

2017 HOUSE APPROPRIATIONS

HB 1123

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Education and Environment Division
Roughrider Room, State Capitol

HB 1123
1/16/2017
26892 and 26937

- Subcommittee
 Conference Committee

Virginia L Moch

Explanation or reason for introduction of bill/resolution:

To provide an appropriation to the secretary of state for the procurement and implementation of a statewide voting system and to declare an emergency.

Minutes:

Attachments 1-12

Chairman Monson: called the committee to order on HB 1123.

Al Jaeger Sec of State and State Chief Election Officer: (see attachment 1) 1:00-8:00

Jim Silrum Deputy Sec of State: We are telling you that these numbers are based on solid costs which may be a bit unusual. The \$9 million is a statewide implementation and my testimony tells why the state should pay for it. (see attachment 2) 11:00-12:54

Vice Chairman Streyle: If the counties want to have special elections they should pay for it. What's the estimated cost to continue with the way you do things now?

Mr. Silrum: The \$16 million that was given to us over the years was designated for specific things like the replacement of our voting systems, the creation of a voter data base, other things for the administration of elections. We have been managing the voter data base through federal funds for the past decade plus even though it was a state initiative. If we stripped everything to bare bones it would take \$250,000 a year to administer elections, keep up the database, and pay salaries for those who are currently paid with federal dollars.

Chairman Monson: The feds started giving us money in 2001 session by enacting the legislation. In that period of time how much has the state kicked in? 17:34

Mr. Silrum: The state has not had to kick in anything above what it was already doing before the implementation of The Help America Vote Act. We have one FTE in our office dedicated to elections, we have 2 people working on the central voter file and the others in my office working a portion of their time on that file, they have been covered by federal funds through The Help America Vote Act. We come to you every 2 years to have you give us the authority to spend those federal dollars. Currently our balance is just under \$1.7 million. If we can continue to use those funds they will carry us another couple of biennium.

Chairman Monson: 19:45 We have not put any, at least large, amounts in. This biennium you are asking for \$12 million so you are not expecting any more federal funds?

Mr Silrum: There will not be any more federal funds. To correct what I've stated. With the Help America Vote Act the state was required to put in a portion of a match. We did for several sessions kick in never more than 5% of the \$16 million cost each year.

Chairman Monson: Less than a million then.

Mr Silrum: 21:40-22-20 continues

John Arnold Election Director for Secretary of States Office: (see attachment 3) 23:00-32:10

Chairman Monson: Have any counties updated on their own in the past 12 years?

Mr Silrum: The actual voter system goes through AC certification and we have also an in house certification, they have to be the same, so no. The voter system will fail at some point. We are looking at ways to reduce lines. Less equipment would not reduce that.

Chairman Monson: So some have updated poll books but not equipment.

Mr Silrum: correct.

Chairman Monson: So if you don't get the funds you will continue and cannibalize old machines for parts? Are the old machines connected to the internet?

Mr. Silrum: That would not be a good strategy. We are trying to get away from long lines. We are hoping it won't come to that. Neither the old machines nor the new ones are connected to the internet.

Donnell Preskey ND Association of Counties: 36:00-41:56 (see attachment 4)

Chairman Monson: I have to go to a committee hearing on another bill so Rep Streyle will take over for me. We will be addressing these two bills this afternoon 15 minutes after session.

Vice Chairman Streyle: Anyone else in favor?

Kevin Glatt Burleigh County Auditor and Treasurer: I'm very concerned about breakdowns. We've cannibalized machines from all over the state. The one thing that worries the election administrators most is finding and recruiting workers. This system would make that better and make it better for them. (see attachment 5) 44:25- 45:40

Michael Montplaisir Cass County Auditor: (see attachment 6) 46:00-48:18

Vice Chairman Streyle: No further testimonies for? Against? We will close this hearing until after the session. 48:43

Attachments 7 through 12 were passed out for the record, no testimony heard. (See Attachment 7-12)

Representative Streyle: Made a motion to Do Not Pass

Representative Schmidt: I second that motion

A Roll Call vote was taken. Yea: 7 Nay: 0 Absent: 0

Representative Streyle will carry the bill

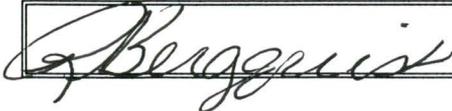
Motion passes to Do Not Pass

2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1123
1/18/2017
27098

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

To provide an appropriation to the secretary of state for the procurement and implementation of a voting system to be utilized statewide; and to declare an emergency.

Minutes:

Chairman **Delzer**: Call the meeting to order

Representative **Monson**: Requesting us to apply 9 million dollars for new polling machines. They have a 10-year life expecting and are about 12 years old. It is a problem, they are getting old, we just feel that we don't have the money in our budget, this is serious but we still don't feel like we have the money at this time. We gave it a 7-0 Do not pass

Representative **Monson** made motion to Do Not Pass.

Second Representative **Schatz**

Chairman **Delzer**: I think we understand that there are things out there that need our attention but we are still trying to get this budget figured out. I think this will be coming back in two years.

Representative **Holman**: I was part of the group that studied this issue. We did look at some machines in different areas, we toured in Cass county and look at the machines. There are some issues that are needed to be figured out.

Chairman **Delzer**: Was the part of a legislative committee or Secretary of State?

Representative **Holman**: Secretary of State

Representative **Monson**: We're working with some kind of scanner, digital, we have the older generation, the newer ones give you a chance to see your vote and a last chance to change it.

Chairman **Delzer**: I do hope that this study continues and if counties do updates that they do so with the ones that we are planning on purchasing.

Representative **Brandenburg**: It might take a little longer but the small areas they can still count in worst case.

Representative **Kempnich**: We probably should have set a fund up this, should we look at a fund for this?

