

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1047

2001 HOUSE JUDICIARY

HB 1047

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1047

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-16-01

Tape Number	Side A	Side B	Meter #
Tape I		x	2618 to 6250
Tape II	x		01 to 38
Committee Clerk Signature <i>Jan Davis</i>			

Minutes: Chr DeKrey opened the hearing on HB 1047. Ask the clerk to read the title.

Vonette Richter: Legislative Council. She was here to explain the bill. (see attached testimony)

Chr DeKrey: What the concern, is this going to change how those ballots are handled?

Vonette Richter: This bill would not have any effect on how those ballots would be handled.

Rep Delmore: Is sub section 6 in the code right now?

Vonette Richter: Yes

Rep Kretschmar: If someone provides appropriate form of identification, then they are not required to sign that affidavit?

Vonette Richter: That is correct.

Rep Kretschmar: Would it be the election board who determines the appropriate form?

Vonette Richter: Yes

Rep Kretschmar: This poll challenger, would he have the right to have this person sign an affidavit? Or would it be just the election board, the inspector?

Vonette Richter: It would be the poll challenger or the election board member.

Rep Kretschmar: Who make the decision if it is appropriate?

Vonette Richter: The same people.

Rep Kingsbury: If the poll challenger brought it up, then the decision would be made the election board.

Vonette Richter: Sounds logically to me.

Rep Mahoney: How is this changed by this?

Vonette Richter: That affidavit process would be one additional step that would happen before.

Chr DeKrey: Right now they have to sign an affidavit if a person challenges them, whereas if this would pass and they have a drivers license or a utility bill that could be avoided.

Vonette Richter: That is correct.

Rep Mahoney: Couldn't they ask for identification already?

Vonette Richter: That question was raised. They do not have the authority to ask right now.

Rep Maragos: In the Interim Committee was there any testimony, why would anybody need an identification if they signed an affidavit?

Vonette Richter: They don't.

Rep Maragos: If a person and has no drivers license, what is required, after a valid drivers license what is the preferred or accepted form of ID.

Rep Grande: Utility bill.

Rep Maragos: Are you sure.

Vonette Richter: It wouldn't be up to the person who challenges anymore, if you can't produce anything then you would have to sign an affidavit.

Rep Maragos: It is just adding one more step beyond the affidavit, to allow a person to vote.

Vonette Richter: That is correct.

Rep Grundy: A utility bill is legal.

Rep Maragos: Does that then say that they have been there 30 days?

Rep Klemm: If you produce and ID, then you have to sign an affidavit. An ID produced then you don't have to go thru the affidavit process.

Chr DeKrey: That would say you that step. When you ask someone to sign an affidavit, that is rather intimidating. So the thought was if we have something before they have to sign an affidavit it would make them more comfortable.

Rep Maragos: The law is in effect, have we ever had a case where someone has been intimidated by signing an affidavit?

Vonette Richter: I don't have that information.

Rep Fairfield: Are we then going to embark on a a campaign to have encourage their utilities bills to the polls with them?

Vonette Richter: It is only an issue if there is an eligibility concern.

Rep Fairfield: I want to make sure that I understand this as well, the same person that is challenging is also going to be the arbiter what appropriate identification is going to be.

Vonetter Richter: I would say yes.

Rep Fairfield: On the affidavit, what about people who can't write?

Vonette Richter: I will defer to Mr Fong on that question.

Cory Fong: here on behalf of the Secretary States Office. (see attached testimony)

Question number one - the question of current law. You cannot be requested to produce ID under current law. Number 2 - already there is some statute under sub section two, the reasons for the key indicators, the poll challengers look to to challenge voters, and those are identified in sub section two a, b, c, d. He then goes on to explain the process.

Rep Eekre: Who decides then, when a person cannot provide the identification?

Mr Fong: Right now, if someone executes an affidavit, they must be allowed to continue on with the right to vote. The County Auditor is required by law to randomly verify 10% of the vote. They must report anyone known violations to the States Attorney for action.

Rep Eekre: Didn't a very similar bill come before Political Subdivisions last year?

Mr Fong: A bill tried to address that voting residency, what resulted in that was the four points under sub section two a, b, c, d.

