

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2369

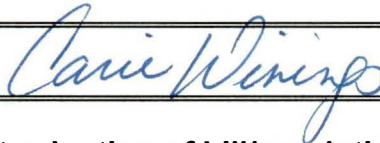
2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

SB 2369
2/6/2015
Job # 23399

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 16.1-16 of the North Dakota Century Code, relating to audits of ballots and voting equipment.

Minutes:

Attachments 1 - 3

Senator Dever: Opened the hearing on SB 2369.

Senator Warner, District 4: Testified as sponsor and to introduce the bill.

(:48) Paul Murphy, States Attorney for Foster County: See Attachment #1 for testimony in support of the bill.

(6:35) Chairman Dever: Could you walk us through the bill?

Paul Murphy: Explained the bill.

(11:02) Chairman Dever: It seems that you think there could be improvement to the bill?

Paul Murphy: I am open for anything that will get it passed that helps me keep a handle on the ballots. I want to do whatever we need to do to fix this problem. Yes, it is a fact that it "may have" happened, but I will tell you this, the former auditor was found with open ballots on his desk Saturday night before the election. Not only that, when he resigned and left the office, as he was leaving in his briefcase were ballots also trying to take out of the office. Those are huge red flags because if they are absentee ballots that are to be mailed out it is too late and if they are voted ballots that were mailed back in, there is no way those should be open on your desk Saturday night when no one else is in the office.

Chairman Dever: It seems to me that our auditor has a staff and an individual to have that opportunity would be pretty limited.

Paul Murphy: In larger counties it is true, but I will say of the 53 counties very few are large. In one of those elections, where I had suspicions, the margin of victory was 7 votes. Now if I change 4 votes that is an 8 vote turnaround. That can be the difference. Not to mention a few

years ago when the Burke/Heidkamp race was going on, the margin of victory of that statewide was really not that much. The point I am trying to make is that it may not be a concern for the big counties but in many races throughout the state one person can a difference if they have motive and opportunity and enough willingness to bend rules. This only provides an opportunity to look over the shoulder of an auditor and provide an option to audit those books which we don't currently have in place after the retention schedule runs out. This is an option and it is an option that if a person is willing to pay for it and make sure that nothing was done wrong. It provides a discouragement to people trying to perpetrate voter fraud.

Senator Nelson: Is Foster County a mail ballot county or are you talking absentee ballots?

Paul Murphy: We are a dual county. WE have a mail in precinct and then we have an in person precinct.

Senator Nelson: The state of Oregon has all mail in ballots and I was wondering if you were talking about a county that was solely mail in.

Chairman Dever: I believe that every county that has mail in has a voting location open on Election Day.

Paul Murphy: In talking to the auditors, I think what may fix this is to replace it with a longer retention schedule.

(18:32) Kevin Glatt, Burleigh County Auditor/Treasurer: See Attachment #2 for testimony in opposition to the bill.

(19:38) Chairman Dever: Is it possible that there are bad apples out there?

Kevin Glatt: I don't buy it.

Senator Davison: What are your thoughts on longer retention of the ballots?

Kevin Glatt: Once the election is over and there is something that is active in the court system, I do not know of any auditor that would throw ballots away; whether they were voted or un-voted.

Chairman Dever: You have no set policy on keeping them?

Kevin Glatt: No we do not. Just beyond the canvassing board or any active situation that would require us to.

Senator Nelson: What do you do for security for mail in ballots?

Kevin Glatt: In my office when we receive absentee ballots, we have a location to put them and they are placed where we can. They are secured in the auditor/treasurer's office but not in a vault. This last election we had over 9,000 absentee ballots.

Chairman Dever: I would imagine that all the records in the auditor's office are secure within the auditor's office.

Kevin Glatt: I would hope so.

Senator Cook: What if all we did was have an opportunity after the canvassing board met for someone to request a longer period of retention?

Kevin Glatt: I do not think that it would be a big problem as long as the time was not a long amount of time. We need the space.

Senator Cook: The only way that you would need to retain them longer if is something did not go right to the point that someone considered that something could be wrong and made that protest at the canvassing board. If you do your job right it is not going to happen for you.

Kevin Glatt: I would agree with that. We would not destroy anything if there was something active.

(25:15) Jim Silrum, Deputy Secretary of State: See Attachment # 3 for testimony in opposition to the bill. The law specifically states retention of 22 months.

(27:50) Senator Davison: So you are saying that if a state's attorney gets a complaint of election fraud that there is not enough time between that election fraud to be brought forward and the time that those ballots are getting destroyed? Or do I not understand the problem.

Jim Silrum: I think I am in the dark with you too. I know for a fact that all the counties keep the ballots that have been voted on are being kept for 22 months. Not sure if they keep all of the blank ones. We could amend the section to state what all is included in what needs to be retained.

Senator Cook: What is the penalty if they are not kept 22 months?

Jim Silrum: I would need to look that up.

Senator Davison: Could you provide clarity on what you thought you heard in regards to this bill on counting the number of absentee ballots vs. the number of ballots that were delivered and being able to oversee that?