Chairman **Delzer** Not a bad idea but we should look at it at the end session when we have a better idea of where we're at.

Representative **Monson**: They have been bid, it's a solid bid, but it's a secret and we just know it's somewhat less than 9 million.

Representative **Boe**: Was the 9 million above whatever the highest bid? If it's just over the lowest bid it should be kind of telling on who got the bid.

A Roll Call vote was taken. Yea: 18 Nay: 1 Absent: 2

Motion carries Representative Streyle will carry that bill

Date: 1-16-17
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. _____**

House Appropriations - Education and Environment Division Committee

Subcommittee

Amendment LC# or Description: HB 1123

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 Representative Streyle Seconded By Representative Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Monson	✓		Rep Boe	✓	
Vice Chairman Streyle	✓				
Rep Martinson	✓				
Rep Sanford	✓				
Rep Schatz	✓				
Rep Schmidt	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Rep Streyle

If the vote is on an amendment, briefly indicate intent:
Recommend a "Do Not Pass" on HB 1123

Date: 1-18-17 Click here to enter a date.
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1123**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: HB 1123

- 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 Rep. Monson Seconded By Rep. Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X		Representative Streyle	A	
Representative: Boehning	X		Representative Vigesaa	X	
Representative: Brabandt	X				
Representative Brandenburg	X				
Representative Kading	X		Representative Boe	X	
Representative Kreidt	X		Representative Delmore		X
Representative Martinson	X		Representative Holman	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	A				
Representative J. Nelson	X				
Representative Pollert	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 18 No 1

Absent 2

Floor Assignment Representative Streyle

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

REPORT OF STANDING COMMITTEE

HB 1123: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO NOT PASS** (18 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). HB 1123 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1123

Att: 1 HB 1123 1-16-17

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

January 16, 2017

TO: Chairman David Monson and the members of House Appropriations – Education and Environment Division

FR: Al Jaeger, Secretary of State

RE: HB 1123 – Voting System

As the state's chief election official designated by the provisions of N.D.C.C. § 16.1-01-01, I have numerous duties related to the administration of elections. I believe those duties include a responsibility to the citizens of this state to recommend changes to the legislature related to election laws and make recommendations about the software/hardware needed to ensure that elections are conducted efficiently, accurately, and with integrity.

The most visible hardware component of that process is the voting system into which a voter inserts his or her ballot. With the passage of the Help America Vote Act (HAVA) in 2002, all states were required to have new voting systems in place by the 2006 elections.

In North Dakota, it was determined that a statewide system utilizing the same voting system from a single vendor was the most efficient and best for voters because of its consistency statewide. Prior to that, at least one county was still using punch cards and the ballot marking varied depending on which system was used in the various counties.

However, because it was a nationwide mandate, voting equipment vendors were inundated. Therefore, while the system arrived in a new box, the technology in 2004 was already archaic. As a result, several of the operating functions of the current system are no longer supported and the state's current voting system is on the verge of failure. It is only through the sheer determination of our election workers statewide that the system has survived to date.

Fortunately, it is a much different situation today. While many people in 2002 were offering their "best mouse trap", there are several solid vendors today and the testing and accreditation processes of the federal Election Administration Commission has greatly evolved and is much better.

To provide the most accurate cost possible for your consideration, my office worked last year with the state's procurement office to issue a Request for Proposals. It was made clear to all bidders that the successful bid would be awarded subject to it being funded. Although procurement rules do not allow me to disclose the name, a vendor has been selected and the requested amount in this bill is a solid number based on their bid.

This morning, my Deputy, Jim Silrum and my Director of Elections, John Arnold, will provide detailed information about the voting system.

ATT: 2

HB 1123

1-16-17

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BISMARCK ND 58505-0500

January 16, 2017

TO: Chairman David Monson and the members of House Appropriations – Education and Environment Division

FR: **Jim Silrum**, Deputy Secretary of State, on behalf of Secretary of State Al Jaeger

RE: HB 1123 – Statewide voting system replacement

Nine million is no small amount, but let me explain the why behind the costs for voting systems.

1. It might seem like an election is run the same in every state because of the consistency of the outcomes – who does and does not get elected. But the reality is that states run their elections quite differently because the laws of each state are different. For example, some states allow for straight party ticket voting and others like us do not. This means that the systems built must be made to handle all possibilities, which drives up the costs.
2. Voting systems must meet certain national standards that are decided upon by election officials from all 55 states and US territories, the National Institute of Standards and Technology, advocacy groups for people living with disabilities, and other interested parties. The current set of standards is well over 1,000 pages in length. After a vendor builds to those standards, the systems must be independently verified by a certified voting system test laboratory to ensure that the system does meet the standards. Finally, the system is given a certification by the federal agency known as the Election Assistance Commission. This process often takes years to complete and costs millions of dollars and each time the system is modified it must go back through the process again before it can be used in a state. These changes include things that might be expected like software enhancements to include new functionality, but also include what would be unexpected to those outside of the elections world, such as the use of a new screw, bolt, or nut because the original item for replacement is no longer available for purchase.
3. During my time as Deputy Secretary of State, I have served as a member of the Voting Systems Standards Board since it was established in 2005 and as Chair and on the Executive Committee for several of those years. We have worked hard to keep the standards realistic and achievable so they would not have such a great impact on the cost and improvements to voting systems, but that has not been an easily achievable task. All of these costs to the vendor are by necessity passed on to the customer.

If I may borrow a concept from the Governor's Main Street Initiative, it is important to remember that whether money is appropriated by the federal, state, county, or city government, it all comes from us as tax payers. As Secretary Jaeger has stated, it isn't an option to not replace the system. It must be replaced before at best we can no longer find or buy replacement parts and at worst it fails to count the votes accurately. Because of the entire state's need for a new voting system, the prudent option for the tax payer is to make use of the group buying power than can only be provided by the state.