Rep Delmore: When we looked at this bill during the Interim Committee, we really weren't sure that something was wrong, that needed to be fixed. Are we following through with the County Auditor looking at the 10%. Has it shown us problems.

Mr Fong: It is a good question, probably one for election officials. This just strengthens the challenge process.

Rep Maragos: Are the County Auditors following the current statutes?

Mr Fong: Yes, I do.

Rep Maragos: Do we know how many affidavits per capita are usually crafted during any given election?

Mr Fong: The number would be a fraction of 1% of the vote cast.

Rep Maragos: My question would be better directed to someone on the Criminal Justice Interim Committee.

Rep Mahoney: There is an assumption that they can't do this now, is there case law?

Mr Fong: It is based on an understanding, the only method of challenging the voter is that step which is the affidavit.

Rep Mahoney: What if they just don't

Mr Fong: What you are saying is , does that prohibit them from asking for a form of ID.

Rep Mahoney: A discussion was then held with several examples given when asked for ID other than voting.

Mr Fong: Are people intimidated by the process, yes they do.

Rep Maragos: If the person is not on the roll, how do they ascertain if that person has been in the district for 30 days?

Mr Fong: No, they don't.

Rep Maragos: You still haven't answered question on the 30 day requirement.

Mr Fong: I guess it would be on face value.

Rep Wrangham: How does part 2 of para 2,b -- fails to provide reasonable evidence of residence in the precinct - isn't that what we are saying with the new language under three?

Mr Fong: It clarifies and strengthens by this bill HB 1047.

Rep Mahoney: Are you challenging that person by asking them for an ID?

Mr Fong: I think that is another step in the process.

Chr DeKrey: The auditors are here, is there anything they would like to bring up at this point?

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House Judiciary Committee

Bill/Resolution Number HB 1047

Hearing Date 01-16-01

TAPE II SIDE A

Chr DeKrey: Is there any further testimony on HB 1017? If not we will close the hearing on HB 1047.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1047A

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
Tape II	x		4371 to 6244
Tape II		x	01 to 990
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey: We will take up HB 1047.

Rep Mahoney: I move a DO NOT PASS.

Rep Fairfield: I second the motion.

Chairman DeKrey: Is there any discussion on the bill. The issue of ID was discussed and how it could be taken care of.

TAPE II SIDE B

The discussion of ID continues

Cory Fong from the Secretary of States Office came in and clarified some of the points of the discussion.

Chairman DeKrey: We will ask the clerk to read the roll on a DO NOT PASS motion on HB 1047. The motion passes with a vote of 14 YES, 4 NO and 1 ABSENT and not voting. Rep Maragos will be the carrier.

Date: 01-24-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1047

House JUDICIARY

Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Not Pass

Motion Made By

Rep Mahoney

Seconded By

Rep Fairfield

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey		✓			
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre		✓			
Rep April Fairfield	✓				
Rep Bette Grande		✓			
Rep G. Jane Gunter					
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin		✓			
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total

(Yes)

10

No

4

Absent

1

Floor Assignment

Rep Maragos

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

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 8:25 a.m.

Module No: HR-13-1566
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1047: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1047 was placed on the
Eleventh order on the calendar.

2001 SENATE JUDICIARY

HB 1047

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1047

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 7th, 2001

Tape Number	Side A	Side B	Meter #
1	x		0-18.8
Committee Clerk Signature			

Minutes: **Senator Traynor**, opened the hearing on HB 1047.

Vonette Richter, legislative council for the interim committee, (testimony attached)

Senator Traynor, this bill passed house without any amendments.

Senator Nelson, what is the difference now?

Vonette Richter, there is no authority in the law now for an election worker to ask for identification. This would allow them to ask for id. A simple drivers license will not be sufficient.

Senator Nelson, the difference in existing law is the voter can stay in line.

Rep. Grande, district 41, (proposed amendments attached) currently when a person files out an affidavit and its wrong, they have already voted.

Senator Traynor, secrecy of the ballot is maintained no matter what happens?

Rep. Grande, correct.

Senator Traynor, I read about the argument in the house, where someone was challenged about small communities. Everyone would know who was asked to show identification and who challenged them.

Senator Trenbeath, we set this provisional ballot aside, then no information regarding the ballot comes. Who then looks at the affidavit?

Rep. Grande, the state auditor.

