

2011 HOUSE POLITICAL SUBDIVISIONS

HB 1431

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee Prairie Room, State Capitol

HB 1431
February 3, 2011
Job # 13963

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the canvassing of ballots of voters whose eligibility to vote has been challenged, early voting precincts, and mail ballot elections.

Minutes:

Testimony 1, 2 3

Chairman Johnson: Opened the hearing on HB 1431.

Rep. Boehning: What Rep. Koppelman was talking about on the first bill covers the first couple of sections in here with the ballot etc. There are quite a few elections that do get within two, three or five votes. If we do have ballots come in and we find out later that they weren't a valid voter; three votes do make a big difference. There is a recourse we can do through the court system and put them in jail possible. There have only been one or two tried in many years. But what happens to the person that has three votes and there are three affidavits that are incorrect? What recourse does the candidate have? Do we do a new election or what? We should be able to take those ballots out of the election cycle. If it does come down to a new election that is what we should have to do. It is not only fair to the electors; we may win or we may not. My election was very close so there is a little bit of disparity when the votes are counted. We maybe don't have a lot of voter fraud in ND but some folks come in and they are not sure which district they live in or whatever. We need to make sure everyone is a qualified voter. Section 4 of the bill it would allow the county with a population of fewer than 15,000 may partition the county commissioners to request that the election be held mail ballot. In a lot of these counties the people don't have a choice; it is what the county commissioners or auditor want to do is have a mail in ballot. I think we have taken away some of our freedoms in these rural counties. We are doing only vote by mail but I think we do need to allow the people to go to the ballot box. It is getting harder to campaign with all the early voting. We don't know when people have voted. We have 30-45 days or whatever it is to actually vote now. This just gives the opportunity of the people of the counties to petition the county commissioners to ask that we are able to vote in a precinct that is close to us. I will stand for questions.

Rep. Shirley Meyer: In Section 4; does that mean we could also petition to not have a mail ballot?

Rep. Boehning: When I read the language as well I am not sure how that would work. I think it probably would revert back to the way it was and then the people could petition to go to the mail ballot.

Rep. Klemin: The way I read Section 4 it doesn't seem to allow you to petition to not have a mail ballot if the county commission wanted to do that. Then it goes on to say even if you do have a vote one way or another the county may conduct it however they want to anyway. If you look at line 24 you use the word may by mail ballot. Then the opposite is not the case in this section. In Section 3 reducing early voting from 15 to 7 days? What is the reason for that?

Rep. Boehning: On Section 4 we need to get more clarification on how that will work. Section 3 from 15 to 7 days. In Fargo we are voting really early. We have people running to the polls and advertisements on the radio before you go into the polls it changes your mind due to the many ads. Are we electioneering while we are having early voting? I don't know. We have not had an opinion on that so how do you conduct an election when you see on Election Day you can't campaign. So for 15 days before that are we able to campaign, which probably the question.

Rep. Klemin: The rationale you just gave for doing this was about campaigning on Election Day. Doesn't that rationale hold true whether it is on days 8-15 as it is on days 2-7? It is the same thing isn't it?

Rep. Boehning: It is hard to explain. It is hard to campaign when people are voting early so you really don't know who has voted and who hasn't.

Rep. Klemin: In my district they usually say well we have already voted for you. I like to hear that.

Rep. Mock: In Section 3 that is permissive language. Is there a reason why we should be limiting the county's ability to have early voting? If it is truly that cumbersome on the candidates in Cass County as it appears to be, why you are not going to the Cass County commissioners and say 15 is too much. Just have early voting the week prior; don't use the full allowance as listed in the law?

Rep. Boehning: I think we are running our voting too long. We do mail and absentee ballots 45 days out. We are going to the polls 15 days in advance. It is a local issue but I think there is getting to be some many voting and we are going out so far in the voting; why don't we just open up early voting 45 days in advance? We could amend it to do that.

Rep. Mock: You can vote 40 days in advance. You can go to the county auditor's office when absentee ballots are available. Whether the person chose to cast their ballot by mail or at the auditor's office a month before Election Day or 14 days before the election in your established early vote precinct I don't know that you are changing anything?

Rep. Boehning: In Fargo we have two or three precinct's that are set up 15 days in advance that you can go in and cast your ballot. I think that is too long.

Rep. Kilichowski: Section 4 can the people of any county now petition the county commissioners to either have a vote by mail or to eliminate a vote by mail?

Rep. Boehning: I am not sure in that.

Al Carlson: The election process has always been of interest to me. I am not sure if these bills have the best interest of every voter in mind. I think they have some good things in them. The cornerstone of our democracy is people voting. We need to focus on how we get more than 47.9% of the eligible voters in this state to vote. We have tried to make it easier. We have extended early voting; expanded our efforts in absentee ballots; we have had voting by mail and yet our numbers really haven't changed very much. I am not a fan of voting by mail because I think it is a process that people should go and vote and not mail their ballots in. There leaves more opportunity to be some problems when you do that.

It is not longer Election Day; it is election month. In repose to Rep. Mock we wouldn't need any of these other things because everybody could vote by absentee the way our laws are set up. We don't chose to do it that way. The main point that I want to make is this is not about saving money. I have heard discussion about this is cheaper to vote by mail to the counties; it is hard to find people to vote at the polls. This is the cornerstone of democracy; this isn't about saving money. This is about increasing the participation in the voting process. I would appreciate it if you look at these bills. What do they do to increase the participations of the citizens? The campaigning thing is an issue but that is the way the process works. How we make a system with as little opportunity for fraud and misunderstanding and false votes being cast is a function of the committee, I think. I think it is unclear when I look at the language whether you can get out or get in, but the function should be how do we increase that participation without thinking that is the one place in the budget we can save money.

Rep. Mock: One thing about increasing turnout; in 2006 for the June primary I was out running and didn't have anything on me and I ran by my polling location and decided to run up to vote. I had no ID or nothing on me but I got to cast my ballot. I would have to turn around and return if this bill were in. I would get to vote and then it would be set aside and I would have to go back and either get my driver's license or something and I live close to the polling location, but isn't that going to discourage more people from coming back and lower a few votes each year?

Rep. Carlson: We have a big college district in our town. I think it is imperative that we make sure that those kids aren't voting in two states and they have some proof that they are voting in ND and voting as a ND citizen. How about all the oil workers out there. Oklahoma citizens, but they have been living in a man camp for 6 months or 3 months which technically makes them eligible to vote. Do we know where they all voted without proper identification? We don't have a clue. Is a three day mandate right or wrong I am not sure about that? I do think the day is gone when they should vote without identification. We don't register voters. We made that decision long ago and it was because in most cases everyone knows Bill and everyone else.

Rep. Mock: Why not registration. The concern is people are moving into ND and they are registered to vote in Minnesota; Texas, Oklahoma and other states then why not open it up

and have the most open form of voter same day registration and try to put those concerns to rest the way every other state has?

Rep. Carlson: Why don't you foot the bill?

Rep. Mock: If that is the concern why don't we do that?

Rep. Carlson: We have made it simple. It cannot be much simpler than to bring your utility bill with you. Not many states would accept your utility bill as proof of identification. Try and get on an airplane with that.

Opposition:

Al Jaeger, Secretary of State: The state's chief election officer. (See testimony #1). The only difference on these two bills is Section 4; so my comments will apply to the next one as well. We have no excused absentee voting in the state of ND. We have our ballots ready 40 days ahead of time and under the federal military and overseas voting bill that was just passed; if it involves a federal election we have to have those ballots available 45 days before election. We are able to do that because the ballots are ready electronically in the system. They might not be printed yet, but they are electronically in the system. Our office is contact each election by both political parties; the major ones, and they actively promote absentee voting. So when I hear the comments about the campaign is too long; the fact is the political parties themselves encourage early voting. So when we talk about voting by mail all we are talking about is a little bit different process. If the county has voting by mail the political parties promote it differently than they do absentee voting.

