

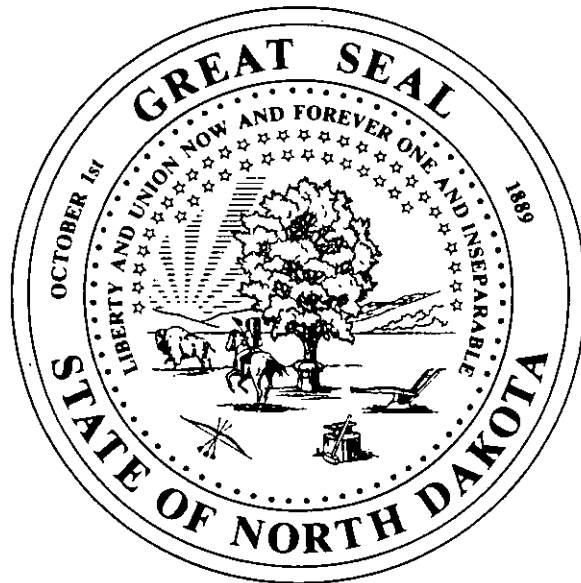
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**NORTH DAKOTA
ELECTION LAWS**



**SECRETARY OF STATE
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ELECTIONS DIVISION (701) 328-4146**

printed October 1995

Alternate formats for disabled person are available upon request.

1996-97

**NORTH DAKOTA
ELECTION LAWS**

This material is a reproduction of state and county election laws found in North Dakota Century Code (NDCC) Title 16.1, Public School District Elections found in Chapters 15-28 and 15-47, and Municipal Elections found in Chapter 40-21.



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*** NOTICE ***

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*** NOTICE ***

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TITLE 16.1 ELECTIONS

CHAPTER 16.1-01 GENERAL PROVISIONS

16.1-01-01. Secretary of state to supervise election procedures - County administrator of elections.

1. The secretary of state must be, ex officio, supervisor of elections; he may employ additional personnel to administer this title. The secretary of state shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred on him by law, the power to examine upon his request or the request of any election official, any election ballot or other material, machine, or device used in connection with any election, for the purpose of determining sufficient compliance with the law. The secretary of state, upon determining that any ballot or other material, machine, or device is not in sufficient compliance with the law, shall direct the proper changes to be made.

2. In addition to other duties provided elsewhere by law, the secretary of state shall:
 - a. Develop and implement training programs for all election officials in the state.
 - b. Prepare information for voters on voting procedures.
 - c. Publish and distribute to each county a political calendar, a manual on election procedures, and a map of all election districts for state and national office in that county.
 - d. Convene an annual state election conference of county auditors 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 nonperformance of duties or violations of election laws by election officers.
 - g. Require such reports from county auditors on election matters as he deems necessary.
 - h. Certify results of statewide elections.
 - i. Establish and carry out accounting procedures designed to reflect all election expenditures incurred by the state.
 - j. Prepare and publish biennial reports on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as he may deem appropriate.
 - k. Establish standards for all election machinery, locations, and supplies, including but not limited to, ballots, wrappers, seals, stamps, ballot boxes, pollbooks, tally sheets, reports, voting machines, electronic voting systems, and voting places.
 - l. Prescribe the order in which each political subdivision will appear on a primary election ballot.

3. In carrying out his duties and to assure uniform voting opportunities throughout the state, the secretary of state shall issue those rules and regulations he deems necessary.
4. In each county there must be a county administrator of elections who must be the county auditor. The county auditor is responsible to the secretary of state for the proper administration within his county of state laws, rules, and regulations concerning election procedures.
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. Carry out training programs for all county and precinct election officials as prescribed by the secretary of state.
 - d. Receive and handle complaints referred to him by any voter or precinct official involving circulation of petitions, challenges to voters, actions of election officials, or irregularities of any kind in voting. He shall refer complaints to the secretary of state or the proper prosecuting authority, as he 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.

16.1-01-02. Applicability of provisions of title. The provisions of this title govern all primary, general, and special statewide and legislative elections, and all other elections, unless otherwise provided by law.

16.1-01-02.1. State policy encouraging employers to establish policy granting employees time to vote. It is the policy of this state to encourage voting by all eligible voters at all statewide special, primary, or general elections. To this end, employers are encouraged to establish a program to grant an employee who is a qualified voter to be absent from his employment for the purpose of voting when an employee's regular work schedule conflicts with voting during time when polls are open.

16.1-01-02.2. Special election - Special procedures. Notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a special session of the legislative assembly has been held, any of the ninety-day period for the submission of a referendum petition to the secretary of state with respect to any measure enacted during the special session occurs during a regular legislative session, and a referendum petition has been submitted to refer a measure or part of a measure enacted during the special session. Notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan.

The secretary of state shall reduce all the deadlines, including those necessary for filing, appointments, and election material preparation, to ensure that the election is held as allowed by this section. If time constraints make it impossible for a county auditor to comply with the publication requirements of section 16.1-13-05, the sample ballot and election notice may be published only once. The provisions of chapter 46-02 concerning competitive bidding and of subsection 2 of section 16.1-01-01 and subsection 2 of section 16.1-05-03 with respect to election training sessions do not apply to this election.

16.1-01-02.3. Special election costs - Reimbursement. The state shall reimburse each county for the costs incurred by the county for conducting a statewide special election that is not held on the date of a statewide primary or general election. Each county shall submit a detailed statement to the office of the budget which lists all expenses incurred by the county in conducting the special election within forty-five days after the special election. The office of the budget shall submit a request for an appropriation to reimburse the counties to the next regular or special session of the legislative assembly. The legislative assembly shall appropriate the funds necessary for the payment of the special election costs.

16.1-01-03. Opening and closing of the polls. The polls at all primary, general, and special elections must be opened at nine a.m. or at such earlier hour, but not earlier than seven a.m., that may be designated for any precinct by resolution of the governing body of the city or county in which such precinct is located except that in precincts in which seventy-five or fewer votes were cast in the last general election, the governing body may direct that the polls be opened at twelve noon. They must remain open continuously until seven p.m. or such later hour, not later than nine p.m., as may be designated for a precinct by resolution of the governing body of the city or county in which the precinct is located. All electors standing in line to vote at the time the polls are set to close must be allowed to vote, but electors arriving after closing time may not be allowed to vote. The election officers present are responsible for determining who arrived in time to vote, and they shall establish appropriate procedures for making that determination. All determinations required to be made pursuant to this section relating to polling hours must be made, and the county auditor notified of them, no later than thirty days prior to an election.

16.1-01-04. Qualifications of electors.

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.
2. Every qualified elector of the state may have only one voting residence.
3. A person's voting residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by persons convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.

16.1-01-05. Voting by qualified elector moving from one precinct to another. Where a qualified elector moves from one precinct to another precinct within this state, he is entitled to vote in the precinct from which he moved until he has established his new voting residence.

16.1-01-05.1. Voter lists - Addition or transfer of names. In a county in which the county auditor prepares a list of the persons who voted at a prior election and provides the list to voting precincts on election day, the county auditor, with the approval of the secretary of state, may establish a procedure by which a person may transfer that person's name from the voter list of one precinct to the voter list of another precinct in the county if that person establishes a new residence, and by which a person who establishes residence in the county may have that person's name placed on the voter list in the appropriate precinct. The procedure provided for in this section may not be used to require the registration of electors.

16.1-01-06. Highest number of votes elects. Unless otherwise expressly provided by the laws of this state, in all elections for the choice of any officer, the person receiving the highest number of votes for any office must be deemed to have been elected to that office.

16.1-01-07. Constitutional amendments and other questions to be advertised - Notification by secretary of state - Manner of publishing. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than fifty-five days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05. Questions to be submitted to the people of a particular county must be advertised in the same manner.

The secretary of state shall, at the same time the secretary of state certifies notice to the county auditors of the submission of a constitutional amendment or other question, certify the ballot form for such questions. The ballot form must conform to the provisions of section 16.1-06-09 and must be used by all county auditors in preparing ballots for submission to the electorate of each county and in the preparation of sample ballots. Sample ballots must conform in form and style to samples of such ballots contained in the legal publications handbook prepared under subsection 5 of section 46-01-02. Any requirements in this title that a sample ballot be published will be met by the publication of either the paper ballot or the ballot as it will appear to persons using a voting machine, depending upon the method of voting used in the area involved. Absentee voter ballots may not be considered in determining which method of voting is used in an area. If both paper ballots and voting machines are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. At the same time as the sample ballot is published, an analysis of any constitutional amendment, initiated measure, or referred measure, written by the secretary of state after consultation with the attorney general, must be published in columns to enable the electors to become familiar with the effect of the proposed constitutional amendment or initiated or referred measure, in addition to the sample ballot listing ballot titles.

16.1-01-08. Correcting errors on ballots - Requiring performance of duty - Correcting or prosecuting wrongful performance. The secretary of state shall thoroughly investigate, when the matter comes to his attention, any of the following:

1. Any error or omission which has occurred or is about to occur in the placing of any name on an official election ballot.
2. Any error which has been or is about to be committed in printing the ballot.
3. Any wrongful act which has been or is about to be done by any judge or election clerk, county auditor, canvassing board, a canvassing board member, or any other person charged with any duty concerning the election.
4. Any neglect of duty which has occurred or is about to occur.