Senator Trenbeath, so they have affidavit in front of them.

Cory Fong, Secretary of State's office, (testimony attached). Didn't see Rep. Grande's proposed amendments. Hopes that they are amendments the Secretary of State recommended to the House Judiciary Committee. Supportive of the general concept of the bill. Rep. Grande mentioned there is a review by the county auditor and State Attorney to determine whether person is an eligible voter.

Senator Dever, are these amendments reconcilable with the original bill?

Cory Fong, yes.

Senator Traynor, the question is, are the amendments germane? You also propose amendments Cory. Do they apply to Rep. Grande's?

Rep. Grande, yes.

Senator Traynor, closed the hearing on HB 1047.

**SENATOR NELSON MOTIONED TO PASS AMENDMENTS, SECONDED BY
SENATOR BERCIER. VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND
NOT VOTING. SENATOR TRENBEATH MOTIONED TO DO PASS AS AMENDED,
SECONDED BY SENATOR BERCIER. VOTE INDICATED 7 YEAS, 0 NAYS AND 0**

Page 3
Senate Judiciary Committee
Bill/Resolution Number 1047
Hearing Date March 6th, 2001

**ABSENT AND NOT VOTING. SENATOR DEVER VOLUNTEERED TO CARRY THE
BILL.**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1047

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 16.1-05-06 of the North Dakota Century Code, relating to challenging the right of a person to vote.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-05-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-05-06. Challenging right of person to vote - Affidavit Identification or affidavit required - Provisional ballots - Penalty for false swearing - Optional poll checkers.

1. One poll challenger appointed by the district chairman of each political party represented on the election board is entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger from each political party is entitled to be in attendance at each polling place at any one time.
2. ~~The members~~ Any member of the election board ~~and poll challengers~~ may challenge the right of ~~anyone~~ an individual to vote whom they know or have reason to believe is not a qualified elector ~~of the precinct~~. ~~Members~~ A poll challenger may request members of the election board or poll challengers may to challenge a voter if the right of an individual to vote whom they know or have reason to believe is not a qualified elector of the precinct. A challenge may be based upon any one of the following:
 - a. The ~~person~~ individual offering to vote does not meet the age or citizenship requirements.
 - b. The ~~person~~ name of the individual offering to vote ~~has never voted in the precinct before~~ does not appear in the pollbook, and the individual fails to provide reasonable evidence of residency in the precinct.
 - c. Except as provided in section 16.1-01-05, the ~~person~~ individual offering to vote physically resides outside of the precinct.
 - d. The ~~person~~ individual offering to vote does not meet the residency requirements provided in section 16.1-01-05.
3. An election board member may request that the individual offering to vote provide an appropriate form of identification to address any of the voting eligibility concerns listed in subsection 2. If any person offering to vote is challenged by a poll challenger or by a member of the the identification provided does not adequately address the voter eligibility concerns of the election board member, the challenged person, unless the challenge is withdrawn, shall stand aside and individual may not vote unless the challenged person individual executes an affidavit, acknowledged before the election inspector, that the challenged person individual is a legally qualified elector of the precinct.

