

2023 HOUSE POLITICAL SUBDIVISIONS

HB 1314

2023 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1314
1/26/2023

Relating to the prohibition of drop boxes as lawful places of deposit for absent voters' ballots and mail ballots

Chairman Longmuir opened the hearing on HB 1314 at 9:30 A.M. Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, Rep. Hager

Discussion Topics:

- Drop box security
- Locations of drop boxes
- Voter convenience or suppression

Rep. Kasper: Introduced the bill. No written testimony

Opposition:

Donnell Preskey, NDACo: Testimony #17000

Erica Johnsrud, McKenzie County Auditor/Treasurer: Testimony #16960

Brian Nybakken, Secretary of State: Testimony #17034

Additional written testimony:

Rae Porta, District 23: Testimony #17010

Doug Sharbono, Citizen of ND: Testimony #17012

Hearing closed at 10:14 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Room JW327B, State Capitol

HB 1314
1/27/2023

Relating to the prohibition of drop boxes as lawful places of deposit for absent voters' ballots and mail ballots

Chairman Longmuir opened the meeting on HB 1314 at 10:49 A.M. Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, Rep. Hager. Absent: Rep. Klemin

Discussion Topics:

- Election boards
- County auditors flexibility

Rep. Heilman moved a Do Pass;
Seconded by Rep Rios

Representatives	Vote
Representative Donald W. Longmuir	N
Representative Clayton Fegley	N
Representative Jayme Davis	N
Representative LaurieBeth Hager	N
Representative Patrick Hatlestad	N
Representative Matt Heilman	Y
Representative Dawson Holle	N
Representative Jim Jonas	N
Representative Lawrence R. Klemin	A
Representative Mike Motschenbacher	N
Representative Mitch Ostlie	N
Representative Nico Rios	Y
Representative Nathan Toman	Y
Representative Jonathan Warrey	N

Roll Call Vote: 3 Yes 10 No 1 Absent Failed

Rep. Ostlie moved a Do Not Pass;
Seconded by Rep. Hatlestad

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jayme Davis	Y
Representative LaurieBeth Hager	Y
Representative Patrick Hatlestad	Y
Representative Matt Heilman	N
Representative Dawson Holle	N
Representative Jim Jonas	Y
Representative Lawrence R. Klemin	A
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nico Rios	N
Representative Nathan Toman	N
Representative Jonathan Warrey	Y

Roll Call Vote 9 Yes 4 No 1 Absent Carrier: Rep. Ostlie

Meeting closed at 11:01 AM.

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1314: Political Subdivisions Committee (Rep. Longmuir, Chairman) recommends **DO NOT PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1314 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1314

Written Testimony for the
House Political Subdivisions

January 26, 2023

Erica Johnsrud, McKenzie County Auditor/Treasurer



RE: OPPOSITION for HB 1314

Good morning, Chairman Longmuir, and members of the House Political Subdivisions Committee. My name is Erica Johnsrud and I serve as the Auditor/Treasurer for McKenzie County. I stand in opposition of HB 1314.

The title of this bill states it relates to the prohibition of drop boxes as lawful places for ballots to be placed during elections. However, in my review of the bill as currently written, it would allow the use of drop boxes but only if the drop boxes are “secured and under the control of the local election official at all times.”

My main concern with this bill is the definition of the words “under the control.” Possible meanings could include inside a building and accessible only during normal hours of operation, inside the auditor’s physical office, on County property, or that only the Auditor’s Office holds the keys to the drop box. As you can see, this could create issues and confusion for all counties that utilize election drop boxes.

As a County Auditor, and therefore the County Election Official, we have utilized a drop box for the purpose of election ballots for many years. Originally it was a simple drop box on the outside wall of the Courthouse, intended for all types of payments to county departments and after hours absentee ballot drop offs. In 2020 we purchased and installed a larger, more secure drop box outside our Courthouse building, assessable to citizens 24 hours a day, 7 days a week, 365 days a year. While intended only for ballots, we continue to receive tax payments, court documents, and many other drop offs throughout the year. The drop box placement was decided in conversations with the County Commission for best location, taking into account location, visibility, security, and accessibility.

Many voters across North Dakota utilize election drop boxes to return absentee or mail ballots, especially in the weeks leading up to Election Day. Voters have expressed their gratitude for drop box availability and many use it even during normal courthouse hours as it can be more convenient to stop quickly, deposit your ballot, and go on with your day rather than finding a parking spot and coming inside the building. The purpose of the drop boxes is to make it easier for voters to return ballots securely to the county auditor at a time that is convenient for the voter.