If required, the secretary of state shall order the officer or person charged with such error, wrong, or neglect to correct the error, desist from the wrongful act, or perform any required duty. The secretary of state may call upon any county auditor for aid in investigation and correction of the problem. The secretary of state shall cause any person who violates his order to be prosecuted, if the violation constitutes an offense pursuant to this chapter. If the administrative remedies fail to correct the problem, or if the secretary of state refuses to act, any person may petition the supreme court, or the district court of the relevant county where the election of a county officer is involved, for an order compelling the correction of the error, wrong, neglect, or act.

16.1-01-09. Initiative, referendum, or recall petitions - Signature - Form - Circulation.

1. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure, the printed name, signature, and address of the committee member, and notarization of the signature.

Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement which must fairly represent the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.

The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days.

2. No person may sign any initiative, referendum, or recall petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person may sign any petition more than once, and each signer shall add the signer's post-office address including the signer's residential address or post-office box number and the date of signing. Every qualified elector signing a petition shall do so in the presence of

the person circulating the petition. A referendum or initiative petition must be in substantially the following form:

**REFERENDUM [INITIATIVE] PETITION
TO THE SECRETARY OF STATE,
STATE OF NORTH DAKOTA**

We, the undersigned, being qualified electors request [House (Senate) Bill _____ passed by the _____ Legislative Assembly] [the following initiated law] be placed on the ballot as provided by law.

SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

Name	Address
_____ (Chairman)	_____
_____	_____

BALLOT TITLE

(To be drafted by the secretary of state, approved by the attorney general, and attached to the petition before circulation.)

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF NO MATERIAL IS UNDERSCORED OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED.

[The full text of the measure must be inserted here.]

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota thirty days, and you are a United States citizen. All signers must add their entire post-office address, including post-office box number, and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

(signature of circulator)

Subscribed and sworn to before me this _____ day of _____, 19____, at _____, North Dakota.
(city)

(Notary Seal)

(signature of notary)

Notary Public, North Dakota

My commission expires _____

4. A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 2, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and post-office addresses including the residential addresses or post-office box numbers of not less than five qualified electors of the state, political subdivision, or district in which the official is to be recalled who are sponsoring the recall.
5. No petition shall be circulated under the authority of article III of the Constitution of North Dakota by a person who is less than eighteen years of age, nor shall the affidavit called for by subsection 3 be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety. A petition may not include a statement of intent or similar explanatory information.
6. When signed petitions are delivered to the secretary of state, the chairperson of the sponsoring committee shall submit to the secretary of state an affidavit stating that to the best of that person's knowledge, the petitions contain at least the required number of signatures.
7. A petition must be submitted to the secretary of state by five p.m. on the day designated as the deadline for submitting the petition.

16.1-01-10. Secretary of state to pass upon sufficiency of petitions - Method - Time limit. The secretary of state shall have a reasonable period, not to exceed thirty-five days, in which to pass upon the sufficiency of any petition mentioned in section 16.1-01-09. The secretary of state shall conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, postcards, telephone calls, personal interviews, or other accepted information gathering techniques, or any combinations thereof, to determine the

validity of the signatures. Signatures determined by the secretary of state to be invalid may not be counted and all violations of law discovered by the secretary of state must be reported to the attorney general for prosecution.

16.1-01-11. Certain questions not to be voted upon for three months. Whenever at any election a bond issue or mill levy question has failed to receive the required number of votes for approval by the electors, the matter may not again be submitted to a vote until a period of at least three months has expired, and in no event may more than two elections on the same general matter be held within twelve consecutive calendar months.

16.1-01-12. Election offenses - Penalty. It is unlawful for a person to:

1. Fraudulently alter another person's ballot or substitute one ballot for another, or to otherwise defraud a voter of his vote.
2. Obstruct a qualified elector on the way to a polling place.
3. Vote or offer to vote more than once in any election.
4. Knowingly vote in the wrong election precinct or district.
5. Disobey the lawful command of an election officer as defined in chapter 16.1-05.
6. Knowingly exclude a qualified elector from voting, or knowingly allow an unqualified person to vote.
7. Knowingly vote when not qualified to do so.
8. Sign an initiative, referendum, recall, or any other election petition when not qualified to do so.
9. Sign a name other than his own name to an initiative, referendum, recall, or any other election petition.
10. Circulate an initiative, referendum, recall, or any other election petition not in its entirety, or circulate such a petition when unqualified to do so.
11. Pay or offer to pay any person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file their intent to remunerate prior to submitting the petitions and fully disclose all expenditures and revenues upon submission of the petitions to the secretary of state.

12. Willfully fail to perform any duty of an election officer after having accepted the responsibility of being an election officer by taking the oath as prescribed in this title.
13. Willfully violate any rule adopted by the secretary of state pursuant to this title.
14. Willfully make any false canvass of votes, or make, sign, publish, or deliver any false return of an election, knowing the same to be false, or willfully deface, destroy, or conceal any statement or certificate entrusted to his care.
15. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law.

A violation of subsections 1 through 14 is a class A misdemeanor. Any signature obtained in violation of subsection 11 is void and may not be counted. A violation of subsection 15 occurring after an election but before the final canvass, or during an election, is a class C felony, and in other cases is a class A misdemeanor.

Every act which by this chapter is made criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to qualified electors to be decided by votes cast at an election.

16.1-01-13. Term limits for United States senators and representatives in Congress. A person is permanently ineligible to have that person's name placed on the ballot at any election for the office of United States senator or representative in Congress if, by the start of the term for which the election is being held, that person will have served as a United States senator or a representative in Congress, or in any combination of those offices, for at least twelve years.

16.1-01-13.1. Term limits for United States senators and representatives in Congress. A person is ineligible to have that person's name placed on the ballot at any election for the office of United States senator or representative in Congress if, by the start of the term for which the election is being held, that person will have served as a United States senator or a representative in Congress, or in any combination of those offices, for at least twelve years. However, if that person is still otherwise eligible to hold the office, the disqualification imposed by this section ceases after two years have elapsed since the disqualification last affected that person's eligibility for placement on the ballot.

16.1-01-14. Statement of intent. In enacting this measure, the people of North Dakota:

1. Recognize that, along with the rest of the people of the United States, we have bestowed certain powers on the state and federal governments, and the governmental power flows ultimately from the people, not to them.
2. Do so in the partial exercise of our duty to elect representatives in Congress, under Article I, section 2 of the United States Constitution, and our duty to elect United States Senators, under the 17th Amendment to the United States Constitution.

3. Recognize that the United States Supreme Court has never held that the people of a state do not have the constitutional power to establish term limits for federal legislators from their state.
4. Recognize that certain restrictions are placed on our ability to choose federal legislators, such that we could not, for example, elect a 28-year old to the Senate or require a religious test for a federal legislator.
5. Assert that, aside from the requirements explicitly imposed by the United States Constitution, our power with respect to election of federal legislators is plenary.
6. Note that, under the United States Constitution, we have certain rights to control suffrage in elections, regulating such matters as residency, ballot access, and voting methods. As the possessors of the power to regulate suffrage, we also have the power to regulate certain qualifications of the agents we appoint by exercising our suffrage.
7. Exercise the legislative power we reserved to ourselves in Article III, Section 1 of the North Dakota Constitution.
8. Recognize that, just as the federal Hatch Act [5 U.S.C. # 7324 et seq.] restricts the candidacies of otherwise eligible persons from holding elected office, we have the same salutary purpose as does the Hatch Act, namely preventing an incumbent party from using government power to entrench itself permanently into government office.
9. Are mindful of the United States Supreme Court's statement, in *Garcia v. San Antonio Metro Transit Authority*, 469 U.S. 528, 551 (1985), that state control of the election process is supposed to be a protection of the state peoples from the national government.
10. Recognize that increased concentration of power in the hands of incumbents has made this state's electoral system less free, less competitive, and most importantly, less representative.
11. Recognize that our interests are best served by having our United States senators and representatives in Congress be mindful of their origins and return to our ranks whence they came.
12. Make the following declarations and historical findings:
 - a. James Madison, in No. 57 of *The Federalist Papers*, predicted that the House of Representatives would always be responsive to the will of the people because that house would be bound by the same laws they impose on the people. His prediction was wrong and Congress has arrogated to itself powers not granted to the people, a recent notorious example being the bank of the House of Representatives in which members were allowed to kite checks. His prediction was wrong in that Congress has oppressed the people with laws from which it exempts itself, recent examples including minimum wage, discrimination, occupational safety, and other laws.

- b. The appearance of corruption and the lack of competitiveness for entrenched incumbency seats has lessened voter participation and that is counter-productive to the purposes of a representative republic.
- c. Our vital interests in maintaining the integrity of the political process have been harmed by these and other factors. Therefore, term limitation is the best method by which we can insure that our vital interests are guarded.

