

**Sixty-fifth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1363  
(Representatives Dockter, Steiner)

AN ACT to create and enact subsection 3 of section 16.1-04-01 of the North Dakota Century Code, relating to election precincts; to amend and reenact section 1-08-09, subsections 2 and 5 of section 16.1-01-01, sections 16.1-04-02 and 16.1-05-01, subsection 3 of 16.1-05-07, section 16.1-05-08, subsection 2 of 16.1-06-16, and sections 16.1-07-15, 16.1-10-06, 16.1-11-20, 40-02-10, 44-02-05, 44-02-07, and 44-02-08 of the North Dakota Century Code, relating to election polling places and filling vacancies in elective offices; to repeal section 16.1-04-03 of the North Dakota Century Code, relating to election administration; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

**1-08-09. Service of civil process within boundary of an open polling location place.**

During any primary, general, or special election held in this state, or in any district, county, city, or precinct, civil process may not be served on any person entitled to vote at the election within one hundred feet [30.48 meters] from the outermost entrance leading into the building or facility in which a polling place is located and open for voting.

**SECTION 2. AMENDMENT.** Subsection 2 of section 16.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

2. In addition to other duties provided elsewhere by law, the secretary of state shall:
  - a. Develop and implement uniform training programs for all election officials in the state.
  - b. Prepare information for voters on voting procedures.
  - c. Publish and distribute an election calendar, a manual on election procedures, and a map of all legislative districts.
  - d. Convene a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state to discuss uniform implementation of state election policies.
  - e. Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments.
  - f. Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
  - g. Require such reports from county auditors on election matters as deemed necessary.
  - h. Certify results of statewide elections.
  - i. Prepare and publish reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.

- j. Establish standards for voting precincts and polling ~~locations~~places, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including but not limited to, ballots, pollbooks, and reports.
- k. Prescribe the order in which each political subdivision will appear on an election ballot.
- l. Develop and conduct a test election for the state's voting system prior to each statewide election utilizing the votes cast within each county according to the logic and accuracy testing required in section 16.1-06-15.

**SECTION 3. AMENDMENT.** Subsection 5 of section 16.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- 5. In addition to other statutory duties, the county auditor shall:
  - a. Procure and distribute supplies required for voting in the county.
  - b. Prepare and disseminate voter information as prescribed by the secretary of state.
  - c. Fully comply with the test election required of this section.
  - d. Carry out uniform training programs for all county and precinct election officials as prescribed by the secretary of state.
  - e. Provide completed reports on election matters as required by the secretary of state.
  - f. Attend, or send a designee to attend, state election conferences convened by the secretary of state.
  - g. Comply with the form of the ballot as prescribed by state law and the secretary of state.
  - h. Comply with the standards for voting precincts and polling locations, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including ballots, pollbooks, and reports as established by the secretary of state.
  - i. Assist with investigations initiated by the secretary of state under this section.
  - j. Receive and handle complaints referred to the county auditor by any voter or precinct official involving circulation of petitions, challenges to voters, actions of election officials, or irregularities of any kind in voting. The county auditor shall refer complaints to the secretary of state or the proper prosecuting authority, as the county auditor deems appropriate.

Upon completion of the duties required by this subsection, the county auditor shall certify to the secretary of state, in the manner prescribed by the secretary of state, that the duties have been completed. A knowing violation of this subsection is an offense under section 12.1-11-06.

**SECTION 4.** Subsection 3 to section 16.1-04-01 of the North Dakota Century Code is created and enacted as follows:

- 3. The precincts may not be established later than December thirty-first of the year immediately preceding an election cycle and not later than seventy days before a special election.

**SECTION 5. AMENDMENT.** Section 16.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-04-02. ~~Voting~~ Polling places - Duties and responsibilities of the board of county commissioners or the governing body of the city.**

The board of county commissioners of each county:

1. Shall designate one or more ~~voting~~polling places for each precinct and ~~may alter the voting places when there is a good and sufficient reason.~~ However, the ~~voting~~polling places for precincts located within the boundaries of any incorporated city must be designated, and altered if required, by the governing body of the city. Polling places may not be designated later than the sixty-fourth day before an election.
2. Shall provide that all ~~voting~~polling places are accessible to the elderly and the physically disabled.
3. May utilize vote centers that contain all of the precincts in a county so that any qualified elector of the county may choose to cast a ballot in that polling ~~location~~place. Qualified electors may vote early at early voting precincts, by absentee ballot, at a polling ~~location~~place of their residential precinct, or at a county vote center. Vote center polling places must serve as a designated polling place for at least one precinct in the county in addition to serving as the site where any county voter may cast a ballot. ~~An individual voting or attempting to vote more than once in any single election is guilty of a class A misdemeanor.~~
4. May change the location of a polling place previously established by the sixty-fourth day immediately preceding an election when there is good and sufficient reason. When a polling place is changed under this provision, the name and location of the new polling place must be prominently posted on or near the main entrance of the prior polling place on the date of the first election held following the change.

