

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2308
(Senators Meyer, Kannianen, K. Roers)
(Representatives Beadle, Grueneich, Vetter)

AN ACT to create and enact a new section to chapter 16.1-15 of the North Dakota Century Code, relating to counting write-in votes; and to amend and reenact sections 16.1-11-12 and 16.1-12-02.2, subsection 1 of section 16.1-12-04, section 16.1-12-07, and subsection 1 of section 16.1-15-08 of the North Dakota Century Code, relating to ballot formats, write-in votes, and certificates of nomination.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-12. ~~County auditor to place applicant's~~ Applicant's name placed on ballot.

1. Upon receipt of the petition or certificate of endorsement provided for in section 16.1-11-06 by the secretary of state and when accompanied by an affidavit as provided in section 16.1-11-10, the secretary of state shall place the name of the applicant on the primary election ballot in the party or appropriate section.
2. Upon receipt of the petition or certificate of endorsement provided for in section 16.1-11-11 by the county auditor and when accompanied by an affidavit as provided in section 16.1-11-10, the county auditor shall place the name of the applicant ~~upon~~ on the appropriate section of the no-party primary election ballot in the party or appropriate column, as the case may be.
3. A candidate whose name was placed on the ballot under this section may have the candidate's name removed from the ballot by submitting a written request to the appropriate filing officer within forty-eight hours after the filing deadline under section 16.1-11-06.

SECTION 2. AMENDMENT. Section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02.2. ~~Counting of write-in votes -~~ Certificate of candidacy by write-in candidates.

- ~~1. An election board or canvassing board may not count or be required to officially report any write-in vote for any:
 - a. Individual 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 or individual 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 county recorder 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 in which 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.~~ Candidate receiving fewer than three write-in votes unless the number of votes received qualifies the candidate to be nominated or elected.
- ~~2.~~ Write-in votes that do not need to be individually canvassed based on the requirements of subsection 1 must be listed on the official canvass report as "scattered write-ins".
- ~~3.~~ An individual who intends to be a write-in candidate for president of the United States or for statewide or judicial district office at any election shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the election. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the election, the secretary of state shall certify the names of the candidates to each county auditor as write-in candidates.
- ~~4.2.~~ An individual who intends to be a write-in candidate at the general election for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.
- ~~5.3.~~ An individual who intends to be a write-in candidate for any legislative district office shall file a certificate of write-in candidacy with the secretary of state. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election.
- ~~6.4.~~ A certificate under this section is not required when:
 - a. No names will appear on the ballot for an office;
 - b. The number of candidates appearing on the ballot for an office is less than the number to be elected; or
 - c. The number of candidates appearing on the ballot for a party office is less than the number of nominations a party is entitled to make.

- 7-5. An individual required to file a certificate of write-in candidacy may not seek more than one office appearing on the primary and general election ballots.

SECTION 3. AMENDMENT. Subsection 1 of section 16.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Certificates of nomination for nominees for offices to be filled by the qualified electors of the entire state must be filed with the secretary of state. Not less than fifty-five days before any general or special election to fill any statewide office, the secretary of state shall electronically transmit a certified list to each county auditor the names and addresses of the persons ~~persons~~ individuals nominated for statewide office according to this chapter as shown on the certificates of nomination filed in the secretary of state's office.

SECTION 4. AMENDMENT. Section 16.1-12-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-07. If nominee declines - Certificate void.

Any person intending to decline a nomination shall do so by filing written notice of that intention with the officer with whom the certificate nominating the person is filed. If the written notice is filed with the appropriate officer ~~before~~ within forty-eight hours after four p.m. on the sixty-fourth day before the election, the nomination is void. If written notice is mailed, it must be in the physical possession of the appropriate officer ~~before~~ within forty-eight hours after four p.m. on the sixty-fourth day before the election.

SECTION 5. A new section to chapter 16.1-15 of the North Dakota Century Code is created and enacted as follows:

Counting write-in votes.

1. An election board or canvassing board may not count or be required to report officially:
 - a. The number of write-in votes for an individual required to file a certificate of write-in candidacy under section 16.1-12-02.2 but who has not filed a certificate of candidacy and been certified as a write-in candidate;
 - b. The number of write-in votes for a fictitious person or individual clearly not eligible to qualify for the office for which the vote was cast;
 - c. A statement concerning a candidate under this subsection;
 - d. The number of write-in votes for a candidate for office if the number constitutes ten percent or less of the votes cast by the voters for the candidate receiving the most votes for the office or political party's nomination of a candidate for the office, except in the case of a primary election in which enough votes were cast as write-in votes to qualify a name for the general election ballot; and
 - e. The number of write-in votes for a candidate receiving fewer than three write-in votes unless the number of votes received qualifies the candidate to be nominated or elected.
2. A write-in vote for a candidate whose name is printed on the ballot will be tallied as a vote for the candidate if the voter has not voted for more candidates than allowed for the contest or voted for the same candidate more than once in that contest.
3. A write-in vote that does not need to be canvassed individually based on the requirements of subsection 1 must be listed on the official canvass report as "scattered write-ins".

SECTION 6. AMENDMENT. Subsection 1 of section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

1. After generating 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 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 if these votes were not canvassed by the polling place election board on election night according to section 16.1-12-02.2. ~~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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2308.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 76 Nays 16 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State