

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1331

2001 HOUSE JUDICIARY

HB 1331

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1331

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-23-01

Tape Number	Side A	Side B	Meter #
Tape 1		x	2423 to 3659
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chr DeKrey opened the hearing on HB 1331. Relating to initiative and referendum petitions.

Rep Haas: District 36. The changes of the bill appear on page 2 and 3, we have line out the entire line that states post office address including the signer's residential address or post office box number and replace it with complete mailing address. On page five, number eight, where it says An initiative petition may be circulated for one year from the date it is approved for circulation by the secretary of state. The current situation that refers to initiated or referred measures, is that the clock starts ticking from the time the first signature is placed on the petition. This creates problems for the secretary of state's office to knowing when the year begins.

Chr DeKrey: Is there any provision here, where the secretary of state's office can have the petition sit in their office for six months before it is released.

Rep Haas: I think that I will let Cory Fong respond to that.

Cory Fong: Secretary of States' Office (see attached testimony testifying on behalf of the Al Jaeger, Secretary of State) In answer to Chr DeKrey question, we are required by law to act within 5 to 7 business days.

Rep Klemm: I am not sure that I understand what you just said. You have approve the sufficiency and respond to it within 5 to 7 business days?

Cory Fong: We have to approve the sufficiency as to format within 5 to 7 days business days.

Rep Klemm: How long can you hold it, before you turn it back over to the people that submitted it.

Cory Fong: I would have to check on the actual wording of the statute, but I believe we are required to respond in writing, I do not think we have the ability to hold it. We also have to add the ballot title.

Chr DeKrey: I think the committee is supportive of what you are trying to do, but the other side of it is, we have to speak to the secretary of state that the office has to give it back. We don't want either side to play games.

Rep Mahoney: Cities have to rule on recall petitions within 35 days. I am surprised that there isn't something for the secretary of state. Is that something that we should put in there.?

Cory Fong: Please don't be confused, this is to get it into circulation. The 35 day deadline is also provided for reviewing of signatures once it is turned in to our office. That is provided by statute.

Rep Eckre: You said five to seven business days, it has to be done by the seventh day.

Cory Fong: That is correct.

Rep Eckre: Is this how it is written in code?

Cory Fong: Yes.

Vice Chr Kretschmar: When the secretary of state's office approves the petition, what happens to it.

Cory Fong: when we approve a petition, we respond to the sponsoring committee and say, here is the ballot title that needs to be inserted and here are the deficiencies in the format of the petition that must be corrected and then we request that they file a copy of the original petition, take is going to be circulated so that we have a copy of the petition.

Vice Chr Kretschmar: Under the bill, when would your time start?

Cory Fong: It would start when we approve it, when we respond back..

Vice Chr Kretschmar: DO you respond by mail.

Cory Fong: By mail, that is correct.

Vice Chr Kretschmar: If you approve it on Monday, and mail it, a guy might not get it until Thursday.

Cory Fong: That's true.

Chr DeKrey: If there are no other questions for Mr. Fong, thank you for appearing. Is there anyone else wishing to testify on HB 1331? If not we will close the hearing on HB 1331.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1331A

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
TAPE III	x		996 to 1217
Committee Clerk Signature <i>Joan Duro</i>			

Minutes: Chairman DeKrey opened the committee meeting on HB 1331. Rep Grande Grande moved a DO PASS on HB 1331, Rep Kingsbury seconded. Is there any further discussion on the bill. Some discussion was held on the bill. Chairman DeKrey asked the clerk to take the roll on a DO PASS motion on HB 1331. The motion passes by a vote of 13 YES, 0 NO, AND 2 ABSENT. The floor assignment is Rep Wrangham.

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

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB-1331

House JUDICIARY Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep Grande Seconded By Rep Kingsbury

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) 13 No 0

Absent 2

Floor Assignment Rep Wrangham

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

**REPORT OF STANDING COMMITTEE (410)**  
January 25, 2001 8:39 a.m.

**Module No: HR-13-1573**  
**Carrier: Wrangham**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1331: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
**(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1331 was placed on the**  
**Eleventh order on the calendar.**



2001 SENATE JUDICIARY

HB 1331

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1331

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 13th, 2001

Tape Number	Side A	Side B	Meter #
1	x		47.8-end
2	x		0-17.2
Committee Clerk Signature			

Minutes: **Senator Traynor**, opened the hearing on HB 1331.

**Cory Fong**, From the Secretary of State, (testimony attached).

**Senator Traynor**, I live at 601 12th Avenue and I receive no mail there, how would I prove my area of residence?

**Cory Fong**, that is a concern, we review something for efficiency. We are more concerned with locating someone in a physical location. I can't come up with a solution to your problem.

**Senator Trenbeath**, were these amendments presented in the house?

**Cory Fong**, no. We were made aware to be more specific. In visiting with them, we agree that the address requirement be the same.

