

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1497
(Representatives Grande, Belter, DeKrey, Timm)
(Senators Christmann, Klein)

AN ACT to amend and reenact sections 15.1-09-11, 16.1-06-04, 16.1-06-05, 16.1-06-06, 16.1-06-07.1, 16.1-06-08, 16.1-06-09, 16.1-06-18, 16.1-11-22, 16.1-11-24, and 16.1-11-35, subsection 1 of section 16.1-12-02.2, and sections 16.1-13-20, 16.1-13-22, 16.1-13-23, 16.1-13-25, and 16.1-15-08 of the North Dakota Century Code, relating to election process administration; and to repeal section 16.1-13-26 of the North Dakota Century Code, relating to election process administration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-11 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-11. School district elections - Preparation of ballots –Stickers.

1. At least twenty days before the election, the business manager shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all individuals who have indicated their intent to be candidates by meeting the provisions of section 15.1-09-08. The business manager shall ~~determine by lot, in the presence of the candidates or their representatives, the arrangement of the candidates' names upon the ballot~~ notify the candidates as to the time and place of the drawing for position on the ballot.
2. The ballot must be nonpartisan in form and include:
 - a. The words "official ballot" at the top;
 - b. The name of the school district;
 - c. The date of the election;
 - d. The number of persons to be elected to each office; and
 - e. Below the list of candidates for each office, blank spaces in which names not printed on the ballot may be written.
- ~~3. An individual who wishes to be a candidate for election, is qualified to hold office, and has failed to meet the filing requirements of section 15.1-09-08 may provide stickers to be attached to the official ballot by the electors. A sticker must have the name and address of the individual printed on it. The sticker may not be more than one-half inch [12.7 millimeters] in height.~~

SECTION 2. AMENDMENT. Section 16.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under this title ~~for use in precincts in which electronic voting systems are not used~~ must:

- ~~1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.~~

- 2. Be printed on uniform quality and color of paper in an ink color suitable to make the ballot clearly legible and compatible with the electronic voting system requirements necessary to tabulate the votes.
- ~~3.~~ 2. Be of sufficient length to contain the names of all candidates to be voted for at that election.
- 4. 3. Have the language "Vote for no more than _____ name (or names)" placed immediately under the name of each office.
- 5. 4. Have printed thereon ~~"Place a cross mark (X) by the name of the person for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."~~ "To vote for the candidate of your choice, you must darken the oval opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval opposite the space provided."
- 6. 5. Leave sufficient space for each office to write ~~or paste~~ a name, or names, as the case may be, in lieu of those printed on the ballot.
- 7. 6. ~~Provide a space enclosed in a square in which the voter may designate by a cross or other mark the voter's choice for each candidate opposite the name of that candidate, and the space must precede or follow the candidate's name on the same line in a uniform manner. Immediately preceding and on the same line as the name of each candidate must be printed an oval in which the voter is to mark the voter's choice by darkening the oval next to the name of the candidate chosen.~~
- 8. 7. ~~Provide a space enclosed in a rectangle and have printed next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted." If a stamp with an inkpad is not required under section 16.1-06-18, the language next to the rectangle must be: two text boxes in the bottom right-hand corner of the party ballot. The first text box is to contain the words "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted." The second text box is to contain the words "Official Ballot", the name of the county, the name or number of the precinct or the word "precinct" preceding a blank line upon which the judge or the inspector shall write the name or number of the precinct, the date of the election, and the word "initials" preceding a blank line where the judge or inspector shall initial the ballot.~~

All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted

Official Ballot
 _____ County
 _____ Precinct
 _____ (Date of the Election)
 _____ Initials _____

Any precinct that uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

~~In precincts in which electronic voting systems are used, the~~ The ballot must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot must ~~otherwise~~ be arranged in a manner and form approximating as far as possible the requirements of this section.

SECTION 3. AMENDMENT. Section 16.1-06-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-05. Form of general election ballot. The official ballots provided for in this title for partisan election at general elections ~~in precincts in which electronic voting systems are not used~~ must be prepared as follows:

1. The ballots must be of sufficient length and width to contain a continuous listing of the designation of all the offices to be voted for.
2. On the top left-hand side of such ballot must begin a continuous listing of the designation of each office to be voted for, and under the designation of each office all of the names of the candidates duly nominated for that office must be printed.
3. The names of candidates nominated for each office must appear under the designation of that office, and under each candidate's name must appear, in smaller type, the appropriate party designation for each candidate. Where a candidate has been nominated by petition, the designation under that candidate's name, in smaller type, must be "independent nomination".
4. The names of candidates under the designation of each office must be alternated in the printing of the official ballot in the same manner as is provided for the primary election ballot.
5. The size of type must be as specified by the secretary of state.

