertarian Party has appealed that to the Eight Circuit Court. That brief is in there right now. The holding of the court was to obtain 1% of the vote of basically 13,000 residences; but they can't all vote, for a political party if they cannot in the legislative district go out and at least achieve those 130 votes is that viable. The District court held that was not discriminatory at all. The decision of this committee it would be unconstitutional and it would cost over \$1 million. The second decision is this amendment and whether or not there is a feeling among this body that that should be changed. All I am explaining is our law has been challenged and so far has been upheld as being constitutional. You can decide whether you want to change that. I am just here to tell you what the district court has said. We know how those petitions are circulated. There was a fellow in front of Kmart; he had petitions for both the Libertarian Party and the Constitutional Party and what is the spiel. People are walking by and he is hired to stand out there and collect signatures so is that a true indication of the strength of the party? The indicator comes when how many candidates did they endorse and how were they advanced.

Rep. Mock: I am going to put the bill as it was introduced aside. I am going to address the amendment. ND is the only state with the threshold. Do other states have problems where right in candidates is advancing to the general election?

Al Jaeger: I don't know.

Rep. Mock: Have states had problems where there is no write ins'?

Al Jaeger: I am not familiar with what the laws are in other states. We see write ins' on a legislative or statewide level where people have written in names. In a statewide level that write in vote to even count it there has to have a certain percentage of write in votes to actually kick out so that those signatures are counted. On a statewide it really becomes a mute point because nobody is going to get enough. Even on a legislative level it would be. If there are no candidates on the ballot I would suspect one write in vote would win because there is nothing else to compare with it. The Libertarian Party in those legislative districts there could have been write in votes. In every legislative district they had a column so somebody could have.

Jim Silrum, Deputy Secretary of State: I do know that our neighbor to the south doesn't allow write in candidates any time at all. In other states a Certificate of Right in candidacy is always required in order to set yourself forward as a legitimate candidate for that. In ND we do have a Certificate of Right in Candidacy in which a person must indicate their intention to be a candidate on that ballot. Whenever there are no candidates or not enough candidates on the ballot then no Certificate of Right-In Candidacy is necessary. In Rep. Klemin's suggestion, if there are no candidates for a contest on the ballots they become legitimate candidates just by writing their own name in. In other states there are stricter rules for write in candidates.

Rep. Mock: So there may be a possible solution while preserving the ability for candidates to meet that serious threshold. It was pointed out this letter and certificate was submitted to the committee.(See handout #4). This is in no way that your staff has done an ill job. In fact LeAnn has done a stand up job. I have had to work with her and you guys certainly do an outstanding job so I want to thank you for that. Our system isn't set up to kick out for the threshold for the top vote precipitant. Hopefully that is something we can address.

Al Jaeger: I need to stand up and acknowledge good work on elections in the state of ND. We have an excellent partnership with the county auditors. We work well together as a team. We work on elections every day in our office. Acknowledged staff because they are really front line people. Went into detail about each one of them. I don't feel there was a problem when these people did not advance. The problem was that their political party was not able to secure 130-140 votes for their candidate and the District Court said that is OK. If they don't get that many they don't need to advance. We are not in favor of the bill as introduced. Personally I am not in favor of the hoghouse because I think what we have is working quite well and it impacts all political parties as history has indicated equally.

Rep. Zaiser: What about the element of the write in vote. When people write in votes the oval is there but many assume that writing in ones name is adequate. When you discern or count the votes one receives do you include those that wrote in a name; maybe six of them didn't fill in the oval and eight of them did. Do you include just those that fill in the oval or the rest of them?

Al Jaeger: In order for the vote to be counted the oval has to be marked according to state law.

Jim Silrum: In order to have your vote counted the oval must be filled; however the candidate in question does under law have the right to ask for ballots to be searched to see

if there are write in names that were listed without the oval being filled and then voter intend can be taken into account for that. That is the responsibility of that write in candidate to make a timely submittal prior to the canvassing board. So there are cases where that might be the case.

Rep. Zaiser: I believe there are people that do not fill in the oval that may really have an indication for voting for someone.