13. Believe this measure is constitutional and intend it to be so. Therefore, even if a court holds any portion of this measure unconstitutional, thereby substituting its own judgment for that we have expressed in enacting this measure, the Legislative Council shall require the publisher of the North Dakota Century Code to include the text of this measure, in the manner as if not so held but with appropriate annotation, to stand as a testament to our expressed will, and as a memorial to the defiance of that will by whatever court holds this measure unconstitutional. Furthermore, if any part of this measure is held unconstitutional, we intend that the rest of it be deemed effective, to the maximum extent permitted under section 1-02-20.

CHAPTER 16.1-02
ELECTOR REGISTRATION - RESERVED

**CHAPTER 16.1-03
PARTY COMMITTEE ORGANIZATION**

16.1-03-01. Precinct caucus to elect precinct committeemen - Time and manner of holding - Caucus call - Notice.

1. On or before May fifteenth following the last preceding general election, a party caucus must be held by every election precinct at a site within or reasonably close to the precinct in the manner provided in sections 16.1-03-01 through 16.1-03-04.
2. The legislative district chairman of each party shall issue the call for the precinct caucus at least twenty days before the time set for holding the caucus and the call must contain the following:
 - a. Name of party.
 - b. Precinct number or name.
 - c. Date of caucus.
 - d. Place of caucus.
 - e. Hours of caucus.
 - f. A statement of the business to be conducted, including the election of precinct committeemen and such other persons as may be provided by state law and party rules.
 - g. The name of the district chairman issuing the call.
3. The district chairman shall provide ten days published notice in the official newspaper in circulation within each precinct in the district. The notices must contain that information set forth in subsection 2. The district chairman may include the information required by this section for all precincts in the district in one notice for publishing purposes.

16.1-03-02. Who may participate in and vote at caucus.

1. Only those persons who are qualified electors pursuant to section 16.1-01-04 may vote or be elected as committeemen or officers at the precinct caucus.
2. Only those persons who either voted or affiliated with the party at the last general election or intend to vote or affiliate with the party at the next general election may vote at the precinct caucus.
3. In case the right of a person to participate at the caucus is challenged, the question of his right to participate must be decided by a vote of the whole caucus. A person so challenged may not vote on the question of his right to participate in the caucus, and a two-thirds vote of the whole caucus is required to exclude a person from participation.
4. No person may vote or participate at more than one precinct caucus in any one year.

16.1-03-03. Caucus business and elections - Political parties entitled to elect committeemen.

1. Each precinct caucus shall elect a chairman, committeemen as provided in subsection 3, and other officers as may be provided by party rules. The caucus may also discuss party policies, candidates, and any other business as prescribed by party rules.
2. No organization, political or otherwise, is entitled to elect a precinct committeeman at its precinct caucus unless:
 - a. The organization nominated and had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president; and
 - b. The candidates provided for in subdivision a received at least five percent of the total vote cast for presidential electors within this state at that election.
3. Each political party in each voting precinct of this state, otherwise qualifying under subsection 2, is entitled to elect one precinct committeeman for each two hundred fifty votes, or major fraction thereof, cast for the party's presidential electors in the precinct in the last presidential election. Each precinct is entitled to at least one precinct committeeman for each party which qualifies under subsection 2. Each precinct committeeman must be an elector of his precinct and must be elected for a two-year term.
4. All questions concerning the manner in which a caucus is conducted or called that are not covered by state law must be governed by Robert's Rules of Order (revised) unless otherwise governed by party rules.

16.1-03-04. Candidates elected at caucus - Tie vote - Canvassing vote. The candidate, or if more than one precinct committeeman is to be elected, the candidates, receiving the highest number of votes must be declared elected. If no person is nominated for or elected as precinct committeeman, the vacancy must be filled by appointment of a resident from the precinct by the district executive committee of the party. In case of a tie vote, the caucus chairman immediately shall decide the winner by a coin flip. Upon completion of the caucus or vote, the caucus chairman, or persons appointed by him, shall proceed to count and canvass the votes cast for precinct committeemen and ascertain who was elected. The caucus chairman shall notify the county auditor of the number of votes cast for each candidate for precinct committeeman and the names of those elected.

16.1-03-05. Vacancies in office of precinct committeeman - Filling. A vacancy in the office of precinct committeeman, which occurs after the organization of the district committee, must be filled by appointment from the precinct by the district executive committee of the party. Notice of the appointment must be given to the county auditor.

16.1-03-06. District committee of political party - How constituted. The precinct committeeman of a party, selected as provided in this chapter, together with that party's nominees for and the members of the legislative assembly, and the officers of the district committee as provided hereinafter, constitute the district committee of the party. The district

committee, upon a majority vote of its members, may appoint any former member of the legislative assembly as an ex officio and voting member of the district committee. The district committee of a party must be organized to coincide with the geographical boundary lines of state senatorial districts. In no event may any person be allowed more than one vote.

16.1-03-07. Meeting of district committee - Organization. In every odd-numbered year, the district committee of each party shall meet within fifteen days after the precinct caucus provided for in section 16.1-03-01. The day, hour, and site must be set by the existing district committee chairman. The district committee shall organize by:

1. Selecting a chairman, vice chairman, vice chairwoman, secretary, and treasurer chosen by the district committee. The officers selected need not be precinct committeemen; however, all the officers must be voting members of the district committee.
2. Adopting rules and modes of procedure not in conflict with law.
3. Filling any vacancies in the office of precinct committeeman pursuant to section 16.1-03-05.
4. Selecting an executive committee consisting of from five to eighteen persons chosen from the district committee. The chairman, vice chairman, vice chairwoman, treasurer, and secretary of the district committee must be members and the officers of the executive committee. That party's nominees for and members of the legislative assembly must also be members of the executive committee. The five to eighteen person membership limitation includes the officers of the executive committee and that party's nominees for and members of the legislative assembly.

The newly elected chairman shall notify the county auditor of the names of the party officers selected. If the office of chairman becomes vacant, the vice chairman shall hold the office until the next regular election for the office or until a new chairman is selected by the district committee for the balance of the term, whichever first occurs.

16.1-03-08. State committee - Membership. The state committee of each party consists of the chairman of each of the district committees of the party, the national committeeman and national committeewoman of the party, and any person provided for in the bylaws of the state committee.

16.1-03-09. Proxies permissible - Exception. Proxies are permissible at all meetings, except at a precinct caucus, held pursuant to the provisions of this chapter, but all persons exercising proxies must be residents of the precinct or district which the person giving the proxy represents.

16.1-03-10. Member of committee to be qualified elector - Term of member. Each member of any committee provided for in this chapter must be a qualified elector and shall retain his office until his successor is chosen.

16.1-03-11. State committee - Meetings - Organization - Vacancies. The state committee shall meet on or before July first of each odd-numbered year. The committee shall organize by selecting a chairman, vice chairman, vice chairwoman, if provided for in the rules of the party, secretary, and treasurer and by adopting rules and modes of procedure. The officers elected need not be members of the committee, but they shall become voting members of the committee after their election. These officers, together with the national committeeman, national committeewoman, a representative of state elected officials who are members of that party, the party's majority or minority leaders in the house of representatives and senate and four district chairmen to be selected by the state committee, constitute the executive committee of the state committee. If a vacancy occurs in the office of committee treasurer, the committee chairman may appoint a person to serve as acting treasurer. The vacancy must be permanently filled for the balance of the term by a majority vote of the state committee at the first committee meeting following the occurrence of the vacancy. A vacancy in an office of the state committee, other than a party district chairman, must be filled upon a majority vote of the state committee.

16.1-03-12. Meeting of district committee to elect delegates to state party convention - Optional precinct caucus - Proxies. Prior to the second Monday in June in each presidential election year and upon the call of the chairman, the district committee of each state senatorial district shall meet at a place designated by the chairman to elect delegates to a state party convention to be held as provided in this chapter. If the bylaws of the state senatorial district so provide, precinct committeemen may call a precinct caucus prior to the district meeting to elect additional delegates to attend the district meeting. Unless the rules of the state party provide otherwise, one delegate to the state convention must be elected for each three hundred votes, or major fraction thereof, cast in the district at the last preceding presidential election for the candidates for presidential electors of the party, but every district is entitled to at least one delegate. Delegates must be electors of their district. If any delegate is unable to attend the convention, that delegate shall designate in writing an alternate from the list of alternates selected at the district convention to attend and represent and act for that delegate.

16.1-03-13. When state party convention held. The state party conventions must be held in each presidential election year at a place and time designated by the party state committee.

16.1-03-14. Duties of state party convention. The state party convention provided for in this chapter shall:

1. Nominate the legal number of candidates for its party for the offices of presidential electors.
2. Elect a national committeeman and a national committeewoman.
3. Elect the required number of delegates to the national party convention and a like number of alternates.
4. Conduct other business as shall come before the convention.