~~In precincts in which electronic voting systems are used, the~~ The list of offices and candidates and the statements of measures and questions to be submitted to the voters must be arranged on the ballot in a manner and form approximating as far as possible the requirements of this section.

SECTION 4. AMENDMENT. Section 16.1-06-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-06. General election ballots for persons authorized to vote for presidential electors only - Prepared separately - General law governs. In addition to the ballots prepared pursuant to section 16.1-06-05, ballots must be prepared containing only the names of duly certified candidates for presidential electors for use by persons authorized to vote for those offices by law. The provisions of this title regarding the preparation, form, arrangement of names, ~~delivering, and stamping and delivering~~ of ballots must govern in regard to the general election ballot prepared pursuant to this section. The ballots prepared pursuant to this section must be delivered to electors who qualify only to vote for presidential electors pursuant to sections 16.1-14-18 and 16.1-14-19.

SECTION 5. AMENDMENT. Section 16.1-06-07.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-07.1. Arrangement of names on ballot - Presidential electors. In presidential election years the ballot provided for in section 16.1-06-05 must include the designation of the office of president and vice president as the first listing of the continuous listing of the designation of each office to be voted for. The names of presidential electors, presented in one certificate of nomination, must be arranged in a group enclosed in brackets under the designation of the office of president and vice president ~~on the right side of the ballot column~~. To the ~~right~~ left and opposite the center of each group of electors' names must be printed in bold type the surname of the presidential candidate represented and in line with such surname must be placed a single ~~square~~ oval. A mark within such ~~square~~ oval ~~by the voter~~ must be designated as a vote for all the electors. The appropriate party designation must appear, in smaller type, under the surname of the presidential candidate represented.

SECTION 6. AMENDMENT. Section 16.1-06-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-08. No-party ballot at general elections - Contents - Delivered to elector. There must be a separate no-party ballot at the general election upon which must be placed the names of all

candidates who have been nominated on the no-party primary ballot at the primary election. Such ballots must be in the same form as the no-party primary ballot and must be delivered to each elector by the proper election official. ~~In precincts in which electronic voting systems are used, The separate ballot may be on the same paper or electronic ballot, but~~ the list of offices and candidates must be entitled "no-party ballot" in a manner to clearly indicate the separation of the no-party list of offices and candidates from the party list of offices and candidates.

SECTION 7. AMENDMENT. Section 16.1-06-09 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-09. Constitutional amendments and initiated and referred measures - Manner of stating question - Explanation of effect of vote - Order of listing. Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, must, unless otherwise determined by the secretary of state, be stated in full in a legible manner on the ~~paper ballot or the ballot card when using an electronic voting system purchased after June 30, 1985, and the ballot label when using an electronic voting system purchased before July 1, 1985.~~ If the secretary of state concludes the amendment or measure is too long to make it practical to print in full, the secretary of state in consultation with the attorney general shall cause to be printed a short, concise summary, which must fairly represent the substance of the constitutional amendment or initiated or referred measure. After the foregoing statement, the secretary of state shall cause to be printed another short, concise statement of the effect of an affirmative or negative vote on the constitutional amendment or initiated or referred measure. This explanatory statement must be drafted by the secretary of state in consultation with the attorney general. The words "Yes" and "No" must be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with a ~~square formed of black lines after an oval before~~ each statement in which the voter ~~may is to indicate by a cross or other mark~~ how the voter desires to vote on the question ~~by darkening the oval~~. Where two or more amendments or questions are to be voted on, they must be printed on the same ballot.

The measures to be submitted to the electors must be grouped and classified as constitutional measures, initiated statutes, or referred statutes and must be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly must be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures must be numbered consecutively, without regard to the various groups or classifications.

SECTION 8. AMENDMENT. Section 16.1-06-18 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-18. Delivery of ballots –Official stamp delivered. At the ~~meeting precinct election officials' training sessions~~ provided for in section 16.1-05-03, the county auditors shall deliver, or cause to be delivered, by mail or other reliable method, to the inspector of elections in each precinct the official ballots, if available. The ballots must be delivered in sealed packages marked plainly on the outside designating the number of ballots enclosed and the precinct for which the ballots are intended. ~~The county auditor shall deliver or cause to be delivered to the inspector, or if that is impracticable, to one of the election judges of the precinct, a stamp and inkpad for the purpose of stamping each ballot with the words "official ballot" and the name or number of the precinct, the name of the county, the date of the election, and providing for a blank line preceded by the word "initials" for the purpose of providing a space where the judge or inspector shall initial the ballot. The stamp and inkpad are not required if that information is preprinted on the ballot. If the information is preprinted on the ballot, the name or number of the precinct may be replaced by the word "precinct" followed by a blank line where the judge or inspector shall write in the name or number of the precinct. The county auditor shall deliver or cause to be delivered a suitable seal for the purpose of wrapping and sealing the stamp and inkpad at the close of the voting but before the counting of the ballots if a stamp is required. The county auditor also~~

shall deliver or cause to be delivered a suitable seal, which has the name of the county inscribed thereon, for the purpose of sealing the wrapper containing the ballots as provided in section 16.1-15-08.