The only way to mandate a replacement of the voting system is for the state to buy it. It would be impractical at best for the state to mandate each of the 53 counties to add the cost of making their own purchase of a voting system to their budgets. And, under federal law, the Secretary of State has the responsibility to determine what systems may or may not be purchased for use in elections. With the state making the purchase, everyone will take advantage of the group buying power bringing down the costs for everyone. Voting systems also must be maintained each and every year. If the purchase responsibility is shifted to each county, it is possible that a county, in tough budget times, could make the decision to not maintain their voting system as a way to save money. This could be catastrophic for elections.

Although it may seem that the state would be paying the whole bill for a new system, that is not the case. Since we purchased our current system in 2004, the expenditures incurred by the counties to administer the elections total \$13,134,864 and this does not yet include the expenditures for the General election last November since those costs are still being calculated.

Year	Election	Expense	Year Total
2004	Primary	\$786,146	
	General	\$751,160	\$1,537,306
2006	Primary	\$826,998	
	General	\$876,318	\$1,703,316
2008	Primary	\$1,036,309	
	General	\$1,024,420	\$2,060,729
2010	Primary	\$1,018,814	
	General	\$924,816	\$1,943,630
2012	Primary	\$1,352,114	
	General	\$1,047,767	\$2,399,881
2014	Primary	\$1,174,500	
	General	\$1,096,398	\$2,270,898
2016	Primary	\$1,219,104	\$1,219,104
	General	Not Yet Totalled	
			\$13,134,864

The expenditures listed above are those reported to our office by the counties. They include such things as ballot layout and printing, voting machine programming, publishing of public notices, supplies, and poll worker training, mileage, and salaries just to name a few of the items.

As can be seen by the county election expenses listed above, even with the state paying for the replacement and the maintenance of the new voting system, the counties will be paying expenses that will exceed the state's expenditure over the years that the new system will be used. In other words, the state would be paying for its share rather than putting the entire burden on the counties since they will continue to pay, on average, over \$1 million for each election.

The costs for administering elections is only partially for county offices. By the state purchasing and maintaining the voting system, the state is taking responsibility for those costs that are shared by everyone. Statewide officers and measures are decided by the entire state, judicial district elections always involve more than one county, legislative districts are often in more than one county, and there are many other multi-county offices such as Garrison Diversion or Southwest Water Authority. Legislative District 39 has a territory that includes all or portions of seven counties. Ensuring the proper elections of the legislators from that district is certainly as important as the elections for a legislative district that is a part of only one county. We all share in the cost of elections, which is why this portion is best provided by the state.

During the General election in 2000, the state of Florida had well-documented issues with its voting system. Thanks to those hanging and dimpled chads, the federal Help America Vote Act of 2002 came into being. From that federal Act, money was given to each state to procure new voting systems in an attempt to make sure there would not be another "Florida 2000." There will be no more federal money appropriate for new equipment unless something else happens. Even if something were to occur in North Dakota in a future election, our state, with a population of less than one million, would not likely cause for new action to be taken by Congress. But we would receive all of the bad press. For Congress to act again, it would take a failure in a large population state for more money to be appropriated. Waiting for that to happen is not a risk worth taking.

Finally, according to the chart on page 11 of the North Dakota Transportation Handbook published in December of 2016, the costs for road construction are:

Average Construction Costs - 2016

Improvement	Total Dollars/Mile
Non-Interstate seal coat (by contract)	\$ 35,000
Interstate seal coat (by contract)	\$ 55,000
Thin lift overlay	\$ 180,000
3" asphalt overlay	\$ 320,000
Asphalt surfacing reconstruction (includes subgrade repair and resurfacing)	\$1,100,000
Total reconstruction (includes grading and asphalt surfacing)	\$2,000,000
Interstate concrete paving (two lanes in one direction)	\$2,400,000

Paving the road to democracy for the entire state is certainly worth the cost for the construction of 4 ½ miles of road upon which only a portion of us will drive.

The purchase of a new voting system is critical to all other expenditures made by the state since it is the system used to accurately count the votes to determine the voter's choices as to who they want making the decisions about government spending.

We request your consideration for a do pass recommendation.

Att: 3

HB 1123

1-16-17

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January 16, 2017

TO: Chairman David Monson and members of the House Appropriations Committee, Education and Environment Division

FR: John Arnold, Elections Director, Secretary of State

RE: HB 1123 – Procurement and implementation of a voting system

As Secretary Jaeger has already mentioned, our current voting system has reached the end of its life and is in dire need of replacement. I stand before you this morning to offer insight as to the state of the current system and to provide a vision of what a new system will look like.

For starters, our current system was introduced in 2004. I ask you to pause and think about that for a moment. Last November, the ballot you cast was tabulated by a piece of equipment that is twelve years old. How many other technological procurements from 2004 are still in use today? To put this in perspective, the 2004 June election was held a full three years before the original iPhone was released. The reason that we are able to say that we've made it this long with the current system is, in a large part, due to the annual maintenance that the state and the counties agreed upon when the purchase was made. Unfortunately, we are now in a situation where we can no longer feel confident that annual maintenance is enough to ensure that the current system will continue to accurately tabulate ballots in 2018 and beyond.

The reason for this is, again, related to the age of the product. We are using optical scan technology in a digital scan world. The original operating system our current voting system was built on was Windows XP; and while it was able to make the transition to Windows 7 we have been informed that it can no longer be upgraded. The chips, processors, and motherboards for use in these federally certified devices are no longer being manufactured, meaning that "cannibalism" is quickly becoming a basic necessity for maintenance. This means that as inventories dwindle and the cost of maintenance increases, we all may soon be forced to come to terms with having to reduce the amount of equipment being deployed. This could equate to a reduction in the number of tabulators at polling places or even a reduction in the number of polling places altogether, both those on Election Day and those used for early voting. This would result in voters having to wait in lines in order to cast their ballot.