The candidate or candidates for nomination or election must be declared nominated or elected pursuant to the rules of the party involved, and the chairman and secretary of the convention shall issue certificates of nomination or election. If any delegate to the national convention is unable to attend that convention, he shall designate, in writing, one of the alternates to attend and represent and act for him. The names of the candidates nominated for presidential electors must be certified by the chairman and secretary of the convention to the secretary of state to be placed upon the general election ballot as provided by law.

16.1-03-15. Expenses of delegates to national conventions. Repealed by S.L. 1987, ch. 247, # 1.

16.1-03-16. Filling vacancy occurring in office of national committeeman or committeewoman. Should a vacancy occur in the office of national committeeman, or committeewoman, the state committee shall fill the vacancy.

16.1-03-17. Political party reorganization after apportionment. If apportionment of the legislative assembly becomes effective after the organization of political parties as provided in this chapter and before the primary or the general election, the secretary of state shall establish a timetable for the reorganization of the parties as rapidly as possible before the ensuing election. When the timetable is established, the secretary of state shall notify all the county auditors of the timetable and of the details of the legislative apportionment as it affects each county. The secretary of state or county auditor may not require reorganization of precincts in which boundaries are unchanged after apportionment by the board of county commissioners or the governing body of the city pursuant to chapter 16.1-04. Each county auditor shall publish in the official county newspaper, a notice containing:

1. A statement that legislative apportionment has occurred.
2. A description and a map of the new legislative districts and the precincts as established by the governing bodies of the counties and cities in the county, pursuant to section 16.1-04-01.
3. The date, time, and places of the precinct caucuses and district committee meetings determined by the secretary of state and the county auditor to be necessary according to the new districts and precincts established.

The political parties, in the newly established precincts and districts, shall then proceed to reorganize as closely as possible in conformance with this chapter and in conformance with the timetable established by the secretary of state.

16.1-03-18. Unfair and corrupt election practices applicable to chapter. The provisions of chapter 16.1-10, relating to unfair and corrupt election practices, are applicable to all elections and conventions provided for in this chapter.

CHAPTER 16.1-04
PRECINCTS AND VOTING PLACES

16.1-04-01. Precincts - 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 divide the county into precincts and establish the precinct boundaries, except that within the boundaries of any incorporated city, the governing body of the city shall divide the city into precincts and establish their boundaries pursuant to title 40. Any number of townships or parts of townships may be joined into a single precinct provided that no precinct may encompass more than one legislative district.
2. May alter the number and size of precincts within the county by combining or dividing precincts. However, the governing body of any incorporated city has the authority to alter the number and size of precincts located within its boundaries. The board of county commissioners may relinquish the jurisdiction provided under subsection 1 over all or any portion of a township or townships under its jurisdiction to a city for the purpose of establishing a voting precinct if a majority of the governing body of the city agrees to assume such jurisdiction. The governing body of a city, by majority vote, may return jurisdiction granted herein to the county and the county shall accept that jurisdiction.

16.1-04-02. Voting 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 a voting place for each precinct and may alter the voting places when there is a good and sufficient reason. However, the voting 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.
2. Shall provide that all voting places are accessible to the elderly and the physically disabled.

16.1-04-03. Time limitations. The authority granted by this chapter must be exercised by the respective governing bodies no later than seventy days before an election. If legislative reapportionment occurs, the authority granted by this chapter must be exercised, as it relates to the establishment or reestablishment of voting precincts that may be required because of any change in legislative districts, within thirty-five days after the effective date of the reapportionment.

CHAPTER 16.1-05 ELECTION OFFICERS

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.

1. The election inspector must be selected in the following manner:
 - a. 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 other 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.

Except in the case of special elections, all appointments required to be made under this section must be made at least twenty-one days preceding an election.

2. The election judges and poll clerks for each precinct must be appointed by the district chairmen representing the two parties that cast the largest number of votes in the state at the last general election. Each election judge and poll clerk must be given a certificate of appointment signed by the chairman of the district committee of the judge's party. In voting precincts or districts in which over one thousand votes are cast in any election, the county auditor may request each district party chairman to appoint an additional election judge. In voting precincts or districts in which over three hundred votes are cast in any election the district party chairmen may each appoint additional poll clerks as determined by the county auditor. The district party chairman shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges and poll clerks at least twenty-one 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 and poll clerks. If at any time before or during an election, it shall be made to appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that any election judge or poll clerk is disqualified under this chapter, the inspector shall remove that judge or clerk at once and shall fill the vacancy by appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk 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.

16.1-05-02. Qualifications of members of the board of election - Oath of office.

1. Every member of the election board and each poll clerk must be a qualified elector of the precinct in which the person is assigned to work and must be eligible to vote at the polling place to which the person is assigned.
2. No person may serve as a member of the election board or as a poll clerk who:
 - a. Has anything of value bet or wagered on the result of an election.
 - b. Is a candidate in the election at which the person is serving.
 - c. Is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate in the election at which the person is serving.
3. Prior to assuming their duties, all members of the election board and the poll clerks severally shall take and subscribe an oath in substantially the following form:

I do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge, or clerk (as the case may be) according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

The oath may be taken before any officer authorized by law to administer oaths, and in case no such officer is present at the opening of the polls, the inspector or election judges shall administer the oath to each other and to the poll clerks. The person administering the oath shall cause an entry thereof to be made and subscribed by that person and prefixed to each pollbook.

4. A person serving as a member of the election board shall, prior to each election, attend a period of instruction conducted by the county auditor or his designated representative, provided that such period of instruction has been conducted since the appointment of the election judges or election inspector.
5. If any member of the election board fails to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a person to serve in the absent person's place. In filling a vacancy in the office of election judge or clerk, the remainder of the board shall select a person of the absent person's political party if such a person is reasonably available. The office of election inspector may be filled by any qualified person without regard to political affiliation. If no members of the election board appear at the hour appointed for opening the polls, the qualified electors present shall orally elect a board as nearly as possible in conformity with the provisions of this section.

16.1-05-03. Secretary of state and county auditors to distribute election information - County auditor to provide instruction.

1. Not less than thirty days before any primary, general, or special election, the secretary of state shall provide an instruction manual approved by the attorney general, which in layman's terms presents in detail the responsibilities of each election official. The

secretary of state shall forward sufficient copies of this manual to each county auditor who shall distribute the manuals to each member of all the election boards in the county.

2. Before each primary and general election, each county auditor or the auditor's designated representative shall conduct training sessions on election laws and election procedures for election officials in the county and may conduct training sessions before any special statewide or legislative district election. The session or sessions must be conducted at such place or places throughout the county as the county auditor determines to be necessary. Attendance at the session is mandatory for members of the election board and for poll clerks unless the board of county commissioners determines that the poll clerks in that county may not attend. The county auditor shall notify the members of the election boards, poll clerks if applicable, and the state's attorney of the time and place of the session. The state's attorney shall attend all sessions to give advice on election laws. The county auditor shall invite the district chairman in that county representing any political party casting at least five percent of the total votes cast for governor at the last election to attend the session at the chairman's own expense. On the date of such course or courses, the county auditor may deliver to all election inspectors at such meeting the official ballots and all other materials as provided in chapter 16.1-06. Except as otherwise provided in this section, each person attending the course or courses must be compensated as provided in section 16.1-05-05.
3. An election official, at the option of the county auditor, may be excused from attending a third training session on election laws within a twelve-month period. If an election official has attended a training session within the six months preceding a special election, the election official must be compensated at the pay appropriate for those having attended a training session, as provided in section 16.1-05-05, for that election.

16.1-05-04. Duties of the members of the election board during polling hours.

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.
2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.
3. The election inspector shall assign the poll clerks, an equal number from each political party represented on the election board, to perform the function of maintaining the pollbooks. The designated poll clerks shall maintain the pollbooks. Each pollbook must contain the name and address of each person voting at the precinct, and must be arranged in the form and manner prescribed by the secretary of state.
4. The members of the election board shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector.

5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.
6. All members of the election board shall distribute ballots and other election materials to electors. An election judge from each party represented on the election board shall give any assistance requested by electors in marking ballots or operating voting machines. The election officers shall instruct voters on how to open and close voting machines and how to move the levers to cast and change votes.
7. Each member of the election board shall maintain order in the polling place.
8. All members of the election board at each precinct using an electronic voting system shall, before the polls are open, verify that each voting device in that precinct contains a ballot label that correctly lists the names of the candidates legally on the ballot for that precinct and verify that the booklets are all identical in arrangement.

16.1-05-05. Compensation of election officers. The county auditors shall pay at least the state minimum wage to the relevant election officials. Members of the election board and poll clerks who attend the training sessions provided by section 16.1-05-03 must be paid at least the state minimum wage for the hours in attendance in the session in addition to necessary expenses and mileage. State, county, or other election officials who are required to incur expenses while performing duties in the election process may be reimbursed only for their actual and necessary expenses and mileage in the performance of those duties, in accordance with sections 54-06-09, 44-08-04, and 11-10-15. Other persons performing election duties must also be paid for expenses and mileage in like manner and amounts. Members of election boards who attend the training sessions provided by section 16.1-05-03 must be paid at least twenty-five percent more than the state minimum wage during the time spent in the performance of their election duties.