Jim Silrum: In North Dakota the general public has determined that paper ballots would be the way to go because then we has a paper record of what the votes were and we can check out those kinds of things. We could go to a direct record electronic system that is used in many states around the country and in that case a voter is not permitted to mark a vote without essentially filling in the oval. We as a state have decided this is the way people like best. We have laws in place that allow for us to account for voter intent when that is pertinent.

Al Jaeger: The reason we have in law that the oval has to be marked is the Help America Vote Act made it clear that states need to establish what is a vote and isn't a vote and we have done that.

Rep. Klemin: We didn't get any history on why we have the one percent. Do you know anything about that?

Al Jaeger: I could see how long ago it has been in the law and maybe pull some legislative history. The law as it exists has been upheld at one level.

Rep. Klemin: You said this Libertarian Party was on every ballot statewide whether there was any body in the column, is that right?

Al Jaeger: Yes that is correct.

Rep. Klemin: If under this amendment with only one write in vote being enough to get on the general election ballot, I can see a possibility of some real mischief being done here where by you have 47 districts; 47 people could go in and write in different names for this and we could have 47 candidates for Secretary of State all with one vote advancing to the general election.

Al Jaeger: With the threshold that would be impossible.

Rep. Klemin: Without the threshold under this amendment that has been given to us what happens.

Jim Silrum: I believe what you are asking in that situation there is somewhat like what would be happening if there were that many names put forward because it is a statewide contest the jurisdiction in question is the entire state so therefore if there were 47 different names then there would be considered a tie in that contest for that office. We would be required first to do a recount. Every county would be required to do a recount under the law. It would be determined, yes these 47 names each received one vote and then there

would be under law a breaking of that tie by a drawing of names so only one person would advance from the Libertarian Party if that we the party in question. The issue that exists there is worth noting for the committee is that in a primary election is generally intended to narrow the slate of candidates so that in a general election in an office for electing one you have the person who is elected receiving more than 50% of the vote. If you have a situation where there are three candidates running for the same position then you do run into a situation where a candidate could be elected with less than 50% of the vote. A tie would be the case in that situation you described and we would have to settle that tie to move them forward to the job.

Neutral: None

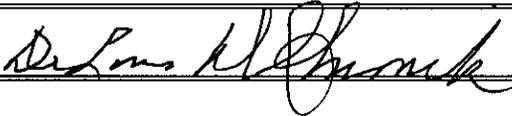
Hearing closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1299
February 3, 2011
Job #13979

Conference Committee

Committee Clerk Signature 

Minutes:

Proposed amendment #1

Chairman Johnson: Reopened the hearing on HB 1299. This bill was crossing party lines in a primary. Rep. Mock brought forward an amendment to it that was a hoghouse amendment.

Rep. Mock: I wanted to have the conversation addressing some of the concerns brought up in the 2010 election. Despite some of the concerns from some of the county auditors what I would like to do is offer and moves the amendment .01001 so that we can address the fiscal note; the concerns of the county auditors still offer a solution to a problem. (Proposed amendment #1). Seconded by Rep. Zaiser:

Chairman Johnson: This amendment also allows if there is one person from a political party that gets one vote that it eliminates the threshold for having to have 130 votes or something to get on the ballot.

Rep. Klemin: Clarification of this amendment. According to my notes this is the one where a person could write in their name and get one vote and that is the highest he goes to the general election. There could be several persons with one vote each and if there is a tie they all go. Is this what we talked about?

Rep. Mock: This amendment would eliminate the minimum vote threshold in the party column so if there were no endorsed candidates or no candidates and the highest recipient even if were a write in candidate would then advance. So in the case of the 2010 election a person who was written in for the Attorney General in the Libertarian Party, if they were the highest vote recipient they would have moved to the general election. Really an issue more for the legislative races than the statewide races. I remind the committee ND is the only state with the thresholds.

Rep. Klemin: This is the one where if you get one vote you can go onto the general election ballot.

Rep. Mock: Yes if it is the highest vote recipient and they are the highest eligible candidate they can move on to the general.

Rep. Zaiser: does the person who is written in does that have to be a real documented that lives?

Rep. Mock: I know that Mickey Mouse has made quite a few appearances on a few ballots, but I don't think they have ever advance to the general. This is only actual individuals; have to be a qualified elector in that district and be eligible in order to advance.

Rep. Heilman: Don't you have to file some kind of statement of intent even as a write in candidate?