Jim Silrum: It was my reading of the language in this new section that said that there would be an audit - not sure what exactly what is meant by that. It also does not say who would conduct the audit and who would be involved in it. There are too many unanswered questions. I now understand based on the testimony that it seems to be an audit of the number of ballots in the election.

Senator Davison: From what you heard today, do you see that there is a problem currently and that there needs to be a solution of some kind?

Jim Silrum: I do not see that it is necessary. Part of the canvassing board's procedure is exactly that. At least a five member board coming together is presented testimony about the ballot audit. They all employ ballot number audits and those are made available. If there is a discrepancy, that canvassing board has every right to call the polling place officials and inquire on that. I believe it already exists and occurs.

Senator Nelson: Kevin showed us this ballot certification that gives all of the numbers and it is signed by the inspector and the two judges, are those part of permanent records or are they part of the things that can be destroyed after 45 days or 22 months depending on what is on the ballot.

Jim Silrum: We would see those as something that needs to be retained for 22 months.

Senator Nelson: So these are not kept in a database and they are disposed after the timeframe?

Jim Silrum: We have not asked that they are retained in a database. Once we hit a mandatory retention time we are duty bound to dispose of them on a schedule.

Senator Marcellais: Is there anyone checking the 22 month time frame?

Jim Silrum: They are sworn to uphold the law as we are. We do not go out and inspect that it is there and nor do we feel we are required to do that.

Senator Nelson: So then in Foster County if the State's Attorney had a concern within the first 22 month, he should have been able to find that. If he didn't there could be other kinds of charges filed?

Jim Silrum: Yes we believe you are right.

Chairman Dever: Closed the hearing on SB 2369.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2369
2/19/2015
Job # 24158

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

No Attachments

Chairman Dever: Opened SB 2369 for committee discussion.

Senator Nelson: Moved a Do Not Pass.

Senator Flakoll: Seconded.

Chairman Dever: I had the impression that ballots are held long enough and I think the process allows for avenues of prosecution if it is felt it needed to be done, it can be.

Senator Nelson: They have a problem child in whatever county this is and they should fix it locally and not impact the other 52 counties.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Dever will carry the bill.

Date: 2/19
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2369

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Nelson Seconded By Flakoll

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	✓	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook	✓				
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Dever

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

REPORT OF STANDING COMMITTEE

SB 2369: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2369 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

SB 2369

Good Morning Chairman Dever, Vice Chairman Poolman and Members of the Senate Government and Veterans Affairs Committee:

My name is Paul Murphy, I am the states attorney for Foster County, located at Carrington. I have asked this bill to be filed for consideration. The reason for this bill is because I have had concerns with the security of mail in /absentee ballots for quite some time and have struggled to find a solution that is acceptable to the rank and file auditors of the state. The many voters of my county, have expressed their concerns about the security of the mail in ballots to me and have asked many times, "How can we ensure that ballots are not being tampered with?". While many may feel that the risk of tampering with ballots is slight, it has been my concern and the concern of the voters in my county under former office holders of the county auditor. Even though the current auditor is apparently trusted by a majority of the voters in Foster County, I would venture to guess that the mistrust of the current auditor, by some in my county, exists. I, for one, wish to find a suitable solution to the problem. A solution that can be acceptable to the auditors and to the voters. I believe this bill may accomplish that, HOWEVER, I, in the interests of finding a suitable solution to the problem, am open to suggestions on how to increase the security of mail in ballots with the least infringement or burden to county auditors throughout this state.

As many of you may have read or heard on the news, our county had a few issues in the last election cycle. A certification was sent in by our auditor that was in error. Approximately 1100 voters were tallied at the polls but a certification was sent certifying over 1400 had voted. To be clear, the certification was an error that did not affect the winners of the primary, however the mistaken certification was only caught because one of the races was close enough to prompt a recount. During this recount, it was discovered that, not only did the numbers not match, but it was

also discovered that there were other problems, but one of the most glaring was the total number of voters.

I had a discussion with an auditor from a large population county and he stated that retaining unused ballots (his term was useless paper) was a waste of money. And to him, they are viewed as useless, however to me they may be evidence of election fraud. (One's trash is another's treasure) It may be the only way to prove that fraud has occurred. That being said, this bill does not fix every problem with mail in ballots. (If you want to know about the problems that we had with the mail in process, I am happy to let you know about those).

Even if we attempt to account for all the ballots, the weak link in the process is that some ballots may be sent out as mail ballots, and they may be lost, unused, and unaccountable for the final audit. A dishonest auditor could find a way to effect an election using that excuse as the cause of the audit not accounting for every ballot. But this bill or an amendment to this bill that requires a longer retention schedule for keeping all voting supplies would assist my office in ascertaining whether a significant discrepancy occurred. A longer retention schedule would allow for investigation into the possibility of election fraud. Ultimately I would like to see an increase in the penalty for election fraud be increased to a felony, to allow my, or similar offices, the ability to spur an investigation into election fraud, when I have an unwilling sheriff, but that is another bill for another session.