My personal philosophy is that voter turnout is driven by political parties, candidates and other issues that are on the ballot. I personally do not think it is a prudent use of state tax payer dollars for state government to promote voter turnout. I don't do it and I can imagine the first time that I went out and did anything like that I would get crucified because I would be using tax payer dollars to promote voter turnout and the Secretary of State on the ballot is going it. People know about the elections. When I go to my national conferences we are the envy of the nation. They would really love to have what we have. It would be very costly to implement. My favorite saying at conference is dead people don't vote in ND. I can tell you dead people, dogs and other things vote in other states. Other states have a problem with fraud more so that we do. When we calculate the voter turnout in the state of ND we have to go to the census data base and base it on the number of people they estimate over the age of 18. In Minnesota that is calculated against the people who registered. Which doesn't necessary equate to the number of eligible voters? If they calculated it against the number of eligible voters would it be as high. I am guessing it wouldn't be. As to the bill I am concerned about the mechanics of how that will work. As you come in everybody has to provide identification; if you fail in all of those ways, then you are required to fill out the affidavit. Under the bill that individual has to show up within three days to the county auditor with some kind of proof. Section 3; I did give you some statistical information on the reverse side of my handout are the number of counties here that had early voting precincts. The number of days they were open varied. They weren't all open the maximum and it was a county decision of how long their open. The other thing about reducing the number of days on an early voting precinct; I did live in Cass County for twenty years and when I went back after we had the first early voting type thing the number

of people who knew me that came up to me and were so excited about early voting. The public really likes it. The counties that use it they love it. On Section 4 Rep. Klemin said you could take it away. What I find interesting is all the sponsors of the bill are from Cass County. There isn't a sponsor of this bill from any county that uses vote by mail. The vote by mail decision the county commission in many counties gages the public and did surveys to arrive at their decision. In 2008 Dunn County used vote by mail. They decided after that election in 2010 to go back to polling locations. So the county made a decision; the state didn't. To me this applied to counties of less than 15,000 where the citizens would be required to submit petitions containing the decision of ten percent. It doesn't seem to say if you are in a county of over 15,000 the county commission can make that decision. In other words it only applies to a county of 15,000 or less that they have to petition. That is particular concern. If you had it already legislation if passed would become law on August 1, 2011. That legates any county that has vote by mail. Again with the cost and a lot has been brought up about cost; poll workers and recruitment. Isn't it best to let the county make that particular decision. I didn't mean to ramble.

Rep. Zaiser: Did you not do a little promotion of the election since you have promotion funds?

Al Jaeger: Earlier I said that those funds that were used come through the Federal Health and Human Services specifically designated to have voter place accessibility and education for those with disabilities. It is a grant that is given each year and ND is qualified each year. Years ago we did a survey of all the voting places in ND. They have to be accessible. We have made funds available to the counties for signing or any number of things and ads were geared to educate those with disabilities that they had voting options.

Rep. Zaiser: I think it is helpful.

Rep. Beadle: What do we currently do when people sign an affidavit and file their ballot that we make sure we follow up to insure that they are actually eligible to vote in the precinct or district after the fact?

Al Jaeger: The law does say that within 45 days after the election the county auditor needs to send out something to those people that signed the affidavits so I would defer to the county auditor on these questions. We have a central voter file. It is a record of who has voted; not who can vote. Every person is given a unique identifier so if you try to vote in Fargo, so we do check those and I am aware of two cases right now out of the entire state where somebody may have voted twice. I believe one was in Cass County and one is in Burleigh County. The issue of residency; it is a huge one. If you are in college you can vote back home, but you could also vote at college so you make a choice. There is residency for whether you are an in state or out of state student. The question of residency is so broad range. In some cases they no longer have a place. Voter residency has been a problem an if you give an address there should be something that represents a house. In Billings County there were people that were listing an address that had only a mailbox and there is no house anywhere around. I don't think the state has too many people who have done it unlawfully.

Rep. Hatelstad: On Section 4 you said we would have to eliminate those that already have the mail ballot and start over again. Couldn't we just grandfather them in?

Al Jaeger: Yes you have all those options. The way it is written you would wipe out all 26 counties. If you put in a later effective date or that this would be something that would have to happen after a certain date those are options. Right now if this becomes law I think it would wipe out those 25 counties that have been using it for 2008 and 2010 election.

Rep. Hatelstad: If we eliminated the 15,000 and just said qualified electors of a county may then that would take care of everything.

Al Jaeger: I think there is a different standard if you are in a county of 15,000 or less or 15,000 or over.

Rep. Kilichowski: Is there anything in statute that limits what people petition the state to put on the ballot as?

Al Jaeger: I am not familiar what counties can petition for.

Rep. Kilichowski: Is there anything that the people cannot bring to the vote of the people?

Al Jaeger: I don't know. Not that I am aware of.

Rep. Koppelman: I am looking in Section 4. I am having trouble finding the assurance that this bill would undo everything. This legislation goes into effect this summer and I don't see anything in there that makes this retroactive. Am I missing something?

Al Jaeger: Going forward the only way a county could have vote by mail is to do the petition. When something becomes law it negates any existing law about any choice that a county has.

Rep. Koppelman: It would only apply to future elections.

Michael Montplaisir, Cass County Auditor: (See testimony #2). I have two problems with the bill. We don't do mail balloting other than absentee voting.

Rep. Heilman: So you send out a postcard after they fill out the affidavit; then what? Are they required to fill something out saying we really do live there?

Michael Montplaisir: The process that we follow is established in law. It is not a perfect process. What we do is send out a postcard and the wording on it is well you voted in the previous election by affidavit and if you get this postcard you don't need to do anything with it. If the postcard can't be delivered to that address it comes back to us or in some cases it is delivered to that address and people will call us. If we can't resolve them then we send them to the States Attorney.

Rep. Heilman: Say it was found to be an illegal vote; by virtue of you getting the postcard returned to you as vacant or whatever. My personnel experience is two days ago I got a

returned postcard from the campaign. What is the time limit that you have to certify this is the number of votes?

Michael Montplaisir: Post election the vote is already counted and I think that is one of the things people have a question about. In ND if you fill the affidavit you are allowed to vote and the ballot goes through. We don't have any time line.

Rep. Heilman: Regarding early voting; what is the process for this. What if someone coming in grabs the wrong ballot for the wrong precinct? We had a voter say we got in there and voted and then they got into their car and decided they didn't see any legislatures because they must have gotten an even number district. What is the process when somebody grabs that ballot, is there another person who has to check and confirm. Is that how that works.

Michael Montplaisir: Yes there is. When a person comes in and votes we have about 109 different ballot styles. In the last general election we had 35 different ballots. They register with the clerk and get a slip of paper on that slip it shows the name, address and what district and precinct they live in. They take that over to the judge and one judge is suppose to take that slip and pull the ballot and compares the numbers. Then they hand it to the second judge who is also supposed to double check that and give the instructions on voting etc.

Rep. Hatelstad: When you go in for an absentee ballot don't you have to show an ID?

Michael Montplaisir: We ask people to show an ID when they come in to vote absentee. State law I don't believe requires it nor does it require it when you request it by mail.

Rep. Kilichowski: Is there anything that people cannot petition to a vote of the people county wide?

Michael Montplaisir: We have a home rule charter and in the home rule charter we reserve the right of initiative and referral to the voters so yes in Cass County they can. I can also tell you county commissioners in Cass County would be very concerned if they got a petition of 5,000 or 10,000 people and try to get to the bottom of it.

Rep. Zaiser: What happens when voters get a ballot and their name is not on it? They got a ballot from another district.

Michael Montplaisir: I remember when that happened. Since that time we have changed the procedures within our office when one of our employees pulls an absentee ballot we have a second employee who has to verify it. If someone does get an absentee ballot that is not for their district they simply need to call us and we will resolve that issue at that point. Once it is voted however it is voted.