Rep. Mock: ND does not require an individual to file a statement of write in candidacy. That was a concern. This would allow candidates to go on without having to meet a certain vote threshold.

Roll Call Vote 5 Yes 9 No 0 Absent Failed.

Do Not Pass Motion Made By Rep. Maragos: Seconded by Rep. Mock:

Discussion:

Rep. Mock: This is clearly not the solution and I don't want to cause problems. I agree that this bill as it is leaving this committee should not pass and I will support the do not pass happily.

Vote: 14 Yes 0 No 0 Absent Carrier: Rep. Mock:

Hearing closed.

Roll call vote: 5 Yes 9 No 0 Absent Failed.

FISCAL NOTE

Requested by Legislative Council
01/24/2011

Bill/Resolution No.: HB 1299

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$1,340,000	\$0	\$0
Appropriations	\$0	\$0	\$0	\$1,340,000	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would require the reprogramming of the state's entire voting system. Although the estimates are based on credible sources, the actual cost is unknown because no other state has such a system and it would require custom functionality.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

See 2A

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See 2A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The funds would need come from the state's election fund, which would decrease the long term availability of the funds, which would ultimately require general fund or county support.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	01/27/2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1299

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 16.1-11-36 and 16.1-11-37 of the North Dakota Century Code, relating to primary election nominations to office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-36 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-36. Vote required at primary election for nomination.

~~A person may not be deemed nominated as a candidate for any office at any primary election unless that person receives a number of votes equal to the number of signatures required, or which would have been required had the person not had the person's name placed on the ballot through a certificate of endorsement, on a petition to have a candidate's name for that office placed on the primary ballot. The number of individuals to be nominated as candidates for a party office by a party having a separate column on the primary election ballot must be that number of individuals who receive the highest number of votes and who total the number of available positions for the office if that many individuals are candidates for nomination by that party.~~

SECTION 2. AMENDMENT. Section 16.1-11-37 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-37. Vote required for nomination on no-party ballot - Partisan nominations prohibited.

~~The number of persons~~individuals to be nominated as candidates for any one no-party office must be that number of ~~persons~~individuals who receive the highest number of votes and who total twice the number of available positions for the office if that many ~~persons~~individuals are candidates for nomination. ~~Provided, however, that a person may not be deemed nominated as a candidate for any no-party office at any primary election unless the number of votes received by the person equals the number of signatures of qualified electors required to be obtained on a petition to have a candidate's name for the office placed on the primary ballot. No partisan nominations may be made for any of the offices mentioned in section 16.1-11-08.~~

Renumber accordingly

Date: 2-3-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1299

House Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0310.01061

Action Taken Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep C Mock Seconded By Rep S 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) 5 No 9

Absent 0

Floor Assignment _____

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

NO
Failed
3

Date: 2-3-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1299

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 Mock

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) 14 No 0

Absent 0

Floor Assignment Rep Mock

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

REPORT OF STANDING COMMITTEE

HB 1299: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends DO NOT PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1299 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1299