16.1-05-06. Challenging right of person to vote - Affidavit required - Penalty for false swearing - Optional poll checkers.

1. One poll challenger appointed by the district chairman of each political party represented on the election board is entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger from each political party is entitled to be in attendance at each polling place at any one time. If any person offering to vote is challenged by a poll challenger or by a member of the election board, the challenged person, unless the challenge is withdrawn, shall stand aside and may not vote unless the challenged person executes an affidavit, acknowledged before the election inspector, that he is a legally qualified elector of the precinct. The affidavit must include the name and address of the affiant and the address of the affiant at the time the affiant last voted. Written notice of the penalty for making a false affidavit and that the county auditor will verify the affidavits must be prominently displayed at the polling place in a form prescribed by the secretary of state. Any person who falsely swears in order to vote is guilty of an offense and must be punished pursuant to chapter 16.1-01. The county auditor shall verify randomly at least

ten percent of the affidavits signed in the county, and shall report all violations to the state's attorney.

2. In addition to the poll challenger, not more than two poll checkers appointed by the district chairman of each political party represented on the election board may be in attendance at each polling place, provided such poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. The poll challengers and poll checkers must be qualified electors of the district in which they are assigned.
3. No poll challenger or checker may be a member of the election board.

CHAPTER 16.1-06
BALLOTS-VOTING MACHINES-ELECTRONIC VOTING SYSTEMS

16.1-06-01. Ballots furnished at public expense - Exceptions. Except for local elections, election ballots must be printed and distributed at county expense. For a local election, the expense must be a charge against the local subdivision in which the election is held. For the purpose of this chapter, local elections include elections in townships, school districts, cities, and park districts.

16.1-06-02. Ballots prepared by county auditor or local official. For a local election, the ballots must be printed and distributed under the direction of the auditor or clerk of the local subdivision. For all other elections, ballots must be printed and distributed under the direction of the county auditor, subject to the supervision and approval of the secretary of state as to the legal sufficiency of the form, style, wording, and contents of the ballots.

16.1-06-03. Official ballots only to be used. The official ballot prepared by the county auditor or the local auditor or clerk must contain the name of each candidate whose name has been certified to or filed with such auditor or clerk in the manner provided in this title. Ballots other than official ballots prepared by the county auditor or local auditor or clerk may not be cast or counted in any election governed by this title. The list of officers and candidates and the statements of measures and questions to be submitted to the voters must be deemed an official ballot in precincts in which voting machines or electronic voting systems are used.

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under this title for use in precincts in which voting machines or 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 paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at that election.
4. Have the language "Vote for no more than _____ name (or names)" placed immediately under the name of each office.
5. Have printed thereon "Place a crossmark (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."
6. 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. 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.
8. 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: "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted."

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 purchased after June 30, 1985, are used, the ballot card 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 card must otherwise be arranged in a manner and form approximating as far as possible the requirements of this section.

In precincts in which voting machines or electronic voting systems purchased before July 1, 1985, are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating the requirements of this section. In precincts in which electronic voting systems are used, the requirements of subsection 8 must be met for the ballot card and ballot envelope.

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 voting machines 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 voting machines are used, the list of offices and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating as far as possible the requirements of this section.

16.1-06-06. General election ballots for persons authorized to vote for federal offices 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 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 16.1-01-04, 16.1-14-18, and 16.1-14-19.

16.1-06-07. Arrangement of names on ballot for presidential electors. Repealed by S.L. 1981, ch. 230, # 8; 1981, ch. 240, # 3.

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. To the right 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. A mark within such square 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.

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 voting machines or electronic voting systems are used, 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.

16.1-06-09. Constitutional amendments and initiated and referred measures - Placed on separate ballot - 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 be printed on a separate ballot and must be

deposited in a box separate from that provided to receive the ballots for public officers. A constitutional amendment, initiated or referred measure, or other question 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, 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, 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 each statement in which the voter may indicate by a cross or other mark how the voter desires to vote on the question. 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.

16.1-06-09.1. Constitutional amendments - Statement of intent. Repealed by S.L. 1995, ch. 206, # 5.

16.1-06-10. Voting machines authorized. The use of voting machines, in accordance with the provisions of this chapter, is hereby authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, the machines must be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, the machines may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

16.1-06-10.1. Electronic counting machines authorized - Sharing of machines. The use of electronic counting machines is authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which the election precinct is located, that the use is advisable or necessary in that precinct. Thereafter, the machines must be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies. Two or more counties may enter an agreement concerning the shared use and transport between counties of electronic counting machines and apportioning of expenses. Any electronic counting machine used in an election must be so constructed that when properly operated it registers or records correctly and accurately every vote cast.

16.1-06-11. Electronic voting systems authorized. The use of electronic voting systems in accordance with the provisions of this chapter, is hereby authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, the system or systems must be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies, the system or systems may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

16.1-06-12. Definitions. As used in this title with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on ballot cards.
2. "Ballot card" means, for an electronic voting system purchased after June 30, 1985, a tabulating card containing the names of offices and candidates and the questions to be voted on, which is used in conjunction with the voting device and on which votes may be recorded. For an electronic voting system purchased before July 1, 1985, ballot card means a tabulating card on which votes may be recorded.
3. "Ballot envelope" means the envelope in which the ballot card is enclosed and upon which the names of write-in candidates may be written.
4. "Ballot label" means, for an electronic voting system purchased before July 1, 1985, the booklet or guide containing the names of offices, candidates, and questions to be voted on, which is used in conjunction with the voting device and voting card.
5. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.

6. "Electronic voting system" means a system employing a voting device in conjunction with ballot labels or ballot cards and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.
7. "Voting device" means a device in which ballot cards are used in connection with a punch device for the piercing of ballots by the voter, a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.

16.1-06-13. Requirements for voting machines. Any voting machine used in an election in this state must:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.
2. Permit each voter to vote for as many persons for any office as he is entitled to vote for, and must allow each voter to vote in primary elections for candidates for nomination by the political party of his choice, but it must preclude each voter from voting for more persons for any office than he is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.
3. Permit each voter to change his vote for any candidate, or upon any measure or question submitted to the voters, up to the time he begins the final operation to register his vote.
4. Permit and require voting in absolute secrecy, and must be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, save a voter whom he has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any of the registering mechanism.
5. Have a counter, or other device, the register of which is visible at all times from the outside of the machine, which must show during any period of voting the total number of voters who have operated the machine during said period of voting and have a protective counter, or other device, which must record the cumulative total number of movements of the operating mechanism.
6. Be provided with a lock or locks, by the use of which, immediately after the polls are closed, or the operation of the machine for an election is completed, all movement of the registering mechanism is absolutely prevented.
7. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.
8. Be so constructed that a voter may readily learn the method of operating it.

16.1-06-14. Requirements for electronic voting systems. Any electronic voting system used in an election in this state must:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.
2. Permit each voter to vote for as many persons for any office as he is entitled to vote for, and must allow each voter to vote in primary elections for candidates for nomination by the political party of his choice, but it must preclude each voter from voting for more persons for any office than he is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.
3. Permit each voter, insofar as is possible, by the replacement of spoiled ballots, to change his vote for any candidate, or upon any measure or question submitted to the voters, up to the time he begins the final operation to register his vote.
4. Permit and require voting in absolute secrecy, and must be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, save a voter whom he has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism.
5. Have a counter, or other device, the register of which is visible at all times from the outside of the system, which must show during any period of tabulation the total number of votes tabulated during the period of tabulation and have a protective counter, or other device, which must record the cumulative total number of movements of the tabulating equipment.
6. Be provided with a procedure, by the use of which, immediately after the polls are closed, all voting is absolutely prevented.
7. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.
8. Be so constructed that a voter may readily learn the method of operating it.
9. Permit voting by ballot card.
10. Permit voting for presidential electors by making only one mark or punch.
11. Permit write-in voting and absentee voting.
12. Permit the rotation of names of candidates on ballots as required by this title.

16.1-06-15. Mandatory testing of electronic voting systems before election and before and after tabulation of ballots. All electronic voting systems used in this state must be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used and before and after the counting of the ballots at each election. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials, programs, and preaudited ballots must be sealed and retained in the same manner as paper ballots after an election. The test must be conducted by processing a preaudited group of ballot cards on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section. The test that is conducted before the election must be conducted at least one week before the election and the district chairman of each political party having a candidate on the ballot must be sent notice of the test by the county auditor at least one week before the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.

16.1-06-16. County auditor to provide and distribute ballots - Other election supplies delivered at same time. For each election precinct in the county, the county auditor shall provide the number of ballots the auditor determines to be necessary. Each county auditor shall:

1. Have the ballots printed at least fifteen days before the election, and the ballots may be inspected by any person at the auditor's office.
2. Deliver to the inspector in each precinct at least three days but not more than fifteen days before the election the number of ballots, pollbooks, blanks for election returns with the proper captions if ballots are to be hand counted, forms of oaths and certificates, tally sheets necessary to carry out this title, and other election supplies as the county auditor determines necessary.