Rep. Koppelman: The bills are both so similar. The total you show of affidavits in the last election differs from the Secretary of State's total of about 600 affidavits. When you mail out a postcard and don't get it back you assume it is a valid vote.

Michael Montplaisir: That is what the law specifies we do. We are assuming the post office delivered it to that address and it is a correct ballot.

Rep. Koppelman: You are obviously mailing these out and there are some that you cannot verify. The post office made a mistake with our mail and we got a lot of their mail so I went back to the post office because I wouldn't be there for another week. The point is I don't know how reliable the mail service is today especially for postcards etc. You say in your testimony that only one voter out of 2300 may not have been an eligible voter? Let's assume that one percent of that 23 it would change a lot of elections in Cass County. If you were to find that 23 of those people were fraudulent, what would happen then?

Michael Montplaisir: In ND the process is that those ballots have already been counted and those peoples votes stand. There isn't any way of going back and retrieving those votes. The problem I have with this particular legislation is that we maybe disenfranchising hundreds of people to catch the one or two or three or twenty three voters who miss cast a ballot.

Rep. Koppelman: Doesn't the law in ND require residency to vote?

Michael Montplaisir: Yes that is correct. That is why you are having them sign an affidavit swearing to the fact they are not only a ND resident, but they are 18 years of age and a resident of that precinct for at least 30 days prior to the election.

Rep. Koppelman: I am struck by the fact that the secretaries list shows 4822 affidavits statewide in the last election. It also shows that the early voting turnout in the seven largest counties in the state was 23,102 votes. According to his numbers the total number of affidavits in Cass County alone was 2300. So we have 2300 people voting in one county that we don't know really if they are legal voters or not and that equals the total number of votes in the entire seven largest counties by early voting. My numbers are wrong. Whatever the numbers might be does that kind of rational concern you at all?

Michael Montplaisir: I am comfortable with the affidavit process as far as the law allows us to implement. Would I prefer everybody have an ID. You bet I would not have to have any affidavits. But I also have to look at absentee voting and that is simply voting by affidavit.

Rep. Koppelman: We had a bill similar to this the last session. We heard an outcry about the cost from the auditors to do this work and the workload. I am surprised there isn't a fiscal note stating all the money you would save particularly if HB 1447 were to pass and all those postcards and all that effort would not have to be spent by your office. Have you considered that?

Michael Montplaisir: I haven't looked at the money issue of it. My concern is disenfranchising voters. Students don't have an ID with their voting residence. What are they going to bring? Are we saying you have to vote in your home county or not vote? Is that what we are saying?

Rep. Koppelman: In Minnesota in the last election they researched it and found a lot of fraudulent voting across state lines from Minnesota to Wisconsin. Do you have concerns in what might be going on the western border of Minnesota as there is on the east border?

Michael Montplaisir: When people come to the polls they show an ID; they fill out an affidavit if they vote absentee they fill out an affidavit. If there were something else in state law that said if you don't have an ID you simply can't vote that is a way of solving the problem. Whatever you do is going to cause some voters not to vote.

Chairman Johnson: When I went to vote I knew everyone working the election but I still had to provide an ID.

Rep. Zaiser: Are a significant number of the affidavits similar to what I experienced this fall where people just voted at the courthouse. Basically I showed up and had to fill out an affidavit; does that affect some of the high numbers of affidavits?

Michael Montplaisir: Those aren't included in our high numbers. When the Secretary of State gets their numbers basically they are calling us and asking us for an estimate. When we started to prepare this testimony we went back to the post office records which we use a mail sort system so we know how many postcards we sent out. That is probably a more accurate number than the 2300.

Terry Traynor, Association of Counties: (See Kevin Glaatt's testimony #3). The county commissioners are opposed to this bill as well. They read this to say yes they would have to wait for the citizens to petition this on the ballot in order to continue to vote by mail. Many of these counties did put this on the ballot as a straw vote to get a sense of the citizens, which is allowable. They can do that at any time. Passed out Glaatt's testimony because he could not be here today.

Rep. Kretschmar: How many counties use mail ballots?

Terry Traynor: 26

Neutral:

Larry Syverson, President of ND Township Officers Assoc. These bills go in a lot of directions that don't pertain to us. We don't have early or absentee voting in our meetings. However the eligibility to vote or hold office in the township is determined in Chapter 16 the general election law. Our concern has grown from conversations with Secretary of State that someday in some township some spending measure will be passed because some township board allowed someone to vote wrongly. We would like to see an eligibility verification system that would be followed up on and would work. We don't care about the rest of the bill. Hopefully out of one of these we could get one that would give us a better verification system.

Pamela Mack, Director of Advocacy Services with the ND Protection and Advocacy project. I think the voter turnout discussion is very consistent with some of the goals with Help America Vote Act. One of the discussions that we have had as an agency with the Association of Counties and the Secretaries of State's office is also how we insure that we have an increased turnout of voters that have disabilities. In the process of trying to identify how we do that we held a public comment statewide in January 2010 to really get feedback

and information from voters with disabilities as to what their barriers were to participating in the election process. They weren't aware of how to use technology and to benefit themselves in the voting process and to make that accessible to them. That was what the dedicated HAVA funds were used for to ensure we were educating voters with disabilities of how they could participate and have their vote heard.

Hearing closed.

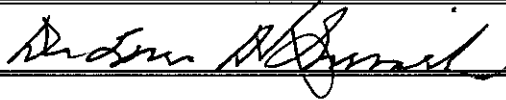
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House Political Subdivisions Committee Prairie Room, State Capitol

HB 1431
February 17, 2011
Job # 14706

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Committee Clerk Signature



Minutes:

Proposed amendment #1, Proposed amendment #2

Chairman Johnson: reopened the hearing on HB 1431.

Rep. Koppelman: (See proposed amendment #1). The changes are the same. I would recommend additional changes that are in the bill from 1447. The amendments to 1447 are identical and these proposed amendments to 1431. The other two sections do two other things: The one section dealt with early voting and I believe it reduced the number of days from 15 to 7 that you could do early voting. I visited with Mr. Silrum and with Rep. Carlson about that and he has agreed to compromise on this so what I would like to propose to the committee that we do two things. We eliminate the portion of the bill that would change with early voting time windows as amended. Secondly the other section deals with the question of whether the voters would need to approve counties going to a vote by mail system. What I would suggest for that section we make it clear in the language of the bill that it is grandfathered the counties who have already done that. Those who have vote by mail would not have to have another vote and take it to the people before they could continue to vote by mail. Second with that section that we amend it to clarify that either the governing board or a petition could place that on the ballot.

Rep. Klemin: Why do we want to amend 1431 to make it look like 1447? Why don't we just take out those parts out of 1431 that are the same as in 1447 and leave the sections that are different still in 1431?

Rep. Koppelman: We can certainly do that. If we chose not to amend 1431 at all with these amendments and just get rid of all this language in 1431 which is identical to 1447 so that what would remain in 1431 would be just that issue of the electors of a county deciding about going vote by mail. It could stand alone as a separate bill. I have no objections to that.

Chairman Johnson: That would make the two issues more distinct.

Rep. Shirley Meyer: I think it would be just a good idea to do not pass this out of committee.

Motion made to move the amendment by Rep. Koppelman: Seconded by Rep. Devlin:

Chairman Johnson: Motion would delete sections 1, 2 & 3; amend Section to grandfather in those county that currently do it; otherwise it would be by county commissioner or petition but it would go to a vote and say we want to be out of mail ballot in or out by county commissioners. That was my understanding of the intent.

Rep. Mock: Is your intention to delete Section 3 and keep it permissive up to 15 days prior?

Rep. Koppelman: Yes we discussed that and we discussed it with Mr. Silrum and talked about maybe saying X number of days within a 15 day period because some of the concern was the number of days but then we talked about the fact that in most places where they do early voting they don't do it for 15 continuous days anyway and most of the time they do it in places like hotels and they are typically not available on weekends so they end up doing it for 2-3 days for each of two weeks essentially.