#1

CONSOLIDATED PRIMARY ELECTION BALLOT
PRIMARY ELECTION, JUNE 8, 2010

A	STATE OF NORTH DAKOTA	B	RICHLAND COUNTY	C	Wakoot
	REPUBLICAN		DEMOCRATIC-NPL		LIBERTARIAN
	ATTENTION! READ BEFORE VOTING You may vote for the candidates of only one party at the primary election. If you cast votes in more than one party column and vote for candidates of more than one party, your party ballot will be rejected.		ATTENTION! READ BEFORE VOTING You may vote for the candidates of only one party at the primary election. If you cast votes in more than one party column and vote for candidates of more than one party, your party ballot will be rejected.		ATTENTION! READ BEFORE VOTING You may vote for the candidates of only one party at the primary election. If you cast votes in more than one party column and vote for candidates of more than one party, your party ballot will be rejected.
	To vote for the candidate of your choice, you must darken the oval (<input type="radio"/>) opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval (<input type="radio"/>) opposite the space provided.		To vote for the candidate of your choice, you must darken the oval (<input type="radio"/>) opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval (<input type="radio"/>) opposite the space provided.		To vote for the candidate of your choice, you must darken the oval (<input type="radio"/>) opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval (<input type="radio"/>) opposite the space provided.
	United States Senator Vote for no more than ONE name <input type="radio"/> John Hoeven <input type="radio"/>		United States Senator Vote for no more than ONE name <input type="radio"/> Tracy Potter <input type="radio"/>		United States Senator Vote for no more than ONE name <input type="radio"/> Keith J. Hanson <input type="radio"/>
	Representative in Congress Vote for no more than ONE name <input type="radio"/> Rick Berg <input type="radio"/> JD Donaghe <input type="radio"/>		Representative in Congress Vote for no more than ONE name <input type="radio"/> Earl Pomeroy <input type="radio"/>		Representative in Congress Vote for no more than ONE name <input type="radio"/>
	State Senator District 25 Vote for no more than ONE name <input type="radio"/> Larry Luick <input type="radio"/>		State Senator District 25 Vote for no more than ONE name <input type="radio"/> Arden C. Anderson <input type="radio"/>		State Senator District 25 Vote for no more than ONE name <input type="radio"/> Richard Ames <input type="radio"/>
	State Representative District 25 Vote for no more than TWO names <input type="radio"/> Ron Flesland <input type="radio"/> John D. Wall <input type="radio"/>		State Representative District 25 Vote for no more than TWO names <input type="radio"/> Clark Williams <input type="radio"/> Larry Geat <input type="radio"/>		State Representative District 25 Vote for no more than TWO names <input type="radio"/>
	Secretary of State Vote for no more than ONE name <input type="radio"/> Alvin A. (Al) Jaeger <input type="radio"/>		Secretary of State Vote for no more than ONE name <input type="radio"/> Corey Mock <input type="radio"/>		Secretary of State Vote for no more than ONE name <input type="radio"/>
	Attorney General Vote for no more than ONE name <input type="radio"/> Wayne Stanek <input type="radio"/>		Attorney General Vote for no more than ONE name <input type="radio"/> Jeanette Boechler <input type="radio"/>		Attorney General Vote for no more than ONE name <input type="radio"/>
	Agriculture Commissioner Vote for no more than ONE name <input type="radio"/> Doug Goehring <input type="radio"/>		Agriculture Commissioner Vote for no more than ONE name <input type="radio"/> Merle Boucher <input type="radio"/>		Agriculture Commissioner Vote for no more than ONE name <input type="radio"/>
	Public Service Commissioner Vote for no more than ONE name <input type="radio"/> Kevin Cramer <input type="radio"/>		Public Service Commissioner Vote for no more than ONE name <input type="radio"/> Brad Crabtree <input type="radio"/>		Public Service Commissioner Vote for no more than ONE name <input type="radio"/>
	Tax Commissioner Vote for no more than ONE name <input type="radio"/> Cory Fong <input type="radio"/>		Tax Commissioner Vote for no more than ONE name <input type="radio"/> Cynthia Kaldor <input type="radio"/>		Tax Commissioner Vote for no more than ONE name <input type="radio"/>
	VOTE BOTH SIDES				
	If you voted in this column, you may not vote in another political party's column.		If you voted in this column, you may not vote in another political party's column.		All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted. Official Ballot RICHLAND COUNTY 2537-01 June 8, 2010 Initials
A	Wakoot	B	City	C	Typ 01 Seq 0001 Sp4.01

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1299

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 16.1-11-36 and 16.1-11-37 of the North Dakota Century Code, relating to primary election nominations to office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-36 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-36. Vote required at primary election for nomination.

~~A person may not be deemed nominated as a candidate for any office at any primary election unless that person receives a number of votes equal to the number of signatures required, or which would have been required had the person not had the person's name placed on the ballot through a certificate of endorsement, on a petition to have a candidate's name for that office placed on the primary ballot. The number of individuals to be nominated as candidates for a party office by a party having a separate column on the primary election ballot must be that number of individuals who receive the highest number of votes and who total the number of available positions for the office if that many individuals are candidates for nomination by that party.~~

SECTION 2. AMENDMENT. Section 16.1-11-37 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-37. Vote required for nomination on no-party ballot - Partisan nominations prohibited.