As you can see, the future for our current system, if it were to continue to be used, is bleak. What, beyond the benefits of a unified system that you have already heard, will be gained by a statewide procurement?

Modern voting systems use digital scan rather than optical scan technology. In addition to being faster, digital scan offers a few other benefits. Optical scan technology is very good at counting ovals that have been filled in; digital scan creates an image of the whole ballot and takes the entire thing into consideration. What does this mean for election officials?

- 1) No diverter. In our current system there is a moving piece inside every ballot box that diverts to one side of the ballot box the ballots that have an oval marked in the write-in space for any contest. This moving piece is one of the parts of the current system that causes the most problems, as I'm sure that the county auditors who will also speak can attest. Since a digital image is taken of every ballot, those ballots that contain a write-in vote will be able to be isolated, reviewed, and tabulated without having to physically handle any ballots.
- 2) May reduce demand recounts. Under current law, voter intent is only taken into consideration in the event of a recount. As a reminder, voter intent is the consideration of marks made on the ballot

that requires a human to interpret, such as drawing an X through a filled in oval and then circling the name of another candidate. We also know, from experience, that one of the leading causes of vote totals changing during a recount is voter intent. As I mentioned, current systems take a digital image of every ballot as it is run through the tabulator. Just like write-in votes, contests with marks made outside of the oval can also be isolated and displayed. Being able to review the images of ballots where voter intent is questioned may help candidates who are able to demand a recount in making their decision.

- 3) Increase productivity and transparency of recounts that do occur. Similar to the above, when a recount does occur, the ability to isolate and project the images of ballots where voter intent is questioned will be an asset. The ability of all members of the recount board to view a projected image of the contest or ballot rather than each member of the board individually handling the paper ballot will allow for quicker decisions to be made. This projection will also increase transparency at the recount since members of the public who are observing the process will also be able to see the projected image.
- 4) One underlying theme of the above points is that much more can be done to answer the questions that arise from ballots without actually having to handle the original ballot. Unless deemed necessary, the original ballots can remain secure so that, if they do need to be run through a tabulator again, they are in as good a condition as possible. This is important because the more a ballot is handled, the possibility of damage, such as incidental stray marks made by reviewers, spills, tears, or even just the oils from our hands, to the ballot increases.

A new system will also give us renewed confidence in the maintenance of the system. When the Help America Vote Act (HAVA) was passed in 2002 and the states were mandated to update their voting systems, the solutions that were able to be certified were those that were already on the market. For example, our current precinct based tabulator, deployed statewide in 2004, was a product that was already nearly a decade old. One consequence of the HAVA mandated, nationwide upgrade was that a "system release" clock was reset for vendors. It is no coincidence that now, as the HAVA purchased equipment is aging out, vendors are releasing new products based on current technology. This means that when annual maintenance is performed on the system, we will be able to rely on replacement parts that are new rather than used. Additionally, with current systems being based on modern operating systems, we are certain that upgrades to the system will be made available by the selected vendor, ensuring that the system will remain current for its expected lifetime.

An additional benefit to a new voting system is an updated user interface that is actually meaningful to both the voter and election officials. For the voter, when combined with the enhanced throughput of digital scan devices, the enhanced user interface will provide meaningful alerts when there is a possible mistake on a ballot, such as crossover voting in the primary or an over vote, as well as confirmation when a ballot has been tabulated. For election officials, including poll workers, the user interface allows for easier setup, troubleshooting, and an increased ability to assist voters who may not understand the meaning of a message on the screen. Additionally, the products that are now available to replace our current ballot marking device required under federal law for voters who are blind or do not have the motor skills to mark a paper ballot by hand also have better user interfaces, can move through the screens at a faster rate, prints the marked ballot more quickly, and has a much smaller footprint making them easier for poll workers to set up.

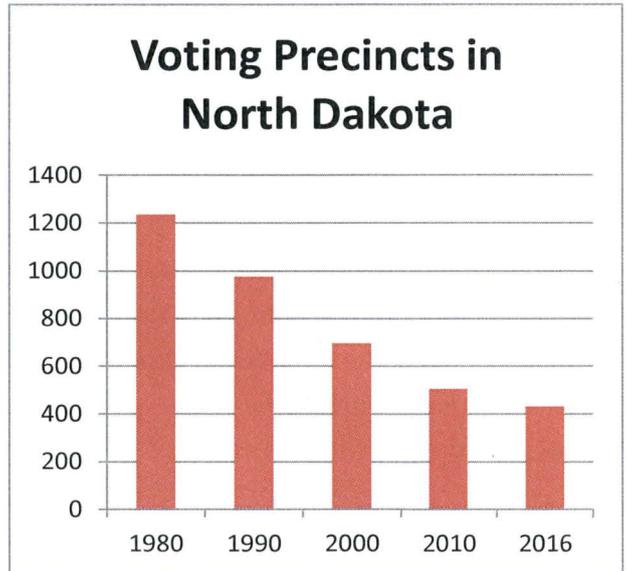
Although I just wrapped up a vision of what a new system, procured with this appropriation, will look like, I would like to close with a reminder from the first portion of my testimony. We aren't appearing before you today because we simply want a shiny new thing. Yes, there are nice enhancements to be utilized in a new system, but the reality is that the current system is rapidly approaching a failure, a reduction in availability to our constituents, or both. We are at the point of questioning when the current system will fail, not if it will fail. The administration of our democracy is far too vital to be allowed to rely on a system with which this question arises, and the strength of our democracy is worth the cost of upgrading the current system before being forced to cope with the effects of a failure.