SECTION 9. AMENDMENT. Section 16.1-11-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-22. Primary election ballot - Form - Voters to vote for candidates of only one party. At the primary election there may be only one ballot for all parties or ~~principals~~ principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot".
2. Each party or ~~principal~~ principle having candidates at the primary election must have a separate column on the ballot; ~~the columns must be separated by a solid six point rule.~~
3. At the head of each column must be printed the name of the political party or ~~principal~~ principle which it represents.
4. In each column below the party or ~~principal~~ principle title must be printed: "You may vote for the candidates of only one party at the primary election. If you cast votes in more than one party column and vote for candidates of more than one party, your party ballot will be rejected."
5. Immediately below the warning against voting for candidates of more than one party must be printed: ~~"Put a crossmark (X) opposite the name of the candidate for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."~~ "To vote for the candidate of your choice, you must darken the oval opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval opposite the space provided."
6. The offices specified in section 16.1-11-26 must be arranged in each column with the name of each office in the center of each party column at the head of the names of all the aspirants for the office.
7. Immediately under the name of each office must be printed: "Vote for no more than _____ name (or names)."
8. ~~At the side of the name of each aspirant and in a column must be printed a square or other figure for making a crossmark or other mark. No squares or other figures may be printed at the head of the ballot. Immediately preceding and on the same line as the name of each aspirant must be printed an oval in which the voter is to mark the voter's choice by darkening the oval next to the name of the candidate chosen.~~
9. The political party or ~~principal~~ principle which cast the largest vote for governor at the most recent primary election at which the office of governor was voted upon must have the left-hand column, and the party or ~~principal~~ principle casting the next largest vote must have the next column, and so on.

The judges and the inspector of elections shall inform each elector at the primary, before voting, that if the voter votes for candidates of more than one party the voter's party ballot will be rejected.

SECTION 10. AMENDMENT. Section 16.1-11-24 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-24. No-party primary ballot - Contents. There must be a separate ballot at all primary elections which must be entitled "no-party primary ballot". The names of aspirants for nomination to each office must be arranged on the no-party primary ballot in separate groups in their order. ~~In precincts in which voting machines are used,~~ The separate ballot may be on the same paper

or electronic ballot, but the list of offices and candidates must be entitled "no-party primary ballot" in a manner to indicate clearly the separation of the no-party list of offices and candidates from the party list of offices and candidates. The names of all candidates for any of the offices mentioned in section 16.1-11-08 must be placed on the ballot without party designation. Immediately under the name of each office must be placed the language "Vote for no more than _____ name (or names)." The number inserted must be the number to be elected to the office at the next succeeding general election.

SECTION 11. AMENDMENT. Section 16.1-11-35 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-35. Nominations by stickers write-in. ~~On both the party and the no party ballot, a candidate may be nominated by having the candidate's name written on the ballot or by a printed sticker being placed in a blank line left for that purpose underneath the group of candidates in each official position. Not more than one name may be written or printed on any sticker. The provisions of this title do not prevent any elector from writing on the paper ballot, or in the case of direct-recording electronic voting system devices, entering by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted according to the provisions for the counting of write-in votes found in section 16.1-12-02.2.~~