16.1-06-17. County auditor to provide ballots and other electronic voting system supplies. At the same time as other election supplies are provided and distributed, the county auditor shall provide to each precinct in the county using an electronic voting system:

1. A sufficient number of voting devices and ballots.
2. Four facsimile diagrams of the entire face of the voting device as it will appear on election day.
3. Appropriate instruction material for the use of the voting devices.
4. All other materials required to carry on the election process through the use of electronic voting systems.

16.1-06-18. Delivery of ballots - Official stamp delivered. At the meeting 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.

16.1-06-19. Instructions, advertisements, maps, and ballots posted in polling places. Each county auditor shall have cards printed, in large type, containing full instructions to electors on obtaining and preparing ballots and a copy of section 16.1-01-12. He shall furnish ten such cards to the election inspector in each election precinct who, prior to the opening of the polls, shall post at least one of the cards in each booth or compartment provided for the preparation of ballots and at least three of the cards in and about the polling place. Three of the official ballots without the official stamp thereon must be posted conspicuously in the polling place on the morning of the election. The county auditor, at the time of delivering the ballots to the inspector of elections in each precinct, shall deliver at least five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to such inspector of elections. Not less than three of such newspaper publications or copies must be posted conspicuously in the polling place on the morning of the election. Each county auditor shall furnish the election inspector in each precinct with four copies of a map showing the election precinct's boundaries. The inspector shall, prior to the opening of the polls, post the maps at the entry to and in other conspicuous places around the polling place.

16.1-06-20. Election inspector and judges to display material and provide instruction. In addition to other duties provided by law, the election inspector in precincts using an electronic voting system shall post in a conspicuous manner at the voting place, the four facsimile diagrams of the voting devices used to vote with electronic voting systems and three copies of the official ballot used with electronic voting systems. The election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before he enters the voting booth.

16.1-06-21. Pollbooks delivered by county auditor - Contents - Inspector of elections to deliver. The county auditor shall see that two copies of the new pollbook are delivered to the election inspector in each election precinct in the county. The following information must be provided to the inspector, and may be contained in each new pollbook:

1. A copy of the law prescribing the qualifications of electors.
2. A copy of the provisions of this title relating to the duties of inspectors, judges, and clerks of election.
3. A statement of the penalties imposed for offenses against the election laws.
4. Blanks for all entries required to be made in the pollbook, or a preprinted listing of previous voters and blanks for the entry of new voters.

The election inspector shall deliver the pollbooks, or cause the pollbooks to be delivered, to the clerks of election in the inspector's precinct on election day before the opening of the polls.

16.1-06-22. County to provide ballot boxes. The board of county commissioners, at the expense of the county, shall provide suitable ballot boxes for each election precinct in the county.

16.1-06-23. Secretary of state to send blanks and envelopes to county auditor to make returns. The secretary of state shall send blank forms and envelopes, for all returns of votes required to be made to his office, to each county auditor with such printed directions on the envelope as he deems necessary for the guidance of election officers in making returns according to law. The expense of furnishing such blanks and envelopes must be paid by the state.

16.1-06-24. Voting machines - Violations - Penalty. Any person who violates any of the provisions of this chapter or who tampers with or injures any voting machine to be used or being used in any election, or who prevents the correct operation of any such machine, or any unauthorized person who makes or has in his possession a key to a voting machine to be used or being used in an election is guilty of a class A misdemeanor.

16.1-06-25. Electronic voting systems - Violations - Penalty. Any person who violates any of the provisions of this chapter relating to electronic voting systems, who tampers with or injures any electronic voting system or device to be used or being used in any election, or who prevents the correct operation of any such system or device to be used or being used in any election is guilty of a class A misdemeanor.

CHAPTER 16.1-07
ABSENT VOTERS BALLOTS AND ABSENTEE VOTING

16.1-07-01. Absent voter - Who may vote.

1. Any qualified elector of this state who, at any general, special, or primary state election, at any county election, or at any city or school district election, is absent from the city, township, or consolidated voting precinct in which he is an elector, is in the armed forces of the United States, is in the merchant marine of the United States, is physically disabled, or is a United States citizen living outside the United States who resided in this state immediately prior to his departure from the United States, may vote an absent voter's ballot at that election.

2. A qualified elector who is a citizen of the United States and lives outside the United States may vote absentee in this state pursuant to this chapter if he:
 - a. Does not maintain a domicile;
 - b. Is not registered to vote;
 - c. Is not voting in any other state, territory, or possession of the United States; and
 - d. Possesses a valid passport or card of identity and registration issued under the authority of the secretary of state of the United States.

Such an elector may vote only in federal elections, which means any election held solely or in part for the purpose of electing or nominating any candidate for the office of president, vice president, presidential elector, member of the United States senate, or member of the United States house of representatives.

16.1-07-02. Elector may vote before leaving - No voting in person upon return. Any qualified elector of this state who is present in his city, township, or consolidated voting precinct after the official ballots have been printed, and who has reason to believe that he will be absent on election day as provided in section 16.1-07-01, may vote before he leaves in the same manner as an absent voter. Any elector who casts his vote by means of an absentee ballot may not thereafter vote in person at the same election, even if he returns to his city, township, or consolidated voting precinct on or before election day.

16.1-07-03. Preparation and printing of ballots. For all general, primary, or special state elections, for all other special elections held at the same time as a general or primary election, for all county elections, and for all city and school elections, official ballots must be prepared within the time limits provided in section 16.1-07-04. In the case of special elections wherein the election is called less than forty or twenty days, as the case may be, before the election day, or where certification of candidates does not take place before the forty-day or twenty-day limitations, the ballots for the use of absentee voters must be made available as soon as possible. Only official ballots may be used as absentee ballots and no indication may be noted on such ballots that they are used by absentee voters except that the return envelope must be marked "ballot of absentee voter". The county auditor, at the same time other absentee ballots are prepared, shall prepare, and have printed and available, ballots for use by overseas citizens qualified to vote in this state pursuant to section 16.1-07-01.

16.1-07-04. When ballots furnished proper officials. The county auditor, or any other officer required by law to prepare any general, special, or primary state election ballots or any county election ballots, shall prepare, have printed, and deliver to the county auditor at least forty days prior to the holding of any general, special, or primary state election, a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. In city or school elections the auditor or clerk of the city, the business manager of the school district, or any other officer required by law to prepare city or school election ballots, shall prepare, have printed and available for distribution to the public at least twenty days prior to the holding of any city or school election, a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election.

16.1-07-05. Time for applying for ballot. At any time in an election year, any qualified elector expecting to be absent on election day as provided in section 16.1-07-01 may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine or is a qualified elector living outside the United States, may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to those electors eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election.

16.1-07-06. Application form.

1. Application for an absent voter's ballot must be made on a blank furnished by the proper officer of the county, city, or school district which the applicant is an elector, or on any blank containing the following information:
 - a. The applicant's name.
 - b. The applicant's voting address.
 - c. The applicant's mailing address.
 - d. The applicant's current home telephone number.
 - e. The election for which the ballot is being requested.
 - f. The applicant's reason for voting absentee as specified in section 16.1-07-01.
 - g. The date of the request.
 - h. An affirmation that the applicant has resided in the precinct for at least thirty days.
 - i. The applicant's signature.

2. A qualified elector absent from the state is not required to file an application for an absent voter's ballot for any statewide election if either of the following apply:
 - a. The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine.
 - b. The elector is a United States citizen living outside the United States.

If the qualified elector furnishes the county auditor with a current mailing address and the elector's local residence or precinct, the county auditor shall mail to the qualified elector a ballot with a return envelope and instructions for voting for any statewide election in that calendar year.

16.1-07-07. Delivering application blank for ballot. The officers specified in section 16.1-07-05, upon request, shall mail an application blank for an absent voter's ballot to the voter, or they may deliver the application blank to the voter upon a personal application made at the officer's office. The officers may also make available or distribute the applications to the public without any specific request being made for the applications.

16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Inability of elector to sign name.

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.
2. If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and an envelope must be enclosed with the ballot or ballots. The front of the envelope must bear the official title and post-office address of the officer supplying the voter with the ballot, and upon the other side a printed statement in substantially the following form:

State of _____)
)ss.
County of _____)

I, _____, under penalty of possible criminal prosecution for making a false statement, do solemnly swear that I am a resident of the township of _____, or of the _____ precinct of the _____ ward in the city of _____, residing at _____ in said county, county of _____ and state of North Dakota, and entitled to vote in such precinct at the next election; that I expect to be absent from the precinct of my residence on the day of the election or that by reason of physical disability I am unable to attend at the polling place for the election, and that I will have no opportunity to vote in person on that day.

If the absent voter is unable to sign the voter's name, the voter shall mark (X) that statement in the presence of a disinterested person. The disinterested person shall print the name of the person marking the X below the X, and shall sign that person's own name following the printed name with the notation "witness to the mark".

16.1-07-08.1. Procedures for voting with special write-in absentee ballot.