~~The number of persons~~individuals to be nominated as candidates for any one no-party office must be that number of ~~persons~~individuals who receive the highest number of votes and who total twice the number of available positions for the office if that many ~~persons~~individuals are candidates for nomination. ~~Provided, however, that a person may not be deemed nominated as a candidate for any no-party office at any primary election unless the number of votes received by the person equals the number of signatures of qualified electors required to be obtained on a petition to have a candidate's name for the office placed on the primary ballot. No partisan nominations may be made for any of the offices mentioned in section 16.1-11-08.~~

Renumber accordingly

3

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E-MAIL sos@nd.gov



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

January 28, 2011

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

FR: Al Jaeger, Secretary of State

RE: HB 1299 – Relating to Voting in Political Party Primary Elections

The June election consists of several parts. It is a city's general election, it could include a measure, it is the primary election for county level positions, and it a primary election for the various political parties that have qualified for the ballot.

Attached to this testimony is a chart from the National Conference of State Legislature's (NCSL) website, which shows the manner in which primary elections are conducted in the various states. They are:

- Closed Primary (11 states) – Voters must be registered members of the party holding the primary.
- Partially Closed Primary (14 states) – Voters must be registered members of the party holding the primary; however, parties may choose each election whether to allow unaffiliated voters to participate.
- Open Primary (12 states) – Voters may choose which primary to vote in privately. The choice does not register the voter with the party.
- Partially Open Primary (9 states) – Voters may choose which primary to vote in, but must either do so publically or their vote may be regarded as a form of registration with that party.
- Alternative Method (4 states)

North Dakota is an Open Primary State.

This bill would establish what has become known as a "blanket primary". However, according to the decision of the Supreme Court, this type of primary is unconstitutional. The case, California Democratic Party v. Jones, was based on California's enactment of a "blanket primary" in which the voter would be allowed to vote for any candidate in the primary election regardless of the voter's or candidate's political party affiliation. In the court's opinion, Justice Scalia held that California's blanket primary violated political parties' First Amendment right of association. The State of Washington later tried to implement a similar type of primary, but it was not allowed by the United States Court of Appeals, Ninth Circuit for the same reason as in California's case. Therefore, neither Washington nor California hold or will hold this type of primary election.

In addition, to implement this bill, it would be very expensive. See Fiscal Note.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Primary Election Systems

	<u>Closed</u>	<u>Partially Closed</u>	<u>Open</u>	<u>Partially Open</u>	<u>Alternative Systems</u>
	<i>Voters must be registered members of the party holding the primary.</i>	<i>Voters must be registered members of the party holding the primary; however, parties may choose each election whether to allow unaffiliated voters to participate.</i>	<i>Voters may choose which primary to vote in privately. The choice does not register the voter with the party.</i>	<i>Voters may choose which primary to vote in, but must either do so publicly or their vote may be regarded as a form of registration with that party.</i>	
Alabama			X		
Alaska ¹					X
Arizona ²		X			
Arkansas			X		
California		X ³			
Colorado ⁴		X ³			
Connecticut ⁵		X			
Delaware	X				
Florida	X				
Georgia			X		
Hawaii			X		
Idaho ⁶			X		
Illinois				X ⁸	
Indiana				X ¹⁰	
Iowa				X ¹¹	
Kansas	X				
Kentucky	X				
Louisiana ¹²					X
Maine	X ¹⁴				
Maryland		X			
Massachusetts		X ¹³			
Michigan ¹⁵			X		
Minnesota			X		
Mississippi				X ¹⁶	
Missouri			X		
Montana			X		
Nebraska					X ¹⁷
Nevada	X				

	Closed <i>Voters must be registered members of the party holding the primary.</i>	Partially Closed <i>Voters must be registered members of the party holding the primary; however, parties may choose each election whether to allow unaffiliated voters to participate.</i>	Partially Open <i>Voters may choose which primary to vote in privately. The choice does not register the voter with the party.</i>	Partially Open <i>Voters may choose which primary to vote in, but must either do so publicly or their vote may be regarded as a form of registration with that party.</i>	Alternative Systems
New Hampshire		X			
New Jersey	X ¹²				
New Mexico	X ¹³				
New York	X				
North Carolina		X			
North Dakota ¹⁴			X		
Ohio ¹⁵				X	
Oklahoma ¹⁶		X			
Oregon		X			
Pennsylvania	X				
Rhode Island ¹⁷		X			
South Carolina ¹⁸				X	
South Dakota		X			
Tennessee ¹⁹				X	
Texas ²⁰				X	
Utah ²¹		X			
Vermont			X		
Virginia ²²				X	
Washington ²³					X
West Virginia		X			
Wisconsin ²⁴			X		
Wyoming ²⁵	X				

Source: National Conference of State Legislatures
June 2010

For more information, contact Tom Intorcio or Jennie Drage Bowser at 303-364-7700.