SECTION 12. AMENDMENT. Subsection 1 of section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. An election board or canvassing board may not count or be required to officially report any write-in vote for any:
 - a. Person who is required to file a certificate of write-in candidacy under this section but who has not filed a certificate of candidacy and been certified as a write-in candidate.
 - b. Fictitious person, nonperson, or person clearly not eligible to qualify for the office for which the vote was cast.
 - c. Statement concerning the candidates.
 - d. Name written or printed by the voter for an office that did not also include the darkening of the oval next to the write-in line, except that a write-in candidate for a nonfederal office may make a timely written demand to a county canvassing board to identify and preserve any write-in vote cast for the office sought by the write-in candidate for canvass by the board. The candidate shall deliver the demand to the county auditor and a copy to the clerk of district court no later than thirty-six hours before the time the county canvassing board is scheduled to meet. A demand only may be made if the unofficial election results maintained by the county auditor demonstrate that the write-in candidate's known vote total is within the pertinent percentage limits provided in subsection 1 or 2 of section 16.1-16-01 and a statement to that effect is included in the demand. After delivery of the ballots as provided by section 16.1-15-08, the canvassing board shall review the ballots to identify any ballot that contains a write-in vote. The county canvassing board shall tally and canvass any write-in vote in the same manner as lawful or qualifying write-in votes if the canvassing board is able to clearly ascertain the intent of the voter from examining the ballot because the write-in candidate's name has been written on the ballot opposite the office to be voted for or because of any other cogent evidence of intent.
 - e. Write-in votes which constitute five percent or less of the votes cast by the voters for the candidate receiving the most votes for that office, except in the case of a primary election where enough votes were cast as write-in votes to qualify a name for the general election ballot. This percentage is to be calculated based on the total number of write-in votes tabulated by the voting equipment in the precincts of the county in which that office was on the ballot.

- f. Write-in votes that do not need to be individually canvassed based on the requirements of this subsection must be listed on the county canvass report as "scattered write-ins".

SECTION 13. AMENDMENT. Section 16.1-13-20 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-20. Examination of ballot box before opening of polls - Regulations for ballot box while polls are open. Before declaring the polls open, the inspector and the election judges shall inspect the ballot box to assure that it is empty. The ballot box must then be locked. While the polls are open, the ballot box must remain locked except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box to make room for additional ballots.

SECTION 14. AMENDMENT. Section 16.1-13-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-22. Delivering ballot to elector - Stamping Initialing. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been stamped and initialed.

1. ~~The paper ballot is considered stamped if it is either stamped with a stamp and an inepad or has the stamped information preprinted on the paper ballot, as provided in section 16.1-06-18.~~
2. At primary elections, the inspector or judge shall also inform each elector that if the elector splits the party ballot or votes for candidates of more than one party the elector's party ballot will be rejected.
3. 2. Before delivering any paper ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot, if required under subsection 1, the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall initial the ballot. Failure to stamp and initial a paper ballot in the proper place does not invalidate the ballot, but a complete failure to stamp and initial a paper ballot does invalidate the ballot.

SECTION 15. AMENDMENT. Section 16.1-13-23 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-23. Preparation of ballot by elector —Folding - Depositing - Second-chance voting. Upon receipt of a ballot within the provided secrecy sleeve, the elector, forthwith and without leaving the polling place, shall retire alone to one of the voting booths or compartments to prepare the elector's ballot by ~~placing a crossmark (X) or other mark which clearly shows the intention of the elector within the square~~ darkening the oval opposite the name of each person for whom the elector wishes to vote. In the case of a ballot containing a constitutional amendment, an initiated or referred measure, or any other question to be submitted to a vote of the people, the elector shall ~~place the crossmark (X) or other mark within the square~~ darken the oval opposite the word or words expressing the elector's wish. After preparing the ballot, the elector shall ~~fold it so the face of~~ place the ballot back in the provided secrecy sleeve so it is concealed and so the endorsement of the inspector or election judge stamped thereon may be seen. The elector then shall ~~hand the ballot to the judge, who, without opening the same or permitting it to be opened or examined except to ascertain whether it is a single ballot and whether it has been stamped and initialed, shall deposit it the ballot in the optical scanning device and wait to determine if the ballot is deposited into the ballot box or if the optical scanning device has indicated a possibility for a second-chance voting condition. In precincts which use an electronic counting device, the ballot need not be folded before handing the ballot to the judge. If a second-chance voting condition is indicated, a voter may spoil and receive up to two additional ballots. The voter's third ballot must be cast as is even if errors exist causing certain votes not to be counted.~~

SECTION 16. AMENDMENT. Section 16.1-13-25 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-25. Elector may write or paste name on ballot - Counting. The provisions of this title do not prevent any elector from writing or pasting on the paper ballot, or in the case of direct-recording electronic voting system devices, entering by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted ~~the same as if printed on the ballot and marked by the elector~~ according to the provisions for the counting of write-in votes found in section 16.1-12-02.2.

SECTION 17. 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 clerk of the district court. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the election board shall cause the ballots of each kind cast at the election to be placed in a suitable wrapper to form a complete wrapper for the ballots. 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 name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state 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 clerk of the district court. At the meeting of the county canvassing board, the clerk of the district court 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.

SECTION 18. REPEAL. Section 16.1-13-26 of the North Dakota Century Code is repealed.

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 Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1497.

House Vote: Yeas 89 Nays 2 Absent 3

Senate Vote: Yeas 43 Nays 2 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State