Rep. Kretschmar: Is there anything in the law now that allows vote by mail in any county or is it just counties below a certain population?

Al Jaeger, Secretary of State: At this point it is a county option. It is not based on population.

Rep. Klemin: We are going to grandfather in counties that currently use vote by mail but allow a petition to be filed to discontinue using mail ballots and then in other counties that currently do not use mail ballots we are going to allow a petition to be filed to begin using mail ballots. Is that correct?

Chairman Johnson: That is the way I understood.

Rep. Kilichowski: How does this affect home rule counties?

Rep. Koppelman: I am not sure if there is any difference? I don't think it would.

Rep. Kilichowski: If a county now decided to go to mail in ballot does not the electorate have the option to petition them to say they don't want to now?

Rep. Koppelman: I want to get back to what Rep. Klemin said because I am not sure the way this reads now I don't think it deals with counties that are currently vote by mail counties wanting to change. That would totally be grandfathered in. The amendment said nothing would change in the counties that were vote by mail unless the county commissioners could change it. For any counties going forward by the grandfathering we mean what is done is done.

Chairman Johnson: I think I muddled the water on that one because I said they could petition to get out if they wanted to. That is not what you are saying.

Rep. Kilichowski: If the county commission decided to adopt vote by mail would the people of that county have the right to petition them to deny it?

Rep. Koppelman: I would be mute if this bill would pass because it would prescribe the way that would happen. Originally the discussion was there is no formal procedure to do that in law but we assume that most county commissioners if they had a room full of people saying we don't like this we would like to vote on it; maybe the commission would do that. I understand there is no prescription in law now.

Rep. Zaiser: This would reduce the window of early voting.

Rep. Koppelman: The original bill would have. We are taking that out.

Terry Traynor, Ass't of Counties: There are a number of Attorney General's opinions that make it clear that citizens can petition whatever they want and commissioners can put whatever they want on the ballot; however unless the decision making has been transferred by the legislature to the voters the commissioners make the decision. Anything the citizens say at that point is only advisory at that point.

Rep. Klemin: What is the rationale for limiting this petition process to counties having fewer than 15,000? What makes the smaller counties the only ones that can do this?

Rep. Koppelman: I would certainly not object to amending it to include that in the amendment including that in the amendment that we remove the population restriction.

Rep. Klemin: Maybe you would like to further amend if you look at line 17 on page 4 to delete the words having a population of few than 15,000.

Rep. Zaiser: I call for the question which ends the debate so we can call for the question.

Chairman Johnson: Yes I will call for the question.

Rep. Koppelman: To clarify the vote right now is on the question. If we vote yes then we go right to a vote on the amendment as currently before us. If we vote no we can continue to debate or amend that amendment.

Rep. Klemin: If we vote yes on the question then we would not include the amendment that I just mentioned about the population restriction.

Chairman Johnson: That would be correct. We are just voting to decide to end debate.

Voice vote failed.

Chairman Johnson: Motion is defeated. We are now back to the amendment that Rep. Klemin suggested.

Rep. Koppelman: I think the amendment before us is the one I proposed and I would be willing to include Rep. Klemin suggestion in that if the seconded would agree?

Chairman Johnson: We then have another addition to the amendment. It would be the qualified electors of a county and delete having a population of fewer than 15,000.

Rep. Mock: This is the problem with not having the written amendment before us so that is why I have to ask. My understanding is there is no emergency clause so counties would have up until the effective date to go to vote by mail without having to bring it to the vote of the people. If this bill passes how a county does get out of vote by mail?

Rep. Koppelman: I think the county boards would just change it.

Rep. Mock: If this passes the only way a county can go to vote by mail is either if the county commission puts it on the ballot and it is approved by a majority of the electors or it is petitions to be put on the ballot. Can you revert back to traditional polling locations and to be a vote by mail county and if so the only way of doing it by a petition and vote by the people or can the county commissioners simply make a resolution changing the status?

Rep. Koppelman: It is silent on how you undo a vote by mail decision so I don't think anything would change. A county whether a county has made that decision now by resolution of the county commissioners or whether in the future they would make that decision by a vote of the people I think the commission would still have that authority to undo it. Nothing in this bill would say that you have to vote to both do and undo it.

Rep. Mock: So if there is a county that is vote by mail today. After this passes could voters then petition and say voters didn't want to but county commissioners wanted to keep it that way could they then petition to take that off. Maybe the answer is no, but if we wanted to make vote by mail and option by referendum and authorize it by a vote shouldn't be allowing voters to do the same. After the effective date in order for a county to be vote by mail whether by referendum or by placed on the ballot by the county commission it has to be approved and then the county commissioners could simply come back the next meeting and say no.

Rep. Koppelman: I think you are right about that. It is not part of this motion and this motion is bilious enough we probably need to vote on it the way it is. If someone wanted to amend the bill with the idea that those counties that are vote by mail that the people could petition to undo it; I wouldn't have an objection to that. It was not in the language of the current bill or the amendment. The main issue has been where the counties are that they woke up one day and found out that there was only one polling place and it was 50 miles away and they didn't know and they had to drive and all that kind of thing. Going forward, if amended in the way we described would at least insure that in the future the people would have a voice in that.

Rep. Shirley Meyer moved to further amend that if a county decides to not be a vote by mail county that same process would apply. This would mean at least 10% of the qualified electors of the counties could petition the county commissioners to get out of being a vote by mail ballot. Seconded by Rep. Koppelman:

Discussion:

Rep. Beadle: Is there anything in statue that currently addresses the current process of getting out of vote by mail?

Chairman Johnson: We will do the amendments but I am not going to vote on the bill until we all have a change to see the written amendments so at some point we will have to get called back into committee. There are just too many amendments floating out there.

Voice vote carried.

Chairman Johnson: We have before us an amended amendment that if I am correct deletes 1, 2 & 3; puts in a grandfather clause on section 4; deletes having a population of fewer than 15,000 and then allows the county commission to put it on the ballot to vote by mail or to not vote by mail and allows petitioners to put on the ballot whether they want to vote by mail or not vote by mail.

Rep. Klemin: You said a part there that allows the county commissioners to put it on the ballot to vote by mail or not. I don't remember that being discussed. It was just the petition that was discussed

Chairman Johnson: So the county commissioners couldn't put it on the ballot to not have vote by mail?

Rep. Klemin: I don't know why they couldn't. They can already do that now I think.

Chairman Johnson: So I stand corrected. It is not for the county commissioners to pull it off.

Terry Traynor: Anything the legislature does is good, I think. I do think that the county commissioners cannot put something on the ballot that you haven't allowed them to do that. So if your intention is to allow the commission to put it on the ballot to do it or not do it I think it should state that if that is your intention.

Chairman Johnson: So at this time it didn't allow the counties to put it on ballots or take it off.

Voice vote carried.

Rep. Klemin: I am not sure this current version allows the county commission to put it on the ballot of their own imitative or simply by petition.

Chairman Johnson: My understanding is it allows it county commissioners to put it on the ballot if they want to. It doesn't allow it in the counties where they are already doing it for them to put it on the ballot to remove it. That is my understanding.

Recess:

Chairman Johnson: called us back to order. Everybody has a copy of the amendments.

Rep. Shirley Meyer: On the first page of the amendment on the bottom where it says the board of county commissioners of a county may not discontinue the use of mail ballots unless authorized by the qualified electors. In Dunn County we had mail by ballot and it didn't work and a lot of people didn't get to vote. So the county commissioners just went in and changed it and when we put this language in they couldn't do that. They saw that this wasn't working so this doesn't do anything. I don't like that provision. It takes away the authority of the county commissioners so when they obviously saw a problem; then under this they would have to get a vote of the qualified electors.