This bill, as currently written, will make it more inconvenient for voters to return ballots in the manner the voter determines to be best. With increasing delays and disruptions to the United States Postal Service, counties need to provide voters with the option and ability to return ballots outside of regular county office hours. It is my opinion that the voter should be the one to make the decision on how and when they wish to return their ballot to the County. Voters currently have the ability to track their ballot status online or can call the County Auditor's Office to ensure their ballot was received if the voter has any concerns.

Nothing is more sacred and important to me as an election official than the safety and security of a voter's ballot and their right to vote securely in each and every election. The elimination of drop boxes or restricting locations where drop boxes can be located will be a disservice to the voters. I ask that you leave the decision of drop box locations to the discretion of the local leaders.

I urge a DO NOT PASS recommendation on HB 1314 as written.

Testimony prepared for:
House Political Subdivisions
Donnell Preskey, NDACo
January 26th, 2023



Re: HB 1314 – Restricting use of Drop Boxes

Mr. Chairman and committee members, I'm Donnell Preskey with the North Dakota Association of Counties. In my role at NDACo, I serve as Executive Director of the ND County Auditors Association. County Auditors oppose HB 1314 and request a Do Not Pass Recommendation.

Secure ballot drop boxes have grown to be an appreciated and popular method to return completed ballots by North Dakota voters. Voters like the surety of physically returning their ballot versus putting in the mail. There are drop boxes in every county, and some counties have multiple ballot boxes to make it easier for voters to return the ballot.

In the general 2022 Election, there were 63 ballot drop boxes in North Dakota with multiple sites in six counties (Benson, Billings, Dickey, Hettinger, Slope and Williams). Benson County for example, had four ballot drop boxes these boxes were located in Minnewaukan, Ft. Totten, St. Michael and Tokio. Three of these communities are located on the Spirit Lake Reservation. In looking at the locations across the state, a majority of the secure ballot drop boxes were located outside of courthouses and city halls. They were available 24 hours a day, 7 days a week until 5 p.m. the day before the Election.

It's important to emphasize that in order for the ballots to be counted they are required to be returned in a signed envelope provided to the eligible voter. This is a requirement in order to prevent fraud in our voting system. The envelope has a bar code on it, connecting it to the voter that requested the mail ballot. The signature on the envelope needs to match the signature on the application as well. All steps to ensure the ballot belongs to an eligible voter. This is only one of many fraud prevention elements in place to ensure the integrity of North Dakota's voting system.

County Auditors also oppose this bill due to the vagueness of some of the language in the bill and would seek further clarification.

*If the county auditor or appropriate election officer designates or implements the use of a drop box in an election specified in this title, the drop box must be **secured and under the control of the local election official at all times**. All ballots deposited in a drop box must be collected **by the election official** no less than once per day. Ballots may not be deposited in the drop box after five p.m. on the day before an election.*

“Secured” currently ballots are deposited in locked boxes.

“Under the control” – what defines “under the control”

“of the local election official” – auditors utilize other staff in their office and other county offices to retrieve ballots.

Perhaps a more appropriate method to address the security of ballot boxes is to make it an offense for individuals to tamper with a secure ballot box, similar to what currently exists in relation to mailboxes.

Dear House Political Subdivision Members,

My name is Rae Portra, I live in Trenton, ND, District 23. I am writing in opposition to HB1314.

I was born and raised in Montana, but moved to North Dakota in 1994, at the age of 17 and the day after graduating high school. Every election I've ever voted in has been in North Dakota.

I never paid too much attention to the way our elections were handled until the '16 election. I was told to make sure the number changed after feeding my ballot into the tabulator because they had been having issues with ballots not being counted. I kinda thought, "Well, at least they are aware of the problem and are watching and checking."

Fast forward to '20-'21 when we saw massive changes made to voting. Our community lost in-person voting altogether, and were given illegally implemented Drop Boxes as a replacement. Per Article 1, Section 4 of the US Constitution, "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed, in each state, by the Legislative Branch." The Drop Boxes used in the 2020 election were enacted by Executive Order and should've been referred to the ethics committee since the Governor who signed the order was also a candidate on the ballot of the election in which he changed the rules. I started looking into the Century Code regarding elections and was stunned to see all the changes made after the fact.