Testimony for:
 House Appropriations – Education & Environmental Div.
 1/16/17
 Prepared by:
 Donnell Preskey Hushka, ND Association of Counties

HB 1123: Related to Election Equipment

Chairman Monson and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. I am here today representing the state's 53 county auditors. They are the men and women in our state who are on the front line on Election Day. But regardless of how well they do their job and follow all the necessary preparations for a successful election, there is one thing they can't control. Election equipment failing. And Mr. Chairman, equipment failure is not threat – it is a reality. It is happening.

There is one reason why the equipment failures have not been catastrophic for voting in North Dakota, because auditors and their staff through rigorous testing prior to the election are able to identify warped equipment then piecemeal them for their working parts. In addition, our auditors have made elections more efficient across the state by reducing the number of voting locations and implementing vote by mail. This has resulted in counties reducing the number of M100's also known as ballot scanners that a county needs. It has been a blessing, as those once unneeded ballot scanners are now being pulled out of storage to replace a machine that fails or to give to another county in need. Parts for these outdated machines are no longer being manufactured. And auditors fear they will run out of spare machine and parts sooner than new equipment is approved.



We are facing an impending crisis in voting technology. The voting machines (M100's) are wearing out. The following are examples I have received after an informal survey of our county auditors following the November election.

Sioux County: AutoMark would not configure, used a spare machine.

Cavalier County: Three machines had errors and needed to be removed and replaced by spare equipment. A couple machines needed new batteries, even after being charged; the batteries are worn out. The machines that received new batteries then ended up with other errors and needed to be swapped out for spare devices.

Ramsey County: Ramsey County had all their equipment maintained before the June Election – no problems there but November Election we have 5 M100's that were giving error's that could not be cleared.

McKenzie County: Identified during testing the digital display on the M100 (ballot scanner) was unreadable, could not even read the selections to open the polls or any other options, used a spare M100 at that precinct on Election Day.

On Election Day, ballots jammed in the ballot boxes and were getting stuck in the M100 before dropping into the ballot box.

During the Primary Election, the AutoMark machine jammed up and would not return the ballot or print on the ballot.

Adams County: We had issues with the diverters in Adams County. In testing they would work sporadically. The day of election I changed out the ballot box for the walk-in voters twice and neither one of the diverters worked correctly. We had to hand-sort the ballots to determine the number of write-ins, which is time consuming on election night. We only have four ballot boxes and one was in use for the vote-by-mail ballots, so unfortunately we didn't have another option.

Williams County: We had all of our M-100's maintained before the June election and at that time we had one machine that did not have the right time and date. Then for the General we had three devices that did not work as they had errors and would not take any ballots. We had no other machines to use as 10 were at the precincts and the other 2 were being used in the absentee precinct. So the lines were long at the ARC in Williston due to this reason.

One AutoMark was tested prior to Election Day and worked fine. However, it failed to work when it was at the precinct. We replaced it with another AutoMark.

Scanners did not divert the ballots the proper side if they had write-ins marked on the ballots.

Walsh County: M100 diverters often quit working and would fail to sort the write-in candidate ballots, so we had to manually sort all ballots. This is very time consuming.

M100 often has trouble reading the timing bars on ballots that have been folded and mailed out for absentee ballot/voting. Thus, we have to stand and try to run them in all four directions. And try to rub out any wrinkles. If all attempts fail, then the judges have to re-write the ballot. Takes up a lot of time of the election workers.

AutoMark machine ballot jammed up and couldn't be easily removed, so had to discontinue use of that machine and voter was inconvenienced to have to complete a new ballot on a different machine.

Sargent County: I had lots of issues with the diverters in the ballot boxes. I switched out one, but had to shut down on all three machines during testing & also the morning of processing Vote by Mail ballots. Each time, after shutting down, I pushed the tabulator more firmly into the back of the ballot box, opened a door & wiggled the diverter a little bit. When they were turned back on, they worked! We also had a lot of issues with the tabulators not reading ballots...but I'm not sure if that was a tabulator problem or not. We had LOTS of ballots that had white streaks/holes/spots in the black

timing marks on the sides of the ballots. The machine would not accept them. However, we figured out to color in the white with a black marker & then they would go through the machine.

McLean County: *The diverters on three M100's failed during testing, this is the mechanism that sorts the ballots into two compartments separating the write-in ballots. This issue was repaired so the machines could be used on Election Day.*

We have had several of our AutoMark machines go down during an election. We had spares, but it takes about an hour to get them to the site needed. An individual who needs to use the AutoMark would have had to wait for a considerable amount of time until they could use the voting assistance device and cast their ballot.

County auditors are not surgeons or mechanics but that is what they are being tasked with as they continue to use this election equipment that is at the end of its life. The frequency of mechanical breakdowns is increasing with each election. Auditors echo that this causes stress to the poll workers, staff and most importantly to the voters.

Acknowledging that something needs to be done... The process has already started to assess what new election technology is available, what does the next generation of election equipment look like, what criteria should the equipment meet, what is the cost and how can it be funded.

North Dakota is not alone; a recent study found that 31 states are also looking to purchase new election equipment. There were numerous instances of voting equipment malfunctions across the country this last election due to its age. Think of voting equipment especially the M100's or ballot scanners, as critical infrastructure in the state. You can't wait for an issue to fix it, if you wait to do that with an election it will be too late.

How many of us use the same cellphone we used 10 years ago? Think about how the speed, memory, size and functionality of your computers have changed in the past ten years. Yet we are depending on and trusting decade old equipment to help election officials conduct one of the most important jobs in this country.