Rep. Klemin: the amendment starts basically on the top of page 5, line 2 where we currently have blank language. All this part of existing law in 16.1-11.1-01 that on bottom of page 4 and top of page 5 all of that stays in existing law. By this amendment we are not changing any of that other than to take it out of the bill. Would that being the case we just can't go in and say this language all over again in some places like it is in Section 3 of the amendment is basically repeating what is existing law so what is going to happen then is we are going to have the same thing said in two places in the statute.

Intern explained that should have put overstrike but otherwise was according to Legislative Council directive.

Rep. Klemin: Page 4, should be overstrike lines 25-31.

Chairman Johnson: On page 4 on the bottom one should have said overstrike lines 25-31.

Do Not Pass as Amended Motion Made by Rep. Kilichowski;

Chairman Johnson: I just asked if there were questions on what the amendment was. We haven't voted on anything yet. My mistake, we have voted.

Rep. Klemin: that part that Rep. Meyer brought up was not my understanding was part of the amendment that we approved.

Chairman Johnson: We have two options, we can try and fix that or say good bye.

Rep. Shirley Meyer: Wouldn't it be alright to do not pass. We are trying to fix something that I think we are creating more problems. It is not saying what we want to say. I think we could defeat this amendment and just don't pass the bill.

Rep. Klemin: I would prefer to fix this amendment regardless of whether it has a do pass or do not pass recommendation. It is only a recommendation and the chamber may decide to pass it anyway? Don't we want this bill to be in the form it should be in the event it does pass? .

Rep. Maragos: I move that we reconsider our actions whereby we pass this amendment this morning.

Chairman Johnson: We have a motion to reconsider our actions whereby we passed the amendment. Seconded by Rep. Zaiser.

Discussion:

Rep. Klemin moved we amend this bill in the form as presented by proposed amendment to HB 1431 except that we not include the language in the new Subsection 1 that is the second sentence.

Chairman Johnson: We do have a motion on the floor to reconsider the amendment.

Voice vote carried.

Rep. Klemin move the amendment that we have before us with the exception that delete the second sentence of Subsection 1 where it says page 5 after line 2 insert Subsection 1 delete the second sentence. Seconded by Rep. Koppelman:

Chairman Johnson: So we have this amendment before us: Delete in the amendments on page 5 item #1 second sentence, the board of county commissioners of a county may not discontinue the use of mail ballots unless authorized by the qualified electors of the county as provided in Subsection 2 and amendment on page 4 instead of saying remove, say overstrike.

Rep. Zaiser: Seems like this is a circular discussion and we have been doing this for about two hours.

Rep. Koppelman: I move we amend the amendment to remove line 2 after application beginning after the word ballot through the end of that application section. Seconded by Rep. Klemin:

Chairman Johnson: We have a motion and second to further amend that in Section to the application that everything after the word in the second line of that after ballot would be deleted.

Voice vote carried.

Rep. Koppelman moved for an adoption of the amendment that would in essence be a new bill. Seconded by Rep. Maragos:

Voice vote carried.

Do Not Pass As Amended by Rep. Kilichowski: Seconded by Rep. Kretschmar:

Discussion:

Rep. Kretschmar: I believe the bill right now is not in very good shape. I think the decision to use a mail ballot or not to use a mail ballot should be done by the board of the county commission in their respective counties as they do not. I highly agree with the do not pass.

Rep. Kilichowski: Like it was stated earlier the system that is in place is working. Dunn County reversed their decision on the mail ballot. I think what we have in place is working and to take away local control I am not in favor of.

Rep. Kretschmar: In McIntosh County where I live we are using the mail ballot. At the beginning there was considerable discussion. Some people didn't like it. I think we have done two or three elections now under the mail ballot. More and more people are beginning to like it and be able to vote in their homes at their leisure. I see no reason for this bill.

Rep. Klemin: I don't see how this is probably going to change anything on what really happens in the county as far as the county commissioners are concerned they can still either decide to have mail ballots or not. I think the basic local control is having people vote on things. If this simply provides a method by which the people in the county can require an election to start or stop using mail ballots if they get the required number of 10% petition and they get 50% of the vote they got a couple of hurdles to pass here but at least they will have that ability to try to do it if for some reason they want to. I think that is just fundamental democracy.

Rep. Koppelman: I believe in local control and I believe in local elected bodies but I also believe that the ultimate decision resides with the voters. I hope we defeat this motion and pass this bill.

Rep. Heilman: I am opposed to the do not pass but I think it is funny that if a board says we are going to go vote by mail and the people want to not do vote by mail they can petition and they have to vote by mail to not vote by mail.

Vote: 7 Yes 5 No 2 Absent Carrier: Rep. Kretschmar:

Hearing closed.

Date: 2-17-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1431

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Devlin

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Devlin Sec 1, 2, 3

Roll Call Vote Failed

#1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1431

- Page 1, line 1, after "to" insert "create and enact a new section to chapter 16.1-05 of the North Dakota Century Code, relating to poll checkers; to"
- Page 1, line 1 replace "subsection 4 of section 16.1-02-05, section 16.1-05-06," with "sections 16.1-02-05, 16.1-05-04, and 16.1-05-07,"
- Page 1, line 2, replace the second "section" with "sections 16.1-10-06.1,"
- Page 1, line 2, after "16.1-11.1-01" insert ", 16.1-15-06, 16.1-15-08, and 58-04-09"
- Page 1, line 3, remove "canvassing of ballots of voters whose"
- Page 1, line 3, remove "has"
- Page 1, line 4, remove "been challenged"
- Page 1, line 4, after "elections" insert "; and to repeal section 16.1-05-06 of the North Dakota Century Code, relating to challenging the right to vote"
- Page 1, remove lines 6 through 23
- Page 2, remove lines 1 through 31
- Page 3, remove lines 1 through 31
- Page 4, replace lines 1 through 5 with:

"SECTION 1. AMENDMENT. Section 16.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-02-05. Entry of new voters into the central voter file - Query of the central voter file for double voting - Challenges—Postelection verification.

1. Within forty-five days following an election, the county auditor shall enter the name and required information of each individual who voted at the last election who is not already contained in the central voter file and update any required information requested and obtained at the last election for any individual contained in the central voter file.
2. The secretary of state, with the assistance of the county auditors, within eighty-five days following an election, shall query the central voter file to determine if any individual voted more than once during the preceding election. The secretary of state shall immediately notify the county auditor and state's attorney in each affected county for further investigation.
3. Upon return of any nonforwardable mail from an election official, the county auditor shall ascertain the name and address of that individual. If the individual is no longer at the address recorded in the central voter file, the county auditor shall transfer the voter to the correct precinct in the central voter file or notify the county of the voter's new residence so the voter record can be transferred to the correct county. If a notice mailed at least sixty days after the return of the first nonforwardable mail is also

returned by the postal service, the county auditor shall designate the individual as "inactive" in the central voter file.

4. ~~Within forty five days after an election, the county auditor shall send a notice to each individual who was challenged on election day according to section 16.1-05-06. If a notice is returned as not deliverable, the county auditor shall attempt to determine the reason for the return. A county auditor who does not receive or obtain satisfactory proof of an individual's eligibility to vote shall notify immediately the state's attorney to conduct an investigation of the individual's eligibility to vote in that election.~~

SECTION 2. AMENDMENT. Section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-04. Duties of the members of the election board during polling hours.

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.
2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.
3. The election inspector shall assign the poll clerks to perform the function of maintaining the pollbook. The designated poll clerks shall maintain the pollbook. The pollbook must contain the name and address of each individual voting at the precinct and must be arranged in the form and manner prescribed by the secretary of state.
4. ~~The members of the election board shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector by requiring the elector to complete and sign a voter's affidavit.~~
5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.
- ~~6.5.~~ All members of the election board shall distribute ballots and other election materials to electors. An election judge from each party represented on the election board shall give any assistance requested by electors in marking ballots or operating electronic voting system devices.
- ~~7.6.~~ Each member of the election board shall maintain order in the polling place.