I was disappointed when we still didn't have in-person voting for the Primary and asked why. I was told "It's just too darn difficult with these machines." from a woman at another table, "You've had weeks to use that drop box." I was a little taken aback by that response, everyone should be able to vote in-person on election day and if the machines are so difficult, why are we using them? In Nov, once again, I asked why Trenton didn't have in-person voting, and why, of the 3 Districts in Williams County, is District 23 the only District without in-person voting on election day? This time, I was told that we just didn't want one.

Currently North Dakota is ranked 40th for election integrity and HB1314 will only cause that number to drop further. Drop boxes lack transparency and shouldn't take the place of in-person voting. Several elderly members of our community were disenfranchised because they were unable to get to Williston to vote. My foot was crushed in a car accident several years ago and I have a couple rods and about a dozen screws holding my foot together. In November I waited in line for 2 hrs, an hour of that time outside in 10 degree temps. There was no railing to hold on to, no seats along the way for people with mobility issues to use. I barely made it and was in excruciating pain by the time I did, I don't know how the elderly and people worse off than I am were expected to stand that long.

Another issue I have with this bill is that it states "...the drop box must be secured and under the control of the local election official at all times." How is that even possible? Unless the election official camps out at every drop box location there will be times when those boxes will not be under their control. Also, accepting ballots after Election Day as long as they are postmarked

before election day. It's our individual responsibility to make sure our ballot arrives by Election Day and anything received after that date is null and void. The links below better describe the issues associated with the use of ballot drop boxes, lack of voter registration, and loose absentee laws and how they create an opportunity for fraud and other criminal activity. Thank you for your time and consideration, I urge you all to protect our elections and vote no on HB1314.

Sincerely,

Rae Portra

<https://node-3.2000mules.com/>

<https://www.heritage.org/election-integrity/commentary/the-fraud-dare-not-speak-its-name#>

<https://www.williamsnd.com/Elections/>

<https://www.heritage.org/electionscorecard/pages/states/nd.html>

<https://www.maciverinstitute.com/2022/07/supreme-court-drop-boxes-ballot-trafficking-illegal/>

<https://news.yahoo.com/fake-official-drop-boxes-set-142554017.html>

**Do Pass Testimony
of Doug Sharbono, citizen of North Dakota
on HB1314
in the Sixty-eighth Legislative Assembly of North Dakota**

Dear Chairman Longmuir and members of the House Political Subdivisions Committee,

I am writing as a citizen and believe HB1314 is good legislation.

Please give HB1341 a Do Pass Recommendation.

Thank you,

Doug Sharbono
1708 9th St S
Fargo, ND 58103

MICHAEL C. HOWE
SECRETARY OF STATE

WEBSITE sos.nd.gov



PHONE (701) 328-2900
E-MAIL sos@nd.gov

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

HOUSE BILL 1314
JANUARY 26, 2023

HOUSE POLITICAL SUBS COMMITTEE
REPRESENTATIVE DONALD LONGMUIR, CHAIRMAN

TESTIMONY PRESENTED BY

BRIAN NYBAKKEN, SECRETARY OF STATE

Chairman Longmuir and members of the committee, I am Brian Nybakken and I work in the Elections Division of the Office of the Secretary of State. I am here today to provide neutral testimony on House Bill 1314.

The Office of the Secretary of State believes that those who place their completed ballot into a drop box have the right to believe their ballot is securely handled, received, and counted. To date, our office has not heard of any specific issues with drop box usage in counties that would lead anyone to believe voters' ballots have not been securely received by the counties. All North Dakota counties currently use drop boxes as an option for North Dakota voters who wish to cast their vote in this manner.

We believe some of the language in this bill may need greater clarification to ensure its intent is clearly understood. For example, the phrase "drop box must be secured and under the control of the local election official at all times." Is the intent that the drop box should remain in sight of the election official at all times or could this be a drop box on the outside of the building that is secure or comes into a locked office of the election official? Another area that may cause questions is the language specifies that ballots must be collected by the "election official no less than once per day." Does this mean that only the election official can pick up the ballots or is it possible to designate another person to do so? Many counties may utilize a sheriff's deputy or county staff person for this duty.

While we are providing a neutral stance on House Bill 1314, we do believe administration of it would be better served with greater clarity around its intent.