

2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1280

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1280
1/29/2021

Relating to nullification of official actions; relating to electronic counting machines, ballots, election procedures, and election contests; relating to electronic voting systems; to provide a penalty; and to provide for retroactive application

Chairman Kasper opened the hearing at 9:20 a.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Election integrity provisions

Rep. Ertelt testified in favor, #4231, #4226.

Jim Silrum, Deputy Secretary of State, testified in opposition, #3805.

Paul Sorum, Fargo, testified neutral.

Chairman Kasper closed the hearing at 10:10 a.m.

Carmen Hart, Committee Clerk



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Sebastian Ertelt

District 26
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COMMITTEES:

Finance and Taxation
Political Subdivisions

January 29, 2021

Chairman Kasper and Members of the House Government and Veterans Affairs Committee,

For the record, I am Representative Sebastian Ertelt representing North Dakota District 26, which includes all of Sargent County, the eastern half of Dickey County, the southern half of Ransom County, and the western half of Richland County.

I come before you today to present and urge a unanimous **DO PASS recommendation on House Bill 1280**.

As you are well aware, the 2020 presidential election brought election practices into the spotlight perhaps more than ever in our country. Regardless of your opinion on the results of the presidential election, I think we can all agree that our election practices are deserving of an honest review. We are not only talking about the integrity of the election for the highest office in the land, but for our congressmen and senators, governor, our positions of state legislators, county commissioners, city commissioners, ballot measures, and more. I don't know how you feel about your own suffrage, but I believe mine is worth protecting.

Although lengthy at 17 pages, the bulk of the length is due to the same changes being spread out over several sections of the Century Code.

Let me step you through the bill with notes substantially provided by Claire Ness with Legislative Council.

Section 1: This section removes references to electronic voting to allow only paper ballots. Due to this change, all references to "electronic voting systems" throughout the Century Code were revised to exclude devices to cast votes electronically, while leaving those to count ballots electronically as you will see in other sections.

Section 2 : On page 2, lines 22-28, current language was intended to provide options for publishing sample ballots in case electronic ballots were to be used in an election. That provision is not required when using only paper ballots.

Sections 3-5: These sections remove references to electronic voting.

Section 6: This section prohibits counting machines from being able to connect to the internet, prohibits them from being able to change or manipulate votes or vote tallies, and requires them to register or record every vote accurately and correctly.

Section 7: This section removes definitions related to electronic voting devices and provides a definition for electronic counting machine to distinguish it from an electronic voting device. I am open to an amendment to this definition, if necessary, to ensure that it includes any external interaction including software updates via flash drives, etc.

Sections 8-11: These sections replace references to electronic voting systems with electronic counting machines to remove the option of using electronic ballots.

Section 11: This section also increases the penalty for knowing violations of the section to a class A felony.

Section 12: This section removes reference to electronic voting devices.

Section 13: Currently, applications for absentee voter ballots may be made available to voters who have not requested the applications. This section would change that so voters must request the applications before the applications can be sent.

Sections 14-18: This section removes a reference to electronic voting.

Sections 19-20: This section replaces a reference to electronic voting systems with electronic counting machines.

Section 21-22: This section removes a reference to electronic voting.

Section 23: This section replaces references to electronic voting systems with electronic counting machines.

Section 24: This section requires ballots to be retained securely until the next election in which the offices on the ballot are contested. This replaces the current retention period of 45 days.

Section 25: This section increases the time during which an election may be contested for certain reasons. The deadline for initiating the contest in those cases is the date on which the ballots for the next general or primary election are printed.

Section 26: This section removes a reference to electronic voting and requires ballots related to an election contest to be retained until the contest is resolved.

Section 27: This section provides that if an elected official is removed due to a court's decision in an election contest, all actions of the official are vacated.

Section 28: This section removes a reference to electronic voting.

Section 29: This section repeals sections governing electronic voting.

Section 30: This section makes the bill retroactive to the primary and general elections held in 2020, which would allow those elections to be contested.

Let's recap.

Only paper ballots – Fraud can be visually detected and displayed.

No counting machines connected to internet – Internet connection opens election to worldwide intervention.

No counting machines able to change or manipulate votes or vote tallies – ES&S machines & software used in all North Dakota counties allow for manipulation as testified to by a forensics expert in Pennsylvania election hearing – it's right in the manual and this brand was used in Philadelphia.

Counting machines must register or record every vote accurately and correctly. – No brainer.

Defines electronic counting machine to distinguish from electronic voting device. – So it doesn't depend on what the meaning of the word is.

Increases penalty for knowing counting machine violations to class A felony. – Yes, our elections are that important.

Absentee ballot applications mailed only upon voter request. – Prevent voting from the grave.

Ballots retained securely until next election in which offices on ballot are contested or until final determination of contest. – Leave a paper trail.

Increases election contestation to date ballots for next general or primary election are printed. – Remove limit on justice being served.

All actions of elected official void if removed by court decision in contested election. – Invalid election yields invalid actions.