SECTION 3. AMENDMENT. Section 16.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-07. Poll clerks to check identification and verify eligibility - Poll clerks to request, correct, and update incorrect information contained in the pollbook.

1. ~~Before delivering a member of an election board delivers a ballot to an individual according to section 16.1-13-22, the poll clerks shall request the individual to show identification, which includes the individual's residential address and date of birth. The~~An approved form of identification may includeincludes:
 - a. An official form of identification issued by the state;
 - b. An official form of identification issued by a tribal government;
 - c. A form of identification prescribed by the secretary of state; or
 - d. A combination of any of the forms of identification under subdivisions a through c.
2. If an individual offering to vote does not have or refuses to show an appropriate form of identification, the individual may be allowed to vote ~~without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a poll clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct administered by the polling place. The individual shall provide the individual's date of birth to the poll clerk entering the name of the voter in the pollbook.~~
3. ~~If an individual offering to vote does not meet either of the options set forth in subsection 1 or 2, the election board shall challenge the individual's right to vote and the individual may not vote unless the individual executes a voter's affidavit, as provided in section 16.1-05-06.~~
4.
 - a. When verifying an individual's eligibility or when entering the name of an individual into the pollbook, poll clerks shall request, correct, and update any incorrect or incomplete information about an individual required to be included in the pollbook generated from the central voter file.
 - b. If the individual's name is contained in the pollbook generated from the central voter file, the poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.
 - c. If the individual's name is not contained in the pollbook generated from the central voter file but the individual is determined eligible to vote, the poll clerks shall record the individual's name in the pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook.
- ~~6.4.~~ Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct to the proper precinct and voting location.
5. If an individual offering to vote does not meet either of the options set forth in subsection 1 or 2, the election board shall offer the individual the

opportunity to execute a voter's affidavit acknowledged before an election board member.

6. The voter's affidavit must include:
 - a. The name of the affiant.
 - b. The address of the affiant.
 - c. The birth date of the affiant.
 - d. The contact telephone number of the affiant.
 - e. The address of the affiant at the time the affiant last voted.
 - f. The previous last name of the affiant if it was different when the affiant last voted.
 - g. The identification number and state of any state-issued identification regardless of the state in which the identification was issued, if available.
 - h. A recitation of the qualifications for voting as set forth in section 16.1-01-04 and the rules for determining residence.
 - i. Notice of the penalty for making a false affidavit and that the individual will be required to provide an approved form or forms of identification showing the individual's qualification as an elector of the precinct to a member of the polling place election board while the polls remain open or to the appropriate election official before the meeting of the canvassing board before the vote can be counted.
 - j. A notice indicating the affidavit is not an open record, but information identifying who voted after executing an affidavit may be an open record as part of the pollbook, unless the individual is listed as secured active in the central voter file under section 16.1-02-13.
 - k. A place for the affiant to sign and swear to the affiant's qualifications as a voter.
7. Upon the execution of the affidavit, the individual must be given a notice clearly stating the affiant's ballot will be counted if the affiant returns with approved identification to the polling place before the polls close or verifies the affiant's identity with the office of the appropriate election official before the meeting of the canvassing board. The notice also must state the hour at which the polls will close; the date, time, and location of the meeting of the canvassing board; and the address, location, and office hours of the appropriate election official.
8. The election inspector shall place the ballot of an individual who executes an affidavit under this section in a secure envelope designed by the secretary of state to protect the secrecy of the ballot.
9. If the elector returns to the polling place before the polls close and shows identification providing proof of qualification as an elector, the election inspector shall return the sealed envelope containing the individual's ballot to the voter to allow the voter to cast the ballot. The election inspector shall mark the voter's affidavit as "verified".

10. Each election inspector shall deliver to the appropriate election official a list including the name of each individual who executed an affidavit under this section who has not returned to verify the individual's qualification as an elector and each ballot cast by an individual on the list. The election official shall forward the ballot of each affiant verified to the official's office with approved identification to the canvassing board for canvassing and forward the remaining ballots to the county canvassing board marked as "rejected - elector failed to verify qualification".

SECTION 4. A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

Poll checkers.

The district chairman of each political party represented on the election board may appoint up to three poll checkers to a polling place. A poll checker may not interfere with the election process or with the members of the election board in the performance of the member's duties. A poll checker may not be a member of the election board. The district chairman shall notify the county auditor of each county contained in the legislative district one day before the day of the election of the name of any individual the district chairman has appointed to serve as a poll checker in the legislative district."

Page 4, after line 13, insert:

"SECTION 6. AMENDMENT. Section 16.1-10-06.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-10-06.1. Paying for certain election-related activities prohibited.

No

1. A person may not pay another person any individual for:
 - 1- a. Any loss or damage due to attendance at the polls;
 - 2- b. Registering;
 - 3- c. The expense of transportation to or from the polls; or
 - 4- d. Personal services to be performed on the day of a caucus, primary election, or any election which tend in any way, directly or indirectly, to affect the result of such caucus or election.

~~The provisions of this~~

2. This section does not apply to the hiring of a person an individual whose sole duty it is to act as a challenger duties are to observe the polls and to watch the count of official ballots."

Page 5, after line 2, insert:

"SECTION 8. AMENDMENT. Section 16.1-15-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-06. Reports and pollbooks sent to county auditor - Compensation for making returns.

Immediately following the canvass, except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by the inspector of elections, personally shall deliver one of the signed canvass reports provided for in section 16.1-15-04 to the county auditor. The sealed ballots of voters executing affidavits under section 16.1-05-07 and reports, carefully sealed under cover, accompanied by the pollbook provided for in sections 16.1-02-13 and 16.1-06-21 with the oaths of the inspector and poll clerks affixed thereto, must be delivered properly to the county auditor. The person making the return shall receive compensation therefor in accordance with section 16.1-05-05. The compensation and mileage must be paid out of the county treasury on a warrant of the county auditor and is full compensation for returning all used or voided ballots to the proper official.

SECTION 9. AMENDMENT. Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-08. Wrapping and returning of ballots to county recorder.

After generating the reports and poll lists provided for in section 16.1-15-06 and providing the sealed ballots of voters executing affidavits provided for in section 16.1-05-07 for delivery to the county auditor, the election board shall cause the ballots containing lawful write-in votes cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. All ballots without write-in votes shall be wrapped in a similar manner. The ballots and wrappers must then be tightly secured at the outer end to completely envelop and hold the ballots together. Ballots that are void must be secured in a separate wrapper and must be marked "void". Ballots that are spoiled must be separately secured and marked "spoiled". In sealing ballots, the various classes of ballots must be kept separate. Each wrapper must be endorsed with the names or numbers of the precincts and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the county auditor so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned in person to the county recorder. At the meeting of the county canvassing board, the county recorder shall deliver the ballots containing lawful write-in votes from all the precincts within the county. At the meeting of the county canvassing board, the county recorder shall deliver each ballot that may contain a write-in vote referenced in a demand made under subsection 1 of section 16.1-12-02.2. Ballots used with any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section. The sealed ballot of any voter whose affidavit has been verified with the county auditor must be delivered to the canvassing board for tabulation.

SECTION 10. AMENDMENT. Section 58-04-09 of the North Dakota Century Code is amended and reenacted as follows:

58-04-09. Challenge to voter—Duty of judges.

If any ~~person~~individual offering to vote at any election or upon any question arising at a township meeting is challenged as unqualified using the criteria provided in ~~section 16.1-05-06~~chapter 16.1-05, the judges shall proceed in the manner in which

judges at a general election are required to proceed, adapting the affidavit described in ~~section 16.1-05-06~~ chapter 16.1-05 to the circumstances of the township meeting.

SECTION 11. REPEAL. Section 16.1-05-06 of the North Dakota Century Code is repealed."