Pros and Cons

Closed: In general, a voter seeking to vote in a closed primary must first be a registered party member. Typically, the voter affiliates with a party on his or her voter registration application. This system deters “cross-over” voting by members of other parties. Independent or unaffiliated voters, by definition, are excluded from participating in the party nomination contests. Eleven states use the closed model. This system generally contributes to a strong party organization.

Partially Closed: Political parties use this system to allow independent or unaffiliated voters to participate in their nominating contests. In this type, parties let in independents, while still excluding members of opposing parties. This variation can increase turnout at the primary and can increase party membership because voters are sometimes required to affiliate with the party for a period of time in order to receive a ballot, as is the case in Rhode Island. Fourteen states are in this category.

Open: In general, but not always, states that do not ask voters to choose parties on the voter registration form are “open primary” states. In the pure open primary, voters may choose privately in which primary to vote. In other words, voters may choose which party's ballot to vote, but this decision is private and does not register the voter with that party. The completely open primary permits a voter to switch parties for the primary election and cast a so-called crossover vote. This vote can affect an open primary's outcome because there is no public repercussion—i.e., no change in registration—to switching party allegiance. Consequently, critics argue that the open primary dilutes the parties' ability to nominate. This system gives voters maximal flexibility—allowing them to cross party lines—and maintains their privacy, but tends to dilute the parties' ability to nominate representative standard bearers. Twelve states offer this “Montana” pick-a-party system.

Partially Open: Some state parties keep track of who votes in their primaries as a means to identify their backers. This system permits voters to cross party lines, but they must either publicly declare their ballot choice or their ballot selection may be regarded as a form of registration with the corresponding party. Illinois and Ohio have this system. Iowa is an exception; it asks voters to choose a party on the state voter registration form, yet it allows a primary voter to publicly change party affiliation for purposes of voting on Primary Election Day. Nine states use a partially open system.

Alternative Systems: Alaska uses a “party choice” primary, which allows each political party to select the type of primary it will use prior to each election. Louisiana and Washington currently use a “top two” format. The “top two” uses a common ballot, listing all candidates. In Louisiana, each candidate lists his or her party affiliation, whereas in Washington, each candidate is authorized to list a party “preference.” The top two vote getters in each race, regardless of party, advance to the general election. On June 8, 2010, voters approved Proposition 14, which moves the state to a top two system similar to Washington, effective Jan. 1, 2011. Advocates of the top-two argue that it increases the likelihood of moderate candidates advancing to the general election ballot. Opponents maintain that it reduces voter choice by making it possible that two candidates of the same party face off in the general election. They also contend that it is tilted against minor parties who will face slim odds of earning one of only two spots on the general election ballot. Four states currently have non-traditional systems.

¹ In 2001 following the United States Supreme Court ruling against blanket primaries Alaska switched to a system which allows each party to determine which type of primary it will hold. In 2010, the Democratic Party will allow any registered voter to participate in its “open” primary. The Republican primary is open to registered Republicans, Nonpartisan or Undeclared voters. The same rules applied in 2008.

² Arizona primaries have traditionally been partially open for unaffiliated voters. They may choose which primary to participate in, but must publicly declare their choice at the polls. Note, however, the 2007 U.S. District Court opinion in *Arizona Libertarian Party v Brewer*, 02-144-7UC, which ruled that the Arizona Libertarian Party is free to exclude unaffiliateds, independents and members of non-recognized parties.

³ On June 8, 2010, voters approved Proposition 14, which moves the state to a top two system similar to Washington, effective Jan. 1, 2011.

⁴ Colorado holds a closed caucus at which candidates who receive more than 30% of the vote proceed to the primary election. Candidates may also petition onto the primary ballot.

⁵ Colorado primaries are partially open for unaffiliated voters. They may choose which primary to participate in, but their choice registers them with that party.

⁶ Candidates who lose the primary in Connecticut may then register as Independents, allowing them a position on the general election ballot.