While none of these provisions on their own ensure election integrity, they each serve to strengthen it in some measure. And while I strongly encourage the adoption of them all, I would consider it a victory for election integrity if any of these provisions were adopted. We owe it to the qualified electors of North Dakota, to ourselves, and to future generations to ensure free and fair elections to the best of our ability. If we cannot, then the Republic has truly fallen.

Election Equipment used in ND

According to the email from Lee Ann Oliver, Election Specialist, to Representative Ertelt, the entire state of North Dakota uses the same election equipment purchased from the same vender. ND uses the Election Systems & Software (ES&S) DS200, DS450, and the Express Vote.

I reviewed the ES&S website at: <https://www.essvote.com/products/> and noted the following:

- DS200 is a precinct scanner and tabulator that uses digital-imaging technology to support paper-based voting.
- DS450 is a high-throughput scanner and tabulator
- Express Vote is a touch-screen system that produces a paper record for tabulation.

In addition, ND uses hand-marked ballots compared to certain states that utilize paperless election equipment. Thus, in the event of a contested election, ND would have auditable records to support to election results.

A limited internet search related to election voting machine issues identified vulnerabilities and irregularities with ES&S iVotronic DRE, which is a direct reporting electronic voting machine with no paper backup.

- DEFCON 25 Voting Machine Hacking Village *Report on Cyber Vulnerabilities in U.S. Election Equipment, Databases, and Infrastructure*:
 - Among the most vulnerable voting systems are Direct Recording Electronic (DRE) voting machines.
 - Lesson #1: Even with limited resources, time, and information, voting systems can be hacked.
 - Lesson #2: Foreign-made parts introduce serious supply chain concerns.

<https://www.defcon.org/images/defcon-25/DEF%20CON%2025%20voting%20village%20report.pdf>

- Is Technology the Answer? Software Quality Issues in Electronic Voting Systems
 - Issues with South Carolina's paperless ES&S iVotronic DRE.

https://cse.sc.edu/~buell/Public_Data/2019_VotingMachines.pdf

- Scientists said to buy cheaper, safer voter machines. SC spent \$51M on these instead
 - Top scholars prefer hand-marked paper ballot systems vs. paperless voting systems.

<https://www.thestate.com/news/politics-government/election/article246806162.html>

- Vulnerability & Security Assessment Report Election Systems & Software's Unity 3.1.1.0 identified vulnerability and security issues with the DS200.

<https://verifiedvoting.org/wp-content/uploads/2020/08/ESS-red-team-CA-2016.pdf>

- Wisconsin Elections Committee June 20, 2017 approved the use of ES&S software platform, including DS200 and DS450 for use in Wisconsin.

https://verifiedvoting.org/wp-content/uploads/2020/08/es_s_evs_5220_5320_commission_memo_pdf_11654.pdf

Election Equipment used in ND

North Dakota Century Code

- 16.1-01-01(2)(I). The secretary of state shall 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.
- 16.1-06-15. Mandatory testing of electronic voting systems before each election and after tabulation of ballots.
 - 16.1-06-15(1). County auditors perform tests prior to the election.
 - 16.1-06.15(5). After each election, the Secretary of State shall order a random testing of the voting system programming for one precinct in each county...

ALVIN A. JAEGER
SECRETARY OF STATE

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January 29, 2021

TO: Chairman Kasper and Members of the House Government and Veterans Affairs Committee

FR: Jim Silrum, Deputy Secretary of State on behalf of Secretary of State Al Jaeger

RE: HB 1280 – Nullification of official actions taken by removed public official

This bill has many of the same suggested amendments as in HB 1360 and HB 1239. In many of the amended sections, the suggested amendments only change "voting system" to "counting system." As you saw in HB 1253 that was heard in your committee yesterday, the proper terminology is voting system and efforts are suggested to ensure that the NDCC has the proper terminology when referring to the hardware, firmware, and software that are the components of a voting system.

This bill, however, is different in that it includes a new section of law that would be placed into ch. 16.1-16. That new law in Section 27 on page 16 would say, "If a public official is removed from office as the result of a judgment issued by a court in an election contest under this chapter, all actions taken by the public official before being removed must be vacated or nullified." We are uncertain as to how that law could be followed by whoever is required to carry it out. In short, how do you un-ring a bell?

On behalf of the Secretary of State and his election team, we request the committee to vote for a Do Not Pass recommendation.

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1280
2/5/2021

Relating to nullification of official actions; relating to electronic counting machines, ballots, election procedures, and election contests; relating to electronic voting systems; to provide a penalty; and to provide for retroactive application

Chairman Kasper opened the committee work meeting at 10:49 a.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Similar points in HB 1253
- Different points from HB 1253
- Federal regulations

Rep. B. Koppelman moved **Do Not Pass**. **Rep. Schauer** seconded the motion.

Representatives	Vote
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	Y
Representative Jeff A. Hoverson	N
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Greg Stemen	Y
Representative Steve Vetter	Y

Motion passes. 13-1-0. **Rep. Karls** is the carrier.

Chairman Kasper closed the meeting at 10:55 a.m.

Carmen Hart, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1280: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO NOT PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB
1280 was placed on the Eleventh order on the calendar.