Renumber accordingly

Date: 2-17-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1431

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number . 01002

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Koppelman Seconded By Rep. Durkin

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Delete Sections 1, 2, 3, Amend Sec. to grandfather
in counties that currently vote by mail.*

Further Amend -

Date: 2-17-11
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1431

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Further Amendment

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Meyer Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*allow counties to get out of the
vote by mail + 15,000 population deleted
Vote
Vote
carried.*

Date: 2-17-11
Roll Call Vote #: 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1431

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Reconsider Amend

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Voice
Vote
carried*

*we not include language in Sub 1, second
Sentence.*

#2

Prepared for: House Political Subdivisions Committee
Prepared by: Jessica Braun, Legislative Intern, House Political Subdivisions Committee

PROPOSED AMENDMENT TO HOUSE BILL 1431

Page 1, line 1, remove "subsection 4 of section 16.1-02-05, section 16.1-05-06,"

Page 1, line 2, remove "subdivision a of subsection 2 of section 16.1-07-15, and"

Page 1, line 3, remove "the canvassing of ballots of voters whose eligibility to vote has"

Page 1, line 4, remove "been challenged, early voting precincts, and"

Page 1, remove lines 6 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 13

Page 4, line 17, overstrike "The"

Page 4, line 17, remove "qualified electors of a county having a population of fewer than fifteen thousand may"

Page 4, remove lines 18 through 22

Page 4, line 23, remove "percent of the qualified electors voting on the question, the"

Page 4, line 23, overstrike "board of county commissioners of a"

Page 4, line 24, overstrike "county may conduct"

Page 4, line 24, remove "any subsequent"

Page 4, line 24, overstrike "election by mail ballot."

Page 4, line 24, remove "A"

Page 4, line 24, overstrike "mail ballot election must"

Page 4, ~~remove~~ ^{omit} lines 25 through 31

Page 5, overstrike lines 1 through 2

Page 5, after line 2, insert:

- "1. The board of county commissioners of a county, by resolution, may conduct an election in the county by mail ballot. The board of county commissioners of a county may not discontinue the use of mail ballots unless authorized by the qualified electors of a county as provided for in subsection 2.
2. The qualified electors of a county may petition the board of county commissioners to request that elections be conducted, or discontinue being conducted, in the county by mail ballot. Upon receipt of a petition signed by at least ten percent of the qualified electors of the county as determined by the vote cast for the office of governor at the last general election, the board of

Prepared for: House Political Subdivisions Committee

Prepared by: Jessica Braun, Legislative Intern, House Political Subdivisions Committee

county commissioners shall place on the ballot at the next primary or general election the question of whether mail ballots may be used in the county. The board of county commissioners shall conduct subsequent elections in the manner determined by a majority vote of the qualified electors of the county.

3. A mail ballot election must include city elections administered by the county auditor and may include any other election administered by the county auditor pursuant to an agreement with the governing body of a political subdivision within the county. The board shall designate one or more polling places in the county to be open on the day of the election for voting in the usual manner. The county auditor shall place a notice at all polling places in the county used at the last statewide election which states the location of the polling places open for the election. The county auditor shall keep a record of each mail ballot provided to qualified electors and provide to the election board at each polling place open on the day of the election a list of every person who applied for a mail ballot.

SECTION 2. APPLICATION. A county that is conducting elections by mail ballot before August 1, 2011, may continue to conduct elections by mail ballot, unless the board of county commissioners is authorized by the qualified electors of that county to discontinue use of mail ballots as provided for in subsection 2 of this Act."

Renumber accordingly

Date: 2-17-11
Roll Call Vote #: 5

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1431

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Further

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

§ 5 #1, second sentence.

Sub 2 + amend Page 4.

instead of remove say overstrike.

Voice
Vote
carried!

February 17, 2011

V12
2/18/11
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1431

Page 1, line 1, remove "subsection 4 of section 16.1-02-05, section 16.1-05-06,"

Page 1, line 2, remove "subdivision a of subsection 2 of section 16.1-07-15, and"

Page 1, line 3, remove "the canvassing of ballots of voters whose eligibility to vote has"

Page 1, line 4, remove "been challenged, early voting precincts, and"

Page 1, remove lines 6 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 13

Page 4, line 17, overstrike "The"

Page 4, line 17, remove "qualified electors of a county having a population of fewer than fifteen thousand may"

Page 4, remove lines 18 through 22

Page 4, line 23, remove "percent of the qualified electors voting on the question, the"

Page 4, line 23, overstrike "board of county commissioners of a"

Page 4, line 24, overstrike "county may conduct"

Page 4, line 24, remove "any subsequent"

Page 4, line 24, overstrike "election by mail ballot."

Page 4, line 24, remove "A"

Page 4, line 24, overstrike "mail ballot election must"

Page 4, overstrike lines 25 through 31

Page 5, overstrike lines 1 and 2 and insert immediately thereafter:

- "1. The board of county commissioners of a county, by resolution, may elect to conduct an election in the county by mail ballot.
2. The qualified electors of a county may petition the board of county commissioners to request that elections be conducted, or discontinue being conducted, in the county by mail ballot. Upon receipt of a petition signed by at least ten percent of the qualified electors of the county as determined by the vote cast for the office of governor at the last general election, the board of county commissioners shall place on the ballot at the next primary or general election the question of whether mail ballot elections may be used in the county. The board of county commissioners shall conduct subsequent elections in the manner determined by a majority vote of the qualified electors of the county.

2082

3. A mail ballot election must include city elections administered by the county auditor and may include any other election administered by the county auditor pursuant to an agreement with the governing body of a political subdivision within the county. The board shall designate one or more polling places in the county to be open on the day of the election for voting in the usual manner. The county auditor shall place a notice at all polling places in the county used at the last statewide election which states the location of the polling places open for the election. The county auditor shall keep a record of each mail ballot provided to qualified electors and provide to the election board at each polling place open on the day of the election a list of every person who applied for a mail ballot.

SECTION 2. APPLICATION. A county that is conducting elections by mail ballot before August 1, 2011, may continue to conduct elections by mail ballot."

Renumber accordingly

Date: 2-17
Roll Call Vote #: 6

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

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. K. Koppelman Seconded By Rep. R. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson			Rep. Kilichowski		
Vice Chairman Hatelstad			Rep. Shirley Meyer		
Rep. Beadle			Rep. Mock		
Rep. Devlin			Rep. Zaiser		
Rep. Heilman					
Rep. Klemin					
Rep. Koppelman					
Rep. Kretschmar					
Rep. Maragos					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Unanimous
Vote
Carried*

Date: 2-17-11
Roll Call Vote #: 7

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1431

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider _____

Motion Made By Rep. Kilichowski Seconded By Rep. Kretschmar

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad		✓	Rep. Shirley Meyer	✓	
Rep. Beadle	✓		Rep. Mock	✓	
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman		✓			
Rep. Klemin		✓			
Rep. Koppelman		✓			
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch		✓			

Total (Yes) 7 No 5

Absent 2

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

HB 1431: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HB 1431 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 4 of section 16.1-02-05, section 16.1-05-06,"

Page 1, line 2, remove "subdivision a of subsection 2 of section 16.1-07-15, and"

Page 1, line 3, remove "the canvassing of ballots of voters whose eligibility to vote has"

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3. A mail ballot election must include city elections administered by the county auditor and may include any other election administered by the county auditor pursuant to an agreement with the governing body of a political subdivision within the county. The board shall designate one or more polling places in the county to be open on the day of the election for voting in the usual manner. The county auditor shall place a notice at all polling places in the county used at the last statewide election which states the location of the polling places open for the election. The county auditor shall keep a record of each mail ballot provided to qualified electors and provide to the election board at each polling place open on the day of the election a list of every person who applied for a mail ballot.

SECTION 2. APPLICATION. A county that is conducting elections by mail ballot before August 1, 2011, may continue to conduct elections by mail ballot."