Mr. Chairman, I have written testimony to submit from several auditors, some which have experienced first-hand how this aging equipment is failing. Their testimony is in support of both HB 1122 & HB 1123 and as you will see they combined their support for both bills into one testimony. It is also important to recognize that the North Dakota Auditors Association, North Dakota Association of Counties and North Dakota County Commissioners Association have all passed resolutions to support new election equipment for our state.

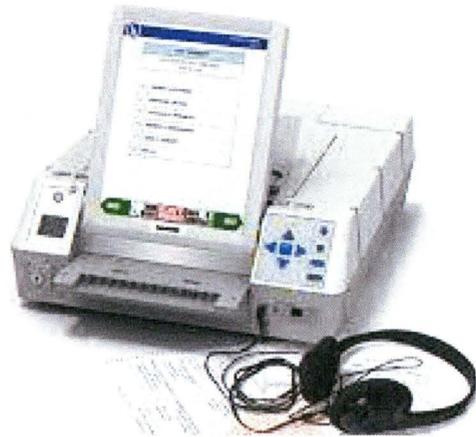
North Dakota election officials believe the system could experience a dangerously high failure rate in 2018 and be unworkable in 2020. Mr. Chairman the time is now. Please support HB 1123.

ND Voting Equipment



M100: is an optical scan voting machine that is used to count paper ballots marked by the voter or AutoMARK device. Information from the ballot is recorded onto a memory card. Following the closure of polls, the data on the memory card is sent to the ND Secretary of State.

AutoMark: is a ballot-marking system that provides autonomy to voters who are blind, visually impaired or have a disability or condition that makes it difficult to traditionally mark a ballot. Voters have a variety of tools to assist them in marking their ballot. The ballot is then printed to be scanned into the M100.



Poll Books: Counties use a mix of paper and electronic poll books to record voters who vote. Eight out of the 53 counties use e-poll books to check-in voters. Poll books include a voters name, date of birth and address.

**TESTIMONY TO THE
HOUSE APPROPRIATIONS COMMITTEE**

Prepared by **Kevin J. Glatt, Burleigh County Auditor/Treasurer**
1/16/17

HOUSE BILL 1123

Mr. Chairman and members of the committee, this testimony is in SUPPORT of HB1123 as Election Administration in ND is at a critical crossroads.

Governor Burgum in his first "State of the State" message spoke to the importance of technology. HB1123 addresses the serious need to update our election infrastructure and provide uniformity in the election process.

HB1123 will provide for the implementation of a uniform statewide voting system to ensure the accuracy, integrity, and speed of elections in the Great State of ND.

The current election system in ND will be fourteen (14) years old in 2018. HB1123 will replace an outdated system and help keep ND current with security issues in today's world.

Burleigh County is presently utilizing voting equipment (scanners) that were put into service in 2004. Through the help of the ND Secretary of State and HAVA funding, we have meticulously maintained this equipment and it has served us very well. However, as testing for each election is completed we find more and more issues with certain equipment components. To date we have been fortunate to have experienced no significant breakdowns or malfunctions on Election Day. I am very concerned that as the equipment continues to age that we may not be so fortunate in the near future.

Our experience has been that when we have had "breakdowns" electors are very concerned about not having that "electronic machine" count their vote. Voters wait for the "Your Ballot Has Been Accepted" message, as reassurance that their vote counts.

Mr. Chairman, members of the House Appropriations Committee, I respectfully request a do pass for HB1123 to ensure the integrity of elections in the State of ND and provide our citizens the confidence that their vote counts.

ATI:6

HB 1123

1-16-17

Testimony for:

House Appropriations – Education & Environmental Division

January 16, 2017

Michael Montplaisir, Cass County Auditor

HB 1123

Chairman Monson and members of the House Appropriations Committee

I am Michael Montplaisir, Cass County Auditor, and am in charge of running elections in Cass County along with my Election Coordinator, DeAnn Buckhouse.

Cass County, along with the rest of the state, use precinct scanners that were purchased in 2000 and 2003. We rely upon this equipment to accurately process our election ballots. On the plus side, the equipment accurately counts votes, we have had numerous election recounts over the years and have never found that the equipment did not accurately count votes. Indeed, both our precinct scanners, and in our case, a central count scanner are extremely accurate.

We strive to make sure that the system we have continues to operate and accurately counts votes for as long as we need to use the equipment. We have professional maintenance on the equipment annually; following each election, if we have had equipment that fails to operate fully, we have a maintenance cycle done on that equipment again before the next election. We have also obtained backup equipment from some of the counties that have switched to vote by mail to further ensure that we have adequate numbers of spare equipment on Election Day.

Unfortunately, we see more failures on Election Day the older the equipment gets. On Election Day, myself, my election coordinator, and several of our information technology staff carry replacement scanners in our vehicles to replace equipment that suddenly quits on Election Day. While the failures do not impact the end result of the vote tally, they do impact the precinct election workers and the voters who have to sometimes wait until a replacement scanner is installed.

Both the scanners and the handicapped voting assist terminals are old technology. There have been a lot of advancements that we could take advantage of with new equipment. Things such as saving an image of each ballot and being able to isolate and print an individual race to use in recounts or in tallying write-in votes would be awesome! In Cass County with the number of ballot styles we use, being able to print ballots on demand would be a great plus and could allow voters to vote at any open polling place on Election Day.

I urge you to support House Bill 1123 to keep North Dakota first in elections!

Debbie Nelson ATT: 7 HB 1123 01-16-17

Representative David Monson
Chairman, House Appropriations Committee
Education and Environment Division

RE: HOUSE BILL 1122 AND HOUSE BILL 1123

January 13, 2017

Dear Representative Monson,

It has come to my attention that the House Appropriations Committee – Education and Environment Division will be hearing House Bill 1122 – Electronic Poll Books, and House Bill 1123 – Voting Equipment.

Mr. Chairman, many North Dakota Counties, including Grand Forks County, have experienced failures of various natures during local, state and federal elections. It is important to note that the failures are not with the system currently in place, but failures of the equipment.

The election equipment which North Dakota Counties rely on are old. It is difficult for us to maintain them as many parts needed can no longer be replaced, thus creating a burden for counties to operate an adequate election process. In order to keep our voting equipment functioning, we must borrow parts from equipment no longer being utilized.

The optical scanners have been in use since 2004. They have served us well in this time, but they are aging, and the time to replace them is drawing near. It would disrupt the voting process in Grand Forks County (and other Counties) if they were to fail us during an election. The Automark, which is our ballot marking device, has been in use since 2006. These devices are large and cumbersome; they are difficult for us to store as they weigh 70lbs. each. Grand Forks County has used the ePollbook - an electronic poll book – since 2012. Unfortunately, the technology they use is outdated and they do not function as they were intended.

My counterparts and I feel it is only a matter of time before we will no longer have our back-ups to keep us moving along. Our election equipment has served us well; however, now is the time to begin replacing equipment before it is too late. New equipment is needed now to avoid critical failure.

Mr. Chairman, I urge you and the members of your committee to support HB's 1122 and 1123, so that North Dakota Counties can continue to serve our constituents well, and ensure all are able to participate in the election process.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Debbie Nelson". The signature is written in a cursive style with a long horizontal flourish at the end.

Debbie Nelson

Auditor

County of Grand Forks, ND

Testimony for
House Appropriations – Education & Environmental Div.
January 16, 2017
Prepared by:
Debbie Nelson, Grand Forks Co. Auditor

HB 1122 & HB 1123: Related to Voting Equipment

Chairman Monson and committee members, I am writing to encourage you to support HB 1122 – Electronic Poll Books and HB 1123 – Voting Equipment.

Many North Dakota counties including Grand Forks County, have experienced failures of various natures during local, state and federal elections. It is important to note that the failures are not with the system currently in place, but failures of the equipment.

The election equipment which North Dakota counties rely on is old. It is difficult for us to maintain them as many parts needed can no longer be replaced, thus creating a burden for counties to operate an adequate election process. In order to keep our voting equipment functioning, we must borrow parts from equipment no longer being utilized.

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My counterparts and I feel it is only a matter of time before we will no longer have our back-ups to keep us moving along. Our election equipment has served us well; however, now is the time to begin replacing equipment before it is too late. New equipment is needed now to avoid critical failure.

Mr. Chairman, I urge you and the members of your committee to support HB's 1122 and 1123 so that North Dakota counties can continue to serve our constituents well and ensure all are able to participate in the election process.

Thank you for your consideration.

Sincerely,
Debbie Nelson
Grand Forks County Auditor

Att: 8 HB 1123 1-16-17

Testimony for
House Appropriations – Education & Environmental Div.
January 16, 2017
Prepared by:
Lisa Gellner, Cavalier County Auditor

HB 1122 & HB 1123: Related to Voting Equipment

Good Morning Chairman Monson and committee members, my name is Lisa Gellner, Cavalier County Auditor. I have worked in the Auditor's Office since 2003. This has given me the opportunity to see the election process done entirely manual, as well as experienced the implementation of the current election machines. The transition to election machines was a scary year for both the Auditor's Office and the election workers we were training to work with the machines. Today, when we talk with the election workers during training, several of them having worked manual elections, they will tell you how much easier the machines have made their job.

North Dakota can proudly say we have had a very efficient election process through the years, and great success with implementing the machines we currently have. However, as our machines and software continue to age, much like computers, we are seeing the urgency to update. This past election year in Cavalier County, we had multiple diverter errors, as well as batteries in the machines that would not charge any more. We were fortunate enough to have extra machines from when we had more precincts, which we could swap out when the problems arose. As these machines age, the problems encountered will become more wide spread, with the fear of somebody not having a backup machine to rely on.

The time has come to move forward with implementing new election machines for North Dakota. It is vital that all counties use the same machines like we currently do, which incurs a large cost to each county in the state of North Dakota. I am hopeful that you will support the proposal to help fund the replacement of the election equipment.

Thank you for your time,
Lisa Gellner
Cavalier County Auditor

Att: 9

HB 1123

1-16-17

Testimony for
House Appropriations – Education & Environmental Div.
January 16, 2017
Prepared by:
Devra Smestad, Ward County Auditor

HB 1122 & HB 1123: Related to Voting Equipment

Chairman Monson and Committee members, I am writing to request a DO PASS and support for the HB 1122 and HB 1123 to replace election equipment.

We have had our equipment since 2004 when we had 32 polling locations. Ward County now has 19 polling locations since the City of Minot went to 4 vote centers. Over the years, our equipment has stopped working during pre-election testing, internal batteries have died, touch screens on the AutoMarks (device for disabled to vote independently) are becoming more difficult to calibrate and hinges for the screens are breaking, wires in the scanners are coming loose. These are a few issues we've experienced. Fortunately, we have had back-up machines with the decrease in polling locations, but we are now facing the reality that we may not have enough back-ups to continue changing out machines.

The electronic poll books for all polling places would be a major savings of time and resources state-wide. They would cut down on human error when checking a voter's name in paper poll books as well. With an electronic poll book, the poll worker enters the voter's name and a receipt is printed off. If the incorrect name was selected in error, that can be corrected immediately. If an incorrect name is checked in a paper poll book, we may never know it was incorrect. Issuing voter credit from the electronic poll book can be completed almost immediately; whereas, with paper poll books, our staff must go page by page and manually give each voter credit. It is January and we are just finishing that process in our County.

Technology is constantly changing and our election equipment is becoming antiquated and failing. I urge you to SUPPORT HB 1122 and HB 1123 and help keep the integrity of the North Dakota election process.