**Senator Nelson**, after you approve, you send out cards to find whether someone lives in a certain location?

**Tape 2**

**Senator Watne**, why isn't a telephone number used?

**Cory Fong**, there have been long debates about requirements for voting and that was one of them.

**Senator Bercier**, in belcourt they demand that I put a street address on my mailing list. There are no street addresses where I live.

**Cory Fong**, that's why we suggest residential address. Who requires this?

**Senator Bercier**, the state Capital.

**Russel Woodegard**, from Minot, has no problem with bill. Five digits should be enough.  
(testimony attached)

**Senator Nelson**, why does the state need to be there?

**Russel Woodegard**, because some people live in ND and have residences in Montana.

**Ralph Mucensee**, ND for term limits, testifies in opposition to the bill. How can you get all that stuff on the petition? Some needs to nailed down using the five digit zip codes. Would like to see an amendment with a grace period of 30-60 days. Opposes the bill.

**Leon Mullburg**, representing self. The secretary of state has a window. That is a significant chunk if he chooses to use the window of 7 days. That is a significant percentage of the time needed. I think 24 hours to 48 hours is plenty of time to file. Time is of the essence when it comes to referrals and 7 days may be to much time. One year is sufficient to do a referral, there is quite a process.

**Senator Traynor** closed the hearing on HB 1331.

**SENATOR TRENBEATH MOTIONED TO AMEND THE BILL, SECONDED BY  
SENATOR DEVER. VOTE INDICATED 5 YEAS, 0 NAYS AND 2 ABSENT AND NOT  
VOTING. SENATOR WATNE MOTIONED TO DO PASS AS AMENDED, SECONDED**

Page 3  
Senate Judiciary Committee  
Bill/Resolution Number 1331  
Hearing Date March 13th, 2001

**BY SENATOR DEVER. VOTE INDICATED 5 YEAS, 0 NAYS AND 2 ABSENT AND  
NOT VOTING. SENATOR DEVER VOLUNTEERED TO CARRY THE BILL.**

**Proposed Amendments to House Bill No. 1331**

Page 2, line 3, replace "mailing address" with "residential address, rural route, or general delivery"

Page 3, line 4, replace "mailing" with "residential address, rural route, or general delivery"

Page 3, line 5, remove "address"

Page 3, line 11, replace "mailing address" with "residential address, rural route, or general delivery"

Page 4, line 29, replace "mailing addresses" with "residential addresses, rural route addresses, or general delivery addresses"

Renumber accordingly

Page 3, line 10, remove the o/s over "or"

after "signature" insert "complete" and

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1331

Page 2, line 2, remove the o/s over "residential address or"

Page 2, line 3, replace "~~mailing address~~" with "residential address <sup>or</sup> rural route <sup>or</sup> general delivery"

Page 3, line 4, replace "mailing" with "residential address <sup>or</sup> rural route <sup>or</sup> general delivery"

Page 3, line 5, remove "address"

Page 3, line 9, remove the o/s over "Residential Address"

Page 3, line 11, replace "~~mailing address~~" with "residential address <sup>or</sup> rural route <sup>or</sup> general delivery" <sub>Address 2</sub>

Page 4, line 28, remove the o/s over "residential address or"

Page 4, line 29, replace "~~mailing address~~" with "residential address <sup>or</sup> rural route <sup>or</sup> general delivery"

Renumber accordingly

Date: 3/13/01  
Roll Call Vote #: 1

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

Senate	Judiciary	Committee
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☐ Subcommittee on \_\_\_\_\_  
or \_\_\_\_\_

☐ Conference Committee

Legislative Council Amendment Number HB 1331

Action Taken Adopt amendment by Sec of State

**Motion Made By** \_\_\_\_\_ **Seconded**  
**By** \_\_\_\_\_

[illegible]

Total (Yes) 5 No 0

**Absent**

### Floor Assignment

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

Date: 3/13/01  
Roll Call Vote #: 2

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

Senate	Judiciary	Committee
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☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number HB 1331

Action Taken Do Pass as amended

Motion Made By Mr. [Signature] Seconded By [Signature]

[illegible]

Total (Yes) 5 No 0

Absent 2

Floor Assignment Seven

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



**REPORT OF STANDING COMMITTEE**

**HB 1331: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1331 was placed on the Sixth order on the calendar.

Page 2, line 2, after "signer's" Insert "complete" and remove the overstrike over "~~residential address or~~"

Page 2, line 3, replace "complete mailing" with "rural route or general delivery"

Page 3, line 4, replace "mailing" with "residential address or rural route or general delivery"

Page 3, line 9, remove the overstrike over "~~Residential Address~~"

Page 3, line 10, remove the overstrike over "~~or~~"

Page 3, line 11, replace "mailing address" with "Rural Route or General Delivery Address"