**SECTION 6. AMENDMENT.** Section 16.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-01. Election officers.**

At each primary, general, and special statewide or legislative district election, and at county elections, each polling place must have an election board in attendance. The election board must consist of an election inspector and at least two election judges. Counties utilizing polling places containing more than one precinct may choose to use one election board to supervise all precincts even if the precincts are within different legislative districts so long as each district chairman of each qualified political party is given the opportunity to have representation on the election board if desired.

1. The election inspector must be selected in the following manner:
  - a. Except as provided in subdivision b, in all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and fill all vacancies occurring in those offices.
  - b. In all multiprecinct polling ~~locations~~places containing both rural and city precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
  - c. The election inspector shall serve until a successor is named. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy.

All appointments required to be made under this section must be made at least forty days preceding an election.

2. The election judges must be appointed in the following manner:
  - a. Except as provided in subdivision b:

- (1) The election judges for each polling place must be appointed in writing by the district chairs representing the two parties that cast the largest number of votes in the state at the last general election. In polling places in which over one thousand votes are cast in any election, the county auditor may request each district party chair to appoint an additional election judge.
  - (2) The district party chair shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least forty days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges. If the county auditor has exhausted all practicable means to select judges from within the boundaries of the precincts within the polling place and vacancies still remain, the county auditor may select election judges who reside outside of the voting precinct but who reside within the polling place's legislative districts. If vacancies still remain, the county auditor may select election judges who reside outside of the legislative districts but who reside within the county.
- b. For special elections involving only no-party offices, the election official responsible for the administration of the election with the approval of the majority of the members of the applicable governing body shall appoint the election judges for each polling ~~location~~place.
3. If at any time before or during an election, it appears to an election inspector, by the affidavit of two or more qualified electors of the precinct, or precincts for a multiprecinct polling place, that any election judge is disqualified under this chapter, the inspector shall remove that judge at once and shall fill the vacancy by appointing a qualified individual of the same political party as that of the judge removed. If the disqualified judge had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.
  4. The election official responsible for the administration of the election, with the approval of the majority of the members of the applicable governing body, shall appoint the poll clerks for each polling place. However, no fewer than two poll clerks must be appointed for each polling place. Poll clerks must be appointed based on their knowledge of election matters, attention to detail, and on any necessary technical knowledge.

**SECTION 7. AMENDMENT.** Subsection 3 of section 16.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct or who does not meet the thirty-day residency requirement to the proper precinct and ~~voting location~~polling place.

**SECTION 8. AMENDMENT.** Section 16.1-05-08 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-05-08. County auditor to provide election board members with precinct maps or precinct finder.**

The county auditor shall provide each precinct election board with an accurate precinct map or precinct finder to assist the election board member in determining whether an address is located in that precinct and for determining which precinct and polling ~~location~~place to which to direct an individual who may be attempting to vote incorrectly in that precinct.

**SECTION 9. AMENDMENT.** Subsection 2 of section 16.1-06-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Deliver to the inspector in each precinct or cause to be delivered in a secure manner to the polling ~~location~~place no later than the day before the election the number of ballots, pollbooks, ballot boxes, voting equipment, forms of oaths, and other election supplies as the county auditor determines necessary.

**SECTION 10. AMENDMENT.** Section 16.1-07-15 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-15. Early voting precinct - Election board appointment - Closing and canvassing.**

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixty-fourth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to chapters 16.1-13 and 16.1-15. At the determination of the county auditor, more than one ~~voting location~~polling place may be utilized for the purposes of operating the early voting precinct. The election board of the early voting precinct must be known as the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners establishes an early voting precinct according to this section, the following provisions apply:
  - a. Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the early voting center locations, dates, and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election.
  - b. The county auditor shall appoint the early voting precinct election board for each ~~early voting location~~polling place that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
  - c. The county auditor, with the consent of the board of county commissioners, shall designate each early voting ~~location~~polling place in a public facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02. With respect to polling places at early voting precincts, "election day" as used in sections 16.1-10-03 and 16.1-10-06.2 includes any time an early voting precinct polling place is open.
  - d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board, shall secure all election-related materials, including:
    - (1) The pollbooks and access to any electronically maintained pollbooks.
    - (2) The ballot boxes containing voted ballots.
    - (3) Any void, spoiled, and unvoted ballots.
  - e. Ballot boxes containing ballots cast at an early voting ~~location~~polling place may not be opened until the day of the election except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box in order to make room for additional ballots.
  - f. Each early voting ~~location~~polling place may be closed, as provided in chapter 16.1-15, at the end of the last day designated for early voting in the county. Results from the early

voting precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.