⁷ There are three ballots to choose from in Hawaii primary elections, a nonpartisan ballot allows voters who choose to vote that ballot to decide which third party candidates advance to the general election.

⁸ Idaho does not have party registration.

⁹ Must publicly declare ballot choice.

¹⁰ Must publicly declare ballot choice.

¹¹ Ballot choice registers you with that party.

¹² Louisiana conducts a "top two" primary where all candidates participate in a first election. If no candidate receives a majority of all votes cast, a "run-off" is held between the top two candidates. The "top two" does not apply to primary elections for federal office.

¹³ Closed Caucus.

¹⁴ Must publicly declare ballot choice. Although the "unenrolled" voters must declare, they are not thereby "enrolled" with the chosen party.

¹⁵ State law allows parties in Michigan to determine what type of primary or caucus they will hold each election year. Related litigation in *Practical Political Consulting Inc. v. Secretary of State Terri Lynn Lund* could effectively switch Michigan to the partially open category.

¹⁶ Voters must publicly state their ballot choice.

¹⁷ Nebraska uses a non-partisan top-two system for its unicameral legislature (senate) races. In federal elections, unaffiliated voters may request a separate partisan ballot to vote in the partially closed primary.

¹⁸ Newly registered voters participating in their first New Jersey primary may choose and register with the party of their choice at the polls.

¹⁹ Closed caucus.

²⁰ There is no state voter registration in North Dakota.

²¹ Voters in Ohio may choose to change their party affiliation the day of the primary by signing a statement registering them with the party they choose.

²² In November of odd-numbered years, each state party chair may submit a declaration to the State Board of Elections permitting independents to vote in the state primary held the following year.

²³ Rhode Island voters must be affiliated with the party they choose to vote in the primary, but may register with that party on Election Day.

²⁴ Voters do not register by party in South Carolina.

²⁵ Voters must publicly declare which ballot they are voting.

²⁶ Voters must sign a pledge on the ballot stating their political affiliation.

²⁷ Parties hold closed caucuses—if more than 60 percent of the vote goes to one candidate, the party bypasses the primary. If no candidate receives more than 60 percent of the vote, the party determines which type of primary it will hold.

²⁸ Voters do not register by party in Virginia.

²⁹ In the November 2004 election, Washington voters approved Initiative 872, establishing a top-two primary. Candidates of all parties are listed on the same primary ballot, and the top two primary vote-getters, regardless of party affiliation, advance to the general election.

³⁰ Voters do not register by party in Wisconsin.

³¹ Wyoming voters may change their party affiliation (on file with the Secretary of State) the day of the election.

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

June 25, 2010

TO: Nominated Candidate
FR: Alvin A. Jaeger, Secretary of State
RE: Notice of Nomination

The State Canvassing Board convened at the State Capitol on June 23, 2010, and determined that you were nominated in the primary election that was held on June 8, 2010.

Under the provisions of N.D.C.C. § 16.1-15-40, the Secretary of State is to provide a Notice of Nomination to each candidate informing them of his or her nomination.

As indicated on the enclosed Notice of Nomination, your name will now be placed on the ballot for the General Election to be held on November 2, 2010.

If you have any questions or need additional information, please contact the Elections Division at (701) 328-4146 or at (800) 352-0867, ext. 8-4146.

You will also find extensive information in both the Election and Voting section and the Campaign Disclosure section of the Secretary of State's web site at www.nd.gov/sos.

State of North Dakota

SECRETARY OF STATE



NOTICE OF NOMINATION

Richard Ames

The State Canvassing Board convened on June 23, 2010, for the purpose of canvassing the votes cast at the June 08, 2010, Primary Election. As provided for by the official statement of the State Canvassing Board on file in the Office of the Secretary of State, and at the direction of Title 16.1 of the North Dakota Century Code, you are hereby notified of your nomination to the office of:

State Senator
Legislative District 25

for the State of North Dakota representing the Libertarian Party.

Therefore, your name will be placed upon the official ballot for the General Election to be held on November 02, 2010.

In witness whereof, I have set my hand at the Capitol in the City of Bismarck this June 23, 2010, and affixed the Great Seal of the State of North Dakota.


Alvin A. Jagger, Secretary of State
Secretary of State