Page 4, line 28, after "the" Insert "complete" and remove the overstrike over "~~residential addressee or~~"

Page 4, line 29, replace "complete mailing" with "rural route or general delivery"

Renumber accordingly

2001 TESTIMONY

HB 1331



SECRETARY OF STATE

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

January 23, 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 1331 – Timeframe for Circulating an Initiative**

Currently, North Dakota law allows an initiative petition to be circulated for one year from the date the first signature is placed upon the petition pursuant to Section 1-01-50 of the North Dakota Century Code (see attached copy of NDCC 1-01-50). If I was the sponsor of an initiative petition and the first signature was placed upon the petition today, January 23, 2001, I would have until January 23, 2002 to circulate the petition and collect the required number of signatures to place the initiative petition on the ballot as a measure.

There are a couple problems the current law creates, beginning with the fact that the Secretary of State never knows when the first signature is placed upon a petition until the time comes to review the petition signatures and certify the measure for inclusion on the ballot. This leaves the Secretary of State's office guessing about whether an initiative petition has failed to meet the one-year circulation deadline and if the petition can be moved from an active status to an inactive one.

Current law allows an initiative petition to remain active for circulation for an indefinite period of time, as long as a signature is not placed upon the petition. Therefore, it is possible that an initiative petition would remain active for circulation and subject to review and ballot certification by the Secretary of State for many years after it was initially approved for circulation. This is true despite the fact that the portion of the constitution or statute the petition was intending to address may have been amended several times since the petition was initially approved for circulation.

More important, the current law invites mischief on the part of a sponsoring committee that could toss out the first group of signatures collected on a petition if the committee wanted or needed to extend the one-year circulation period of a petition.

House Bill 1331 corrects these problems by providing that initiative petitions may be circulated for one year from the date the petition is approved for circulation by the Secretary of State. This change does not shorten the time period for circulating an initiative petition nor does it make the initiative process more difficult or cumbersome for circulators and sponsors.

Rather, the proposed change simplifies the administration of the initiative process and provides more specific direction to the Secretary of State when determining the one-year circulation period for an initiative petition.

For these reasons, the Secretary of State urges a due pass on HB 1331.

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

March 13, 2001

TO: Senator Jack Traynor & Members of the Senate Judiciary Committee  
FR: Cory Fong, Secretary of State's office  
RE: **HB 1331 – Timeframe for Circulating an Initiative**

Currently, North Dakota law allows an initiative petition to be circulated for one year from the date the first signature is placed upon the petition pursuant to Section 1-01-50 of the North Dakota Century Code (see attached copy of NDCC 1-01-50). If I was the sponsor of an initiative petition and the first signature was placed upon the petition today, March 13, 2001, I would have until March 13, 2002 to circulate the petition and collect the required number of signatures to place the initiative petition on the ballot as a measure.

There are a couple of problems the current law creates, beginning with the fact that the Secretary of State never knows when the first signature is placed upon a petition until the time comes to review the petition signatures and certify the measure for inclusion on the ballot. This leaves the Secretary of State's office guessing about whether an initiative petition has failed to meet the one-year circulation deadline and if the petition can be moved from an active status to an inactive one.

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Rather, the proposed change simplifies the administration of the initiative process and provides more specific direction to the Secretary of State when determining the one-year circulation period for an initiative petition.

I am also providing the committee with a set of amendments that are intended to bring consistency to the requirements of addresses on nominating petitions and initiative, referendum, or recall petitions.

For these reasons, the Secretary of State urges a do pass on HB 1331.

to attachment. *Kelly v. Stockgrowers' Credit Corp.* (1935) 66 ND 209, 263 NW 717, 103 ALR 460.

#### Signature or Subscription.

Where the signature to a will was by mark and the person who wrote the name of the maker to identify the mark failed to write his own name as a witness, the effect of the failure did not destroy the signature by mark but placed the burden of proving the mark was made as the maker's signature upon the proponent of the writing. *In re McKee's Estate* (1942) 72 ND 86, 4 NW 2d 652.

When a testator was unable to sign his name because of senile weakness and other physical handicaps and he signed by a mark

which was witnessed, the signature by mark was valid. *In re Burris' Estate* (1956) 72 NW 2d 884.

A court of equity will not cancel an unpaid mortgage at the suit of the mortgagor when it is given as part of a compromise settlement of pending litigation and when to do so would vary the provisions of the executed compromise settlement on the technical claim of invalidity of the method of affixing the signature. *Weigel v. Bauer* (1959) 95 NW 2d 29.

#### Collateral References.

What constitutes "legal representative" or "personal representative" entitled to receive insurance proceeds on account of loss suffered by deceased, 40 ALR 4th 255.