4. The affidavit must include:
 - a. The name and present address of the affiant and the address of the affiant at the time the affiant last voted.
 - b. The previous last name of the affiant if it was different when the affiant last voted.
 - c. A recitation of the qualifications for voting as set forth in section 16.1-01-04 and the rules for determining residence.
 - d. Notice of the penalty for making a false affidavit and that the county auditor may verify the affidavit.
 - e. A place for the affiant to sign and swear to the affiant's qualifications as a voter.
 - f. A space to insert the page number of the pollbook on which the challenged voter's name appears along with the statement of the reason for the challenge.
5. Upon the completion of the affidavit and the marking of the ballot by the challenged individual, the election board member shall insert the marked ballot in an envelope, seal the envelope, and mark the envelope with the word "provisional". The election board member shall attach the affidavit to the envelope containing the provisional ballot. The affidavit must be numbered to correspond to the page number on which the voter's name appears in the pollbook and must also include a statement of the reason for the challenge. The provisional voter's name must also be marked in the pollbook as a provisional voter. A challenged individual who has completed an affidavit and whose ballot has been designated as provisional according to this subsection has until the closing of the polls in the precinct to offer any additional information or proof to the election inspector supporting the challenged individual's qualifications to vote in the precinct. At any time before the closing of the polls in a precinct, if presented with sufficient information or proof to confirm a challenged individual's qualifications to vote in the precinct, an election inspector may withdraw the challenge and order the election board to open the provisional envelope containing the challenged individual's ballot and deposit the challenged individual's ballot into the ballot box. Before the meeting of the county canvassing board, the county auditor, with the assistance and advice of the state's attorney, shall review each completed affidavit along with the corresponding statement of the reason for the challenge and shall make a recommendation based upon the qualifications of electors in section 16.1-01-04 and the rules for determining residence in section 54-01-26 to the county canvassing board as to whether the challenged voter is qualified to vote in the precinct and whether the challenged voter's provisional ballot should be accepted and counted and canvassed by the county canvassing board or rejected. The county canvassing board shall review each recommendation made by the county auditor, and may consider each completed affidavit including the statement of the reason for the challenge, and accept or reject each provisional ballot based upon the qualifications of electors in section 16.1-01-04 and the rules for determining residence in section 54-01-26. The county canvassing board shall count those provisional ballots determined acceptable by the board. Provisional ballots rejected by the county canvassing board must be preserved and retained with all corresponding materials for further review and consideration in case of a recount or an election contest. The decision of the county canvassing board, as it pertains to the counting of provisional ballots, is final, subject only to the recount and contesting provisions of

chapter 16.1-16. An election board or county canvassing board shall take precautions to ensure that secrecy is maintained when opening and counting provisional ballots and shall proceed in the same manner as prescribed for opening and counting absent voter's ballots in section 16.1-07-12. An otherwise properly completed provisional ballot may not be rejected because an election official failed to comply with any of the procedures required by this section. The county auditor shall report all known or suspected violations to the state's attorney for investigation and possible prosecution.

6. Written notice of the penalty for making a false affidavit and that the county auditor may verify the affidavits must also be prominently displayed at the polling place in a form prescribed by the secretary of state. Any ~~person~~ individual who falsely swears in order to vote is guilty of a class A misdemeanor and must be punished pursuant to chapter 16.1-01.
- ~~6. The county auditor shall verify randomly at least ten percent of the affidavits signed in the county and shall report all known or suspected violations to the state's attorney for investigation and possible prosecution.~~
7. In addition to the poll challenger, not more than two poll checkers appointed by the district chairman of each political party represented on the election board may be in attendance at each polling place, provided such poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. The poll challengers and poll checkers must be qualified electors of the district in which they are assigned.
8. No poll challenger or checker may be a member of the election board."

Renumber accordingly

Date: 3/7/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1047

Senate	Judiciary	Committee
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☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Cory Fong's Amendment

Motion Made By Nelson Seconded By Bercier

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment

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

Date: 3/7/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1047

Senate	Judiciary	Committee
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☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken ~~DA~~ DPA

Motion Made By Trenbeath Seconded By Bezier

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Dever

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

REPORT OF STANDING COMMITTEE (410)
March 8, 2001 12:45 p.m.

Module No: SR-40-5121
Carrier: Dever
Insert LC: 10067.0102 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1047: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1047 was placed on the Sixth order on the calendar.

Page 2, line 4, replace "address" with "resolve"

Renumber accordingly

2001 TESTIMONY

HB 1047

Challenged Voters

The committee received testimony regarding the procedures used by election officials when a person's eligibility to vote in a particular precinct or election is in question. Under NDCC Section 16.1-05-06, members of an election board and poll challengers may challenge the right of anyone to vote who they know or have reason to believe is not a qualified elector. The section provides that the election board member or poll challenger may request that the challenged voter execute an affidavit that the challenged person is a legally qualified voter of the precinct. Several members of the committee inquired as to whether a person's Social Security number could be used as a means of identifying voters. Although federal law prohibits the Social Security number from being used as an identifier for election purposes, another unique identifier number could be used. It was reported that a unique identifier number would provide a data base of voters which could be cross-checked to detect voter fraud.

The committee considered a bill draft to permit election board members and poll challengers to request identification from challenged voters to address voting eligibility concerns. Because of the variety of reasons for which a voter's eligibility may be questioned, the testimony on the bill draft indicated it would be difficult to include in the bill draft the acceptable forms of identification.