1. Notwithstanding any other provision of this chapter, a qualified absentee elector may apply to the county auditor for a special write-in absentee ballot. This ballot may be used to vote for presidential electors and members of the United States senate and of the United States house of representatives.
2. The application for a special write-in absentee ballot may be made on a form prescribed by the secretary of state. In order to qualify for a special write-in absentee ballot, the voter shall state on the application that the voter is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated or extremely remote areas of the world.
3. Upon receipt of the application, the county auditor shall issue the special write-in absentee ballot, which must be in the form prescribed by the secretary of state. The ballot must permit the elector to vote by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

16.1-07-09. Canvassing of mailed absent voters' ballots received late. In the case of congressional, state, county, city, or school district elections, if an envelope postmarked by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the ballot must be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at the time the returns are canvassed. Any envelope without a postmark by the United States postal service or other mail delivery system or with an illegible postmark and

containing an absentee voter's ballot must be received by mail by the proper officer within forty-eight hours after the closing of the polls on election day to be canvassed and counted. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time before five p.m. on the day before the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding the ballot shall print the date and hour of receipt on the envelope. Upon receipt, the canvassing board shall first determine that the elector was qualified to vote in that precinct and that the elector did not previously vote in that precinct on the date of the election before allowing the ballot to be tallied.

16.1-07-10. Care and custody of ballot. Upon receipt of an envelope containing the absent voter's ballot, the proper officer immediately shall attach the written application of the absent voter and file the ballot with other absentee ballots from the same precinct. Before delivering the absentee ballots to the precinct, the proper officer shall package the ballots in a manner so the ballots are sealed securely. The package must be endorsed with the name of the proper voting precinct, the name and official title of the officer, and the words "This package contains an absent voter's ballot and must be opened only on election day at the polls while the polls are open." The officer shall keep the package safely in the officer's office until it is delivered by the officer as provided in this chapter.

16.1-07-11. Submitting ballot to inspector of elections. If the envelope containing the absent voter's ballot is received by the county auditor, auditor or clerk of the city, or business manager of the school district, as the case may be, prior to his delivery of the sealed package containing the official ballots to the inspector of elections of the precinct in which such absent voter resides, such ballot, after having been enclosed with the application in an envelope as required by section 16.1-07-10, must be enclosed in such package and delivered therewith to the inspector of the precinct. If the official ballots for the precinct have been delivered to the election inspector at the time of receipt by the proper officer of the absent voter's ballot, then the officer shall immediately mail the same postage prepaid to the election inspector, or the officer, or his deputy, may personally deliver it to the inspector. Any absent voter's ballot sent to the wrong precinct by the official whose duty it is to forward such ballots to the precincts, or any absent voter's ballot received by the inspector from the appropriate officer too late to be counted at the precinct, must be returned to the official by the election inspector, and must be tallied by the county canvassing board, the governing body of the city, or the school board, as the case may be, with other absent voters' ballots received too late to be forwarded to the precinct.

16.1-07-12. Opening ballot - Voting or rejecting - Depositing in ballot box - Preserving. At any time between the opening and closing of the polls on election day, the election judges of the relevant precinct first shall open the outer envelope and compare the signature on such application for an absent voter's ballot with the signature on the statement provided for in section 16.1-07-08. If the judges find that the statement is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct and has not voted at the election, they shall open the absent voter's envelope in such manner as not to destroy the statement thereon. They shall take out the ballot or ballots contained therein without unfolding the same, or permitting the same to be opened or examined, and after stamping and initialing or initialing the same as other ballots are stamped and initialed or initialed, they shall deposit the

ballot in the proper ballot box and show in the pollbook of the election that the elector has voted. If the statement is found to be insufficient, or that the signatures do not correspond, or that the applicant is not then a duly qualified elector of the precinct, the vote may not be allowed, but without opening the absent voter's envelope, the election inspector or election judge shall mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. The subsequent death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting such ballot.

16.1-07-12.1. Absentee ballot precinct - Election board appointment - Ballot counting.

1. For any primary, general, or special statewide or legislative district election, the board of county commissioners may create a special precinct, known as an absentee ballot precinct, for each legislative district in the county for the purpose of counting all absentee ballots cast in an election in that district. Each absentee ballot precinct is a separate precinct for the purpose of ballot arrangement rotation. The election board of the absentee ballot precinct must be known as the absentee ballot counting board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. The governing body of the city shall appoint the election inspector in a district contained entirely within an incorporated city. The county auditor, with the approval of the board of county commissioners, shall appoint all other inspectors. Each district party chairman of the two parties which cast the largest and the next largest number of votes at the last general election shall appoint one election judge for each district. 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.
3. The county auditor shall have the absentee ballots delivered to the inspector of the absentee ballot counting board with the election supplies, or if received later, then prior to the closing of the polls.
4. The absentee ballot counting board shall occupy a room designated by the county auditor which must be open to any person for the purpose of observing the counting process.
5. The absentee ballots must be opened and handled as required in section 16.1-07-12. The absentee ballot counting board may commence counting the absentee ballots at the same time as any precinct within the county, city, or legislative district opens its polls. As soon as all the polls in the county, city, or legislative district close and the count is completed, the inspector shall announce publicly the results. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12, as applicable.

16.1-07-13. Registration of absent voters' ballots on voting machines or on electronic systems. At polling places using voting machines or electronic voting systems, absent voters' ballots, if any, must be registered on the voting machines or electronic voting systems by the two election judges. The voting of absent voters' ballots on voting machines or voting systems must be done in secrecy by the two election judges, acting jointly, during the voting day at times when

the voting machines or voting systems are not in use by voters, or after the close of the voting day and before the machines are unlocked for tallying. The absentee electronic voting system ballots prepared pursuant to this section must be deposited in the ballot boxes and counted as other ballots. If the electronic voting system in use so provides, the actual electronic voting system ballot may be used as the absentee ballot.

16.1-07-14. Penalty. Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.

CHAPTER 16.1-08
CAMPAIGN CONTRIBUTIONS
[Repealed by S.L. 1995, ch. 207, # 20]

CHAPTER 16.1-08.1
CAMPAIGN CONTRIBUTION STATEMENTS

For ease of reading, changes made to Chapter 16.1-08.1 by the 1995 Legislature were not underlined. A majority of those changes resulted from the consolidation and merging of 16.1-08 and 16.1-08.1. For a better understanding of the legislative changes made to 16.1-08.1, a copy of Senate Bill No. 2332 can be attained from the Secretary of State's office or by consulting chapter 207 of the 1995 Session Laws.

16.1-08.1-01. Definitions. As used in this chapter, unless the context otherwise plainly requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
2. "Candidate" means an individual who seeks nomination for election or election to public office.
3. "Contribution" means a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to public office, of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. Contribution also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes, and includes funds received by a political committee which are transferred to that committee from another political committee or other source. This definition does not include:
 - a. A loan of money from a bank or other lending institution made in the regular course of business.
 - b. Time spent by volunteer campaign or political party workers.
 - c. Money spent by a candidate on the candidate's own behalf.
 - d. Any money received from a district or state committee of a political party, as established pursuant to sections 16.1-03-06 and 16.1-03-08, except for contributions reported pursuant to section 16.1-08.1-03.
4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code.

5. "Expenditure" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or property, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
6. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
7. "Person" means an individual, partnership, committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
8. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures primarily for political purposes.
9. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
10. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person.
11. "Public office" means every statewide or legislative office to which persons can be elected by vote of the people under the laws of this state.

16.1-08.1-02. Contributions statement required of candidates. Any candidate who is soliciting or accepting contributions for any political purpose, shall make and file a statement in accordance with this section.

The candidate shall include in the statement the name and mailing address of all contributors who contributed in excess of one hundred dollars to the candidate.

The candidate shall file the statement no later than the twelfth day before the date of the election in which the candidate's name appears on the ballot or in which the candidate seeks election through write-in votes complete from the beginning of that calendar year or, if applicable, from the cutoff date for the previous statement, through the twentieth day before the date of the election. The candidate shall file a complete statement for the entire calendar year no later than the thirty-first day of January of the following year, regardless of whether the candidate's name appeared on the ballot for any office during that calendar year or whether the candidate did not seek election at any election through write-in votes.

Statements of a legislative candidate must be filed in the office of the county auditor of the candidate's county of residence. Statements of state office candidates must be filed in the office of the secretary of state.

No candidate may be required to file any statement required by this chapter if the candidate has not received any contributions in excess of one hundred dollars during the calendar year.

16.1-08.1-03. Contributions statement required of political parties. Any political party that receives contributions in excess of one hundred dollars and contributes money to a candidate in excess of one hundred dollars shall file a statement containing a detailed list of all contributions received from an individual or political committee which exceed one hundred dollars in amount. The statement must include the name and mailing address of all contributors listed.

A yearend statement covering the entire calendar year must be filed with the secretary of state no later than the thirty-first day of January of the following year. A preelection statement must be filed no later than the twelfth day before any election at which the party has endorsed or will nominate a candidate and must be complete from the beginning of that calendar year or, if applicable, from the cutoff date for the previous statement, through the twentieth day before the election.