**1-01-50. Filing or presentation of petitions — Time limit.** Whenever in this code provision is made for the filing or presentation of a petition with or to any officer or governing body or board of the state or any agency, instrumentality, or political subdivision thereof as a prerequisite to the calling of an election, or the performance or prohibition of any act, such petition must be filed with or presented to such officer or governing body or board not later than one year from the date such petition is first placed in circulation, or the date the first signature is affixed thereto, whichever date is the latest. If a petition is required by law to be filed or presented on or before a specific or certain date, the petition shall be filed or presented, and physically be in the possession of the person or office designated to receive such petition before four p.m. on such date. The provisions of this section shall not apply in any case where the law governing a particular petition specifies a shorter or a longer period of time or a different time of day.

Source: S.L. 1961, ch. 95, § 1; 1967, ch. 158, § 1.

**1-01-51. "Qualified elector" defined.** Unless otherwise provided, as used in this code concerning qualifications for signing petitions to governmental bodies, "qualified elector" means a citizen of the United States who is eighteen years of age or older; and is a resident of this state and of the area affected by the petition.

Source: S.L. 1985, ch. 235, § 1.

R1

#### Section

- 1-02-01. Rule of construction
- 1-02-02. Words to be understood in ordinary sense.
- 1-02-03. Language — How
- 1-02-04. Conflict in express
- 1-02-05. Construction of unambiguous
- 1-02-06. Clerical and typographical errors
- 1-02-07. Particular controls
- 1-02-08. Conflicting provisions of same statute.
- 1-02-09. Irreconcilable statutory provisions during the session
- 1-02-09.1. Multiple amendments to a provision, one of which is the original
- 1-02-09.2. Reconciliation of conflicting amendments
- 1-02-10. Code not retroactively applied
- 1-02-11. Source note not part of code
- 1-02-12. Headnote, cross-reference, source note.
- 1-02-13. Uniform laws interpreted uniformly
- 1-02-14. Majority power.
- 1-02-15. Computation of time
- 1-02-16. Repeal does not repeal subsequent provisions
- 1-02-17. Repeal — Effect.
- 1-02-18. Pending actions or proceedings not affected by repeal
- 1-02-19. Effect upon former law
- 1-02-20. Interpretation.

**1-02-01. Rule of construction.** That statutes in derogation of common law are to be construed liberally promoting justice.

Source: C. Civ. P. 1877, §§ 2682, 5147; R.C. 1899, §§ 1, 1905, §§ 3255, 6724; C.L. 7321; R.C. 1943, § 1-0201.

Derivation: *Walt's* (N.Y.) *Harston's* (Cal.) *Practice*, 4.

## Testimony HB1331

I wish to thank the committee for giving me the time to present my case. My name is Russell Regard. I am from Minot. I have worked on petition drives in the past. HB1331 is designed to make the collection of signatures much more difficult. The phrase "complete mailing address" indicates to me that the Secretary of State will require 9 digit zip codes. Not many people know their 9 digit zip codes—including me. Adding "(5 digit zip codes adequate)" after "complete mailing address" would satisfy our concern. Thank you for your time and consideration.

*R. L. Regard*

**North Dakotan's For Term Limit's**  
"Term Limit's" health care for your pocket book  
Ralph Muecke, Chairman  
3441, 100th. Ave. SW  
Gladstone, ND 58630  
701-483-8568 Fax 701-483-5621  
E-mail [rmuecke@pop.ctctel.com](mailto:rmuecke@pop.ctctel.com)

I also represent the Initiative and Referral Institute, and also American's for sound public policy. Both organizations are dedicated to the protection and preservation of the Initiative and Referral in States that have them, and the establishing of the same in States that don't have the Initiative and Referral process as of yet.

I am opposed to House Bill 1331 that pertains to the I & R process.

First of all it would require a complete mailing address. This would leave it wide open for the Secretary of State and whomever if they choose to get real persnickedy if they wanted to be, (and they probably would) to require the extra 4 digit zip code to be included in the mailing address. In otherwards giving them the right to reject signatures on a petition based solely on that technicality if they so choose. The problem is most people don't use the extra 4 digit zipcode, worse than that they don't know what their last 4 digits are. I have already recieved mail with at least 2 or 3 different last 4 digit zip codes. Which one is the correct one if any of them are?

Secondly, The way that the law reads right now, that we have one year from the date of the first signature to collect the needed signatures and to turn them in to the Secretary of State's office to qualify a measure for inclusion on the ballot. HB 1331 would require that we would have one year from the date that the S o S gives approval to circulate the petition to collect the number signatures needed, to place a measure on the ballot and turn them into the S o S office.

Contrary to what proponents of this bill say, HB 1331 is totally unnecessary and unfair as it cuts into the time needed for circulation. We cannot finalize and ready our petition for circulation until the S o S gives his approval and include the ballot title. Also petitions need to be printed up and distributed to the circulators. This all takes time.