In spite of what some may tell you about the success of the mail in ballot procedure, I must tell you that the issues regarding matching of signatures being left to amateur handwriting experts is not the best system. As a prosecutor, I am aware that we, historically have only one handwriting expert in the state, and sometimes we have been without the services of a handwriting expert for months on end, yet we are expecting 53 counties to use amateurs to match signatures on ballots that decide who represents

our interests in every elected office in the state, including you all here.

I will tell you that a person with practice and the time, could easily copy signatures of voters and if they also had access to ballots, stamps and envelopes, could change the outcome of an election. This bill attempts to solve that potential problem in this way; If a person knows that there may be an audit of all ballots, it may keep them from election fraud. When I attempted to investigate a suspected election fraud on past elections, it was impossible because the retention schedule for unused ballots had passed and the evidence that may have indicated fraud, was thrown out by the very person that was suspected of election fraud. The requirement for accounting of all ballots was removed from the law years ago (1987?) at, perhaps, the request of large population counties. I understand why this happened, however, to legally allow a potentially dishonest auditor to destroy evidence of election fraud is not how the law should act. It is akin to passing a law that allows drunk drivers to destroy breathalyzer evidence or drug dealers the opportunity to flush drugs down the toilet before a search warrant is executed. I am open to any amendments that allow me a better opportunity to investigate election fraud and do not unduly burden the honest auditors of this state.

You may have the question as to why I have not approached the Secretary of State with my concerns....I have as well as many of the voters in my county. In fact we requested assistance with the last election cycle, but received none other than phone in advice. I do not get cooperation in fixing a system that has flaws. Every system has flaws, I just want to minimize the risk of fraud, and this bill is a step in the right direction. I would hope that we can make our system better, one bill at a time.

**TESTIMONY TO THE
SENATE GOVERNMENT and VETERANS AFFAIRS COMMITTEE**
Prepared by Kevin J. Glatt, Burleigh County Auditor/Treasurer
2/6/15

SENATE BILL 2369

Mr. Chairman and members of the committee, this testimony is in opposition to SB2369 as the county auditors around the state feel this is a solution looking for a problem.

County auditors understand and recognize the importance of accounting for all ballots – that is what we do as auditors – day in and day out!

County auditors have processes and procedures in place to safeguard the sanctity of elections in ND!

A BALLOT CERTIFICATION form is on the back page. To my knowledge all counties utilize a similar form that accounts for the ballots sent out and returned to each precinct.

BALLOT CERTIFICATION

We, _____, Inspector, and _____ and _____,

Judges of this GENERAL Election duly held on Tuesday the 4th day of NOVEMBER, 2014 in the election precinct known as 4-H BUILDING in the County of Burleigh in the State of North Dakota, do hereby certify that the number of ballots in our possession at the opening of the polls was:

(1)

=====

SEAL #349180

and that after the polls closed we had:

- (2)(+) _____ void ballots,
- (3)(+) _____ spoiled ballots,
- (4)(+) _____ unvoted ballots
- (5)(+) _____ voted ballots (includes Write-in ballots wrapped separately)

(=) _____ **TOTAL (Lines 2, 3, 4, & 5 must equal line 1)**
=====

and that the number of voted ballots is equal to the number of voters who were registered in our poll books.

(# registered in poll book) = (total voted ballots)

_____, Inspector
 _____, Judge
 _____, Judge

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 6, 2015

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

FR: Jim Silrum, Deputy Secretary of State

RE: SB 2369 – Relating to Audits of Ballots and Voting Equipment

The Secretary of State's office stands opposed to this bill due to the obscurity of the meaning of the language for this new section proposed for the elections chapter dealing with recounts and contest of elections. Below are a few questions for which we see no answers:

1. Who is to conduct the audit of the ballots and the voting machines if one is requested? The language does not specify.
2. What is supposed to be done in the audit? The language does not specify.
3. What does the sentence on lines 13 through 17 mean? The meaning is not clear to us.
4. How would this new section effect the testing (otherwise known as the audit requirements) detailed in section 16.1-06-15, which has been included with this testimony?

16.1-06-15. Mandatory testing of electronic voting systems before each election and after tabulation of ballots.

1. All electronic voting systems used in this state must be tested according to guidelines established by the secretary of state and as follows to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.
2. The test of an electronic voting system employing paper ballots must be conducted by processing a preaudited group of ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.
3. The test must be conducted at least one week before the election. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot a notice of the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.
4. At the conclusion of the test, the programming for each electronic voting device must be sealed within the device with a unique numbered seal that must be verified by the election inspector before the opening of the polls to make sure the programming has not been removed from the device.
5. After each election, the secretary of state shall order a random testing of the voting system programming for one precinct in each county of the state according to logic and accuracy testing procedures detailed in subsection 2 and as may be further defined by the secretary of state in writing. This test is to be conducted before the meeting of the county canvassing board.

We request your consideration for a do not pass recommendation.