Renumber accordingly

2011 TESTIMONY

HB 1431

ALVIN A. JAEGER
SECRETARY OF STATE

PAGE www.nd.gov/sos



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

#1
PHONE (701) 328-2900

FAX (701) 328-2992

E-MAIL sos@nd.gov

February 3, 2011

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

FR: Al Jaeger, Secretary of State

RE: HB 1431 – Relating to Voter Affidavits, Early Voting, and Vote by Mail

Sections 1 and 2, pages 1 through 4: While the intent of these two sections appears to be related to making sure only qualified electors cast a ballot, the mechanics of how this is accomplished is not clear.

Section 3, page 4, line 8: The number of days that early voting precincts could be open is reduced from fifteen to seven days.

Section 4, page 4, lines 17 through 23: The change appears to only apply to counties of a population of less than 15,000, whereby the citizens would be required to submit petitions containing the signatures of ten percent of the qualified electors based on a vote held in a previous election. As written, it appears to allow county commissions in counties of more than 15,000 population to make that decision without having a petition submitted to them.

Based on the effective date legislative bills become law (August 1, if this bill is passed), the 25 counties that used vote by mail in the last election cycle would not be able to use it for the June 2012 election because the matter would first have to be placed on the ballot in that election. Now, this decision is based on local control.

For reference purposes, I have attached a breakdown by county as to how votes were cast in the last election.

County	Early Voting Turnout
Burleigh	3153
Cass	10925
Grand Forks	2869
Morton	1004
Stark	1976
Stutsman	1984
Ward	1192
TOTAL	23103

County	Total Ballots Cast	Affidavits	Absentee Ballots Cast
Adams	1203	1	600
Barnes	4801	0	1045
Benson	1810	0	1215
Billings	512	41	128
Bottineau	2998	46	1649
Bowman	1472	38	182
Burke	796	0	618
Burleigh	32831	574	6252
Cass	48791	2300	6302
Cavalier	1868	0	1079
Dickey	2043	2	369
Divide	912	0	224
Dunn	1574	25	371
Eddy	1028	0	217
Emmons	1580	0	1081
Foster	1479	0	648
Golden Valley	751	3	203
Grand Forks	20481	987	2808
Grant	1173	0	941
Griggs	1147	0	733
Hettinger	1179	0	170
Kidder	1171	0	690
LaMoure	2105	0	1238
Logan	981	0	695
McHenry	2374	1	2138
McIntosh	1401	20	925
McKenzie	2193	7	391
McLean	3987	12	796
Mercer	3676	0	3157
Morton	9975	25	1557
Mountrail	2189	32	381
Nelson	1590	0	1330
Oliver	910	0	238
Pembina	2693	5	2303
Pierce	1955	5	550
Ramsey	4249	31	2526
Ransom	1901	27	1232
Renville	1064	3	214
Richland	5690	40	896
Rolette	4087	8	354
Sargent	1624	7	1219
Sheridan	786	0	548
Sioux	807	0	112
Slope	343	1	85
Stark	7793	0	1296
Steele	911	0	710
Stutsman	7853	400	1491
Towner	1044	0	641
Traill	3100	0	1742
Walsh	4120	0	3154
Ward	19296	87	3456
Wells	2206	8	511
Williams	6373	86	2004
TOTAL	240876	4822	65415

#2

**Written Testimony To
THE HOUSE POLITICAL SUBDIVISION COMMITTEE
Thursday, February 3, 2011 by
Michael Montplaisir, Cass County Auditor
Cass County Government**

REGARDING HOUSE BILL 1431

Chairman Johnson and committee members my name is Michael Montplaisir and I am the County Auditor in Cass County. I am here today to give testimony on House Bill 1431.

Sections 1 and 2 of House Bill 1431 establish a requirement for a provisional ballot in North Dakota elections. House Bill 1431 requires a voter using an affidavit to vote to then bring proof of their voting residence to the county auditor's office within three days following the election, which raises a couple of problems. The other part of House Bill 1431 that really affects voters is the change on page 4 line 8 from fifteen days to seven days for early voting precincts.

Affidavits

In our experience in Cass County, voters normally have documentation showing their residential address. In the last General Election, we had 48,774 voters, and of those, 1,725 voted by affidavit or a little over 3.5 percent. In the 2008 General Election, we had 71,965 voters and of those, 4,062 voted by affidavit, or a little over 5.6%. Following the election we send out a mailing, as required by law, to individuals who voted by affidavit and follow up on any that are either returned as undeliverable or when people who received them call and say the person doesn't live there anymore. Of the 1,725 people who voted by affidavit in the last election, our office is still doing investigation on one voter—only one voter out of 1,725 may not have been an eligible voter.

We also have the problem of the voter who voted by absentee ballot. Absentee voters are also voting by affidavit and they don't need to present any identification; they simply sign an affidavit on the back of the ballot envelope. Are the same procedures going to be followed for people who vote by absentee ballot? If not, we are creating a system in which all voters are not treated the same.

Early Voting Precincts

The other area of House Bill 1431 that causes a large problem in Cass County is the change from fifteen days to seven days for the early voting precincts. In Cass County, early voting has become an extremely popular way for county residents to cast their ballot. We vary the length of time the early voting

precincts are open based on expected voter turnout and available space. Going with seven days as House Bill 1431 provides effectively reduces the number of days available for early voting to four, Tuesday through Friday, the week before the election.

In 2008, 20,744 people voted at our early voting precinct. We opened that precinct fifteen days before the election, and ran it Monday through Thursday each week; we were precluded from using the site on Fridays because of large events scheduled at the facility. We also ran it the Monday before the election for a total of nine days. Voting was very orderly and the facility was great; however, we really overtaxed the facility.

In 2010, we had 10,925 people that used our early voting precincts; we expected fewer voters than in 2008, so we scheduled the early voting precinct to run fewer days. We opened two additional early voting precincts, one in West Fargo and one in Casselton, to better serve our voters and get any problems worked out before the next presidential election. We opened up eight days before the election and ran Monday through Friday, so we were open a total of five days. Early voting precincts work. Early voting precincts are popular with voters. Early voting precincts are much more secure than absentee voting—the election worker sees the voter face-to-face and knows that the voter is casting the ballot; you can't say the same for absentee voting.

Summary

The provisional ballot process will most likely lead to eligible voters losing their right to have their vote counted—disenfranchising hundreds, if not thousands, of voters. In addition, the inequity of treating different classes of people who vote by affidavit (absentee voters vs. in-person voters) differently causes me great concern. The shorter time available for early voting precincts will cause a shift from the early voting precinct to absentee voting, a more costly and less secure alternative. Taking in account these proposed changes and the proposed changes in the mail ballot elections, it appears to me that we are going backwards in making voting accessible when we should be making it easier for our citizens to cast their ballot.

I urge a do not pass on House Bill 1431.

**TESTIMONY TO THE
HOUSE POLITICAL SUBDIVISIONS COMMITTEE**

Prepared by Kevin J. Glatt, Burleigh County Auditor\Treasurer

2/3/11

HOUSE BILL 1431

Mr. Chairman and members of the Committee I wish to submit testimony today in opposition to HB1431.

Mr. Chairman and Committee Members the crux of the matter is RESIDENCY. Voting residence in ND has during my tenure been defined as the union of act and intent. I may move to another residence, but if my intent is to return I can continue to vote at the former precinct. Furthermore, I do not lose my voting precinct until I vote in a new precinct (action). If I move but do not vote in my new precinct, I can continue voting in my former precinct.

During the past three (3) general elections Burleigh County has averaged 574 voter affidavits for various reasons. Election workers are instructed if an elector cannot provide ID or the ID is different than the address being used for voting purposes, to request the elector to execute an affidavit.

This proposal leads me to question how many people will execute an affidavit and not come to the auditor's office within three (3) days? And therefore, how many electors will be disenfranchised by this legislation?

Mr. Chairman and members of the Committee, until ND adopts a definition of voting residence, I do not believe this legislation will accomplish what is desired.