16.1-08.1-03.1. Contributions statement required of persons promoting passage or defeat of initiated or referred measure.

1. Any person who is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure at any election shall file a statement in accordance with this section if the person has received any contributions from a person in excess of one hundred dollars. The statement must include the name and mailing address of all contributors who contributed in excess of one hundred dollars to the person.
2. A person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of any statewide initiated or referred measure may not accept a contribution of more than one hundred dollars from an individual who does not reside in this state or from an out-of-state political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person who contributed more than one hundred dollars of the contribution. The certified statement must also list the occupation, employer, and principal place of business for each person who contributed more than two hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or referred measure must include this statement with the contribution statement required to be filed under subsection 1.

3. The statement required of a person under subsection 1 must be filed with the secretary of state no later than the twelfth day prior to the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election. A complete statement for the entire calendar year must be filed no later than the thirty-first day of January of the following year.

16.1-08.1-03.2. Political committee registration. A political committee, other than a political party, and a person aiding or opposing a measure to be voted upon by the voters of the state shall register its name, address, and its agent's name and address with the secretary of state each year in which it receives any contribution. The registration must be completed within five days of the receipt of any contribution and must be submitted with a registration fee of five dollars.

16.1-08.1-03.3. Campaign contributions by corporations, cooperative corporations, limited liability companies, and associations prohibited - Violation - Penalty.

1. A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution:
 - a. To aid any political party, political committee, or organization.
 - b. To aid any corporation, limited liability company, or association organized or maintained for political purposes.
 - c. To aid any candidate for political office or for nomination to political office.
 - d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
 - e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.
2. This section does not prohibit the establishment, administration, and solicitation of contributions to a separate and segregated fund to be utilized for political purposes by a corporation, cooperative corporation, limited liability company, or association. It is unlawful for:
 - a. The person or persons controlling the fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilize money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilize money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund.
 - b. Any person soliciting an employee, stockholder, patron, or member for a contribution to the fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation or of the general political philosophy intended to be advanced through committee activities.
 - c. Any person soliciting an employee or member for a contribution to the fund to fail to inform the employee or member at the time of the solicitation of the right to refuse to contribute without any reprisal.

- d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed and of amounts expended for political purposes.
 - e. Any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, limited liability company, or association maintaining the political committee.
 - f. Any expenditure, except a contract, promise, or agreement, express or implied, to make any expenditure, made for political purposes to be reported under this section before control of the expenditure has been released by the political committee.
3. All political committees formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of one hundred dollars in the aggregate made for political purposes with the secretary of state. A yearend statement covering the entire calendar year must be filed no later than the thirty-first day of the following year. A preelection statement must be filed no later than the twelfth day before any primary, special, or general election and must be complete from the beginning of the calendar year or, if applicable, from the cutoff date for the previous statement through the twentieth day before the election.
 4. A person may not make a payment of that person's money or of another person's money to any other person for a political purpose in any name other than that of the person who supplies the money and a person may not knowingly receive the payment nor enter nor cause the payment to be entered in that person's account or record in any name other than that of the person by whom it actually was furnished.
 5. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, limited liability company, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, limited liability company, or association funds or otherwise violates this section, it is prima facie evidence of a violation by the corporation, cooperative corporation, limited liability company, or association.
 6. A violation of this section may be prosecuted in the county where the contribution is made or in any county in which it has been paid or distributed.
 7. It is a class A misdemeanor for an officer, director, stockholder, manager, governor, member, attorney, agent, or representative of any corporation, cooperative corporation, limited liability company, or association to violate this section, or to counsel or consent to any violation. Any person who solicits or knowingly receives any contribution in violation of this section is guilty of a class A misdemeanor.

8. Any officer, director, stockholder, manager, governor, member, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section is liable to the company, corporation, limited liability company, or association for the amount so contributed.

16.1-08.1-03.4. Person not excused from testifying as to violation - Prosecution or penalty waived upon testifying. No person may be excused from attending and testifying or producing any books, papers, or other documents before any court upon any investigation, proceeding, or trial for a violation of any of the provisions of this chapter, upon the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or degrade the person. No person may be prosecuted nor subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person may testify or produce evidence, documentary or otherwise, and no testimony so given or produced may be used against the person in any criminal investigation or proceeding.

16.1-08.1-03.5. Expenditures for other purposes - Report required. Nothing in this chapter may be construed to prohibit the exercise by corporations, cooperative corporations, limited liability companies, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, limited liability company, or association other than a "political purpose" as defined by this chapter. Any corporation, cooperative corporation, limited liability company, or association that spends money for the purpose of promoting passage or defeat of initiated or referred measures, other than a contribution to another person promoting passage or defeat of an initiated or referred measure, shall file a statement listing the total amount of money spent for that purpose. The statement must be filed with the secretary of state no later than the twelfth day prior to the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election.

16.1-08.1-04. Supplemental statement required on large contributions received after original statement - Filing time. If any candidate or person soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of a statewide initiated or referred measure receives any contribution of five hundred dollars or more in the twenty-day period prior to any election from any individual contributor, that candidate or person shall make and file a supplemental statement in the same form as required by section 16.1-08.1-02 or 16.1-08.1-03.1, stating the name and street address of such contributor and the amount of the contribution, and file the statement in the appropriate office within forty-eight hours of the receipt of the contribution.

16.1-08.1-05. Audit by secretary of state - Random and requested audits - Reports. The secretary of state may arrange an audit of any statement filed pursuant to this chapter. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit must be reported to the attorney general.

16.1-08.1-06. Contributions statement requirements. A statement required by this chapter to be filed with the secretary of state or county auditor must be:

1. Verified by the oath or affirmation of the person filing the statement, taken before any officer authorized to administer oaths.
2. Deemed properly filed when deposited in an established post office within the prescribed time, postage affixed, and directed to the secretary of state or county auditor, but in the event it is not received, a duplicate of the statement must be promptly filed upon notice by the secretary of state or county auditor of its nonreceipt.
3. Preserved by the secretary of state or county auditor for a period of four years from the date of filing. The statement is to be considered a part of the public records of the secretary of state's or county auditor's office and must be open to public inspection.

If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state or county auditor is closed, the statement must be filed on the next available day on which the office of the secretary of state or county auditor is open. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this chapter.

16.1-08.1-07. Penalty. Except as otherwise provided, any person who willfully violates any provision of this chapter is guilty of an infraction.

CHAPTER 16.1-09 STATEMENT OF INTERESTS

16.1-09-01. Declaration of policy. The legislative assembly declares that public office is a public trust, and in order to continue the faith and confidence of the people of the state in that trust and in their government, the people have a right to be assured that the interest of holders of or candidates for public office present no conflict with the public trust.

16.1-09-02. Statement of interests to be filed. Every candidate for elective office shall file a statement of interests as required by this chapter. A candidate for elective office shall file the statement of interests with the officer with whom the candidate filed the candidate's certificate of nomination, certificate of endorsement, or petition of nomination. Candidates for elective office who are required to file such statements shall do so at the time of filing a certificate of nomination, a certificate of endorsement, or a petition of nomination, pursuant to chapter 16.1-11, 16.1-12, or 40-21, as is appropriate; provided, that any person who has filed a statement as the result of candidacy in a primary election need not refile prior to running in the following general election. Every person who is appointed by the governor to a state agency, board, bureau, commission, department, or occupational or professional licensing board shall file a statement of interests as required by this chapter with the secretary of state simultaneously with announcement of the appointment.

16.1-09-03. Contents of statement of interests. The statement of interests required to be filed under this chapter applies to the candidate or appointee and his spouse and must include:

1. An identification of the principal source of income, defined in the state income tax return as "principal occupation", of both the candidate or appointee and his spouse.
2. The name of each business or trust, not the principal source of income, in which the person making the statement, and that person's spouse, have a financial interest.
3. A list of the associations or institutions with which the person making the statement, and that person's spouse, are closely associated, or for which they serve as a director or officer, and which may be affected by legislative action, in the case of a statement submitted by a legislative candidate, or action by the candidate or appointee in his capacity as an officeholder.
4. The identity by name of all business offices, business directorships, and fiduciary relationships the person making the statement, and that person's spouse, have held in the preceding calendar year.

16.1-09-04. Powers and duties of the secretary of state. The secretary of state shall:

1. Prescribe the forms for statements of interests required to be filed under this chapter and furnish such forms, on request, to persons subject to this chapter.
2. Prepare and publish guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements under this chapter.
3. Adopt such rules and regulations, in the manner prescribed by chapter 28-32, as may be appropriate to effectuate the purposes of this chapter.

16.1-09-05. Powers and duties of the secretary of state and county and city auditors. The secretary of state, or the county or city auditor, where appropriate shall:

1. Accept and file any statement submitted pursuant to this chapter.
2. Make statements filed available for public inspection and copying during regular office hours. A reasonable fee may be charged to cover the cost of copying. Proceeds from any fees charged must be deposited in the general fund of the appropriate governmental entity.
3. Preserve statements filed under this chapter for the term of office to which the person making disclosure is elected or appointed or