- g. The early voting precinct election board shall comply with the requirements of chapters 16.1-05, 16.1-13, and 16.1-15, as applicable.

**SECTION 11. AMENDMENT.** Section 16.1-10-06 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-10-06. Electioneering within boundary of an open polling ~~location~~place.**

1. An individual may not ask, solicit, or in any manner try to induce or persuade, any voter within a polling place or within one hundred feet [30.48 meters] from the entrance to the room containing a polling place while it is open for voting to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are displayed on fixed permanent billboards, may not, however, be deemed a violation of this section.
2. A vehicle or movable sign of any type containing a political message as described in subsection 1 may be allowed to remain within the restricted area only for the period of time necessary for the owner or operator of the vehicle or sign to complete the act of voting.
3. Except as provided in subsection 1, a sign placed on private property which displays a political message may not be restricted by a political subdivision, including a home rule city or county, unless the political subdivision demonstrates a burden to the public safety.

**SECTION 12. AMENDMENT.** Section 16.1-11-20 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-11-20. Certified list of nominees transmitted to county auditor by secretary of state.**

At least fifty-five days before any primary election, the secretary of state shall electronically transmit to each county auditor a certified list containing the names ~~and post-office addresses~~ of each person for whom nomination papers have been filed in the secretary of state's office and who are entitled to be voted for at the primary election. A designation of the office for which each is a candidate, and if applicable, the party or principle represented by each must be included.

**SECTION 13. AMENDMENT.** Section 40-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**40-02-10. Election returns - To whom made - Duty of board of county commissioners.**

The election officials acting in each place in which votes are cast in an election held under this chapter shall return to the board of county commissioners which ordered the election a verified statement of the results of the election showing the number of votes cast for and against incorporation at their ~~voting~~polling place. The returns shall be verified by the affidavit of the election officials. The returns shall be canvassed by the board of county commissioners, and the results of the canvass and of the election shall be entered upon the minutes of the proceedings of such board. If a majority of the votes cast on the question at the election favored incorporation, the board shall make an order declaring that the territory described in the petition has been incorporated as a city under the council form of government or as a city under the commission system of government, as the case may be, by the name described in the petition, stating that name, and shall cause the order to be entered in the

minutes of its proceedings. If the territory is located in more than one county, a certified copy of such order shall be submitted immediately to each of the other counties within which a portion of the territory described in the order is situated. The auditor of each county to which a certified copy of the order is submitted shall make a record ~~thereof~~ of the order in the minutes of the board of county commissioners of such county.

**SECTION 14. AMENDMENT.** Section 44-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**44-02-05. Vacancy in board of county commissioners - How filled.**

When a vacancy occurs in the board of county commissioners, the remaining members of the board immediately shall appoint some suitable person to fill the vacancy from the district in which the vacancy occurred. If a majority of the officers fails to agree upon a person to fill the vacancy, the county treasurer or, if the county does not have an elected treasurer, another elective county officer must be called in and shall act as an additional member of the board to fill the vacancy. The appointee holds office until the appointee's successor is elected at the next general election that occurs at least ~~sixty~~ ninety-five days after the vacancy and the successor has qualified.

**SECTION 15. AMENDMENT.** Section 44-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**44-02-07. Brief vacancy not to be filled - Exception.**

If a vacancy occurs within ~~sixty~~ ninety-five days previous to an election at which it may be filled, no appointment may be made unless it is necessary to carry out such election and the canvass of the same according to law. In such case an appointment may be made at any time previous to such election to hold until after such election or until the appointee's successor is elected and qualified.

**SECTION 16. AMENDMENT.** Section 44-02-08 of the North Dakota Century Code is amended and reenacted as follows:

**44-02-08. Appointment to be made in writing - Term.**

Any appointment to fill a vacancy under this chapter must be made in writing, and, except as otherwise expressly provided by law, continues in force until the first general election that occurs at least ~~sixty~~ ninety-five days after the vacancy, when the vacancy will be filled by election, and thereafter until the appointee's successor by election is qualified.

**SECTION 17. REPEAL.** Section 16.1-04-03 of the North Dakota Century Code is repealed.

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Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1363.

House Vote:      Yeas 89              Nays 3              Absent 2

Senate Vote:    Yeas 47              Nays 0              Absent 0

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2017,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State