The committee also considered a bill draft to provide a provisional ballot procedure for the ballots of challenged voters. Under the bill draft, following the execution of an affidavit and the marking of a ballot by a challenged voter, the ballot would be marked "provisional" and would not be counted until the reason for the challenge is reviewed by the county canvassing board. Testimony in support of the bill draft indicated the procedure would be an improvement over the current procedure because the bill draft would set forth a procedure by which the ballot would be set aside until the voter's eligibility is reviewed. Under current law, the ballot of a challenged voter, regardless of the voter's eligibility, is not kept separate and is included and counted with all the nonchallenged ballots. Opponents of the bill draft indicated that unless there is evidence that a large voter fraud problem exists, the state should not impose any procedures that would empower poll workers to make people uncomfortable when they come to polls.

Recommendations

The committee recommends House Bill No. 1047 to permit election board members and poll challengers to request identification from challenged voters in order to address voting eligibility concerns. The bill provides that if the requested identification does not adequately address the eligibility concerns, the election board member or poll challenger may request that the person execute an affidavit before being permitted to mark a ballot.

The committee recommends House Bill No. 1048 to provide a provisional ballot procedure for the ballots of challenged voters. Under the bill, following the completion of the affidavit and the marking of the ballot by the challenged voter, the poll challenger or election board member is required to insert the marked ballot in an envelope, seal the envelope, and write the word "provisional" on the envelope and a statement of the reason for the challenge. Following the election, the county auditor is required to review the reason for the challenge and is required to make a recommendation to the county canvassing board as to whether

the challenged voter is a qualified voter.

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 18, 2001

TO: Representative Duane DeKrey & Members of the House Judiciary Committee
FR: Al Jaeger, Secretary of State (presented on his behalf by Cory Fong)
RE: HB 1047 - Voter ID

Currently, North Dakota law does not allow an election official, e.g., a member of an election board or poll challenger, to request identification from a voter who he or she knows or has reason to believe is not qualified to vote in a precinct. Rather, a person offering to vote may voluntarily provide some form of identification in order to clarify his or her qualifications to vote in a given precinct or to get a challenge withdrawn.

House Bill 1047 essentially provides an election official with the ability to request an appropriate form of identification from a voter who he or she knows or has reason to believe is not qualified to vote in the precinct. If the identification provided by a person offering to vote does not adequately resolve the election official's eligibility concerns, the person offering to vote must complete and sign a voter's affidavit in order to vote.

The Secretary of State's office went on record supporting the draft of HB 1047 when it was discussed and voted upon by the Interim Judiciary Committee. The Secretary of State's office continues to support HB 1047 with the addition of the minor amendment being offered with this testimony.

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

January 16, 2001

TO: Representative Duane DeKrey & Members of the House Judiciary Committee
FR: Al Jaeger, Secretary of State
RE: HB 1047 - Voter ID - Proposed Amendments

Proposed Amendments to House Bill No. 1047

Page 2, line 4, replace "address" with "resolve"

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SECRETARY OF STATE

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

March 7, 2001

TO: Senator Jack Traynor & Members of the Senate Judiciary Committee
FR: Cory Fong, Secretary of State's Office
RE: HB 1047 - Voter ID

Currently, North Dakota law does not allow an election official, e.g., a member of an election board or poll challenger, to request identification from a voter who he or she knows or has reason to believe is not qualified to vote in a precinct. Rather, a person offering to vote may voluntarily provide some form of identification in order to clarify his or her qualifications to vote in a given precinct or to get a challenge withdrawn.

House Bill 1047 is legislation that came out of the Interim Judiciary Committee that was directed to study voter registration. The bill allows election officials to request an appropriate form of identification from a voter who he or she knows or has reason to believe is not qualified to vote in the precinct. If the identification provided by a person offering to vote does not adequately resolve the election official's eligibility concerns, the person offering to vote must complete and sign a voter's affidavit in order to vote.

The Secretary of State's office went on record supporting the draft of HB 1047 when it was discussed and voted upon by the Interim Judiciary Committee. The Secretary of State's office continues to support HB 1047 with the addition of the minor amendment being offered with this testimony.

Proposed Amendments to House Bill No. 1047

Page 2, line 4, replace "address" with "resolve"