A# 10 HB 1123 1-16-17

Testimony for
House Appropriations – Education & Environmental Div.
January 16, 2017
Prepared by:
Lisa Herbel, Bottineau Co. Auditor

HB 1122 & HB 1123: Related to Voting Equipment

Chairman Monson and committee members, I am asking you to support HB 1122 & 1123. Although I am very aware of the fact that the session is under extreme pressure regarding budgets, I strongly believe that keeping our election equipment up to date and operating at an optimal level is as crucial as good infrastructure.

Bottineau County is a Vote by Mail County, but we offer three polling places on Election Day so everyone has the opportunity to vote in a manner that they are comfortable. On Election Day we have five M100's and three Automarks available to the voter. The Automarks are extremely cumbersome for the older election workers to move around and set up, and intimidating to a voter. Our experience at Bottineau County has been a lot of jamming with these machines, which embarrasses the voter and therefore defeats the purpose of encouraging the disabled voter to vote. For the most part, the M100's have operated well considering their age, but the ballot boxes that the ballots drop in to longer work as they were originally intended. The ballots get easily jammed and do not separate the ballots that have write-ins from the ballots that don't. When our equipment is not working it causes a backup of voters who take their frustrations out on our poll workers or leave in frustration. Unfortunately, as an Auditor, I can't be in all four polling locations on Election Day fixing every equipment issue that comes along. I take pride in running a good election, but when equipment is faulty, the control of a well-run election is quickly lost.

Another major issue we ran into this year was our scanner not working. We bought a new scanner, we got a scanner from the Secretary of State's Office, and still did not have success with scanning in our voter labels. We had to manually enter in all voters by hand and enter in all voting credits manually due to our scanner not working. The major concern with the manual entry is accuracy and timeliness. We live in a world where the general public does not want to wait and they do not understand faulty equipment.

I would request that you please give HB 1122 and 1123 Do Pass recommendations. If you have any further questions, I am more than happy to visit with you by email or by telephone.

Thank you for your support.

Lisa Herbel
Bottineau County Auditor
701-228-2225 – office 701-871-0833 – cell

Att: 11 HB 1123 1-16-17

Testimony for Appropriations Committee

January 13, 2017

Sondra Richardson
Walsh County Deputy Auditor
600 Cooper Avenue
Grafton, ND 58237

Dear Mr. Monson and Appropriations Committee Members,

My name is Sondra Richardson. I am Deputy Auditor, and serve as the Election Inspector for Walsh County. I would like you to support House Bill No. 1122 and House Bill 1123, for E-poll books and Ballot Scanners, as not all counties are going to be able to afford to purchase new election equipment that is very much needed, due to problems we encounter with the current election equipment.

In my own experience working elections and serving as the election inspector for our county, I can share many problems that we experience with the current election equipment.

- The M100 often has trouble reading the timing bars on ballots that have been folded and mailed out for absentee voting. Thus, we have to stand and try to run the ballots in all four directions and try to rub out any wrinkles. If all attempts fail, then the judges have to re-write the ballot. This takes up a lot of time of the election workers.
- M100 diverters are supposed to sort ballots. Ballots with no write-in candidates are supposed to be sorted to the left side of the box, and ballots with a write-in candidate are suppose to be sorted to the right side of the box. However, these don't sort properly, and at the end of the election we have to sort through every ballot, manually, to ensure that we get proper counts for write-in candidates. This is very time consuming, makes for a late night, and delays election results reporting to the Secretary of State and the press, thus leaving the voters in waiting.
- M100 diverters often jam up. This will halt voting and can destroy ballots, as well as throw off total counts for ballot results.
- M100 diverters just quit working. Voting will come to a stop, as we have to stop use, and move the reader to a new box.
- Currently, there is no alert on the M100 to know that the container may be at capacity, until it is so full that the ballots jam up. When jams occur, this can destroy ballots, and lead to a miscount of ballots. The "full" line is drawn on the outside of the doors. A possible solution to this problem could be a window on the door at the "full line".
- In the 2016 November General Election, I had an individual who used one of the Automark (ADA Compliant) machines to vote. After completion of voting, the ballot got jammed up and couldn't be easily removed, so I had to discontinue use of that machine. The voter was inconvenienced by having to complete a new ballot on a different machine.

You can see that we have many issues with our current election equipment. Not every county is able to purchase updated equipment that we need for the reasons stated above. I urge you to support HB 1122 & HB 1123.

Thank you for your time and consideration.

Sincerely,

Sondra Richardson

Election Equipment Bills (HB 1122 and HB 1123)

ATT 12: HB 1123 1-16-17

Lisa Gellner <lgellner@nd.gov>

Fri 1/13/2017 12:16 PM

To: Monson, David C. <dmonson@nd.gov>;

Dear Mr. Monson,

I wanted to reach out to you and urge you to support the two bills listed above for the state-wide purchase of new election machines. This past election year for the first time since we got the automated election machines, we started to have problems with the machines. It was predicted this would soon start happening, as the machines can only go so long before they wear out, much like a computer. Specifically, we had errors related to the diverter that will separate any ballots with write-ins on them, as well as issues with the battery backups not charging any more. We were fortunate enough to have extra machines to rely on, being we have cut back on the number of precincts we have, but this is not the case in all counties.

It is my feeling that the time has come to move forward with updating the election equipment, and it is very important for all counties to be using the same equipment in order for North Dakota to continue having efficient/successful elections like we have in the past.

Your support on HB 1122 and HB 1123 would be appreciated. Thank you for representing Cavalier County at the state level.

Sincerely,

Lisa Gellner

Cavalier County Auditor

901 3rd Street – Suite 15

Langdon, ND 58249

(701) 256-2229

(701) 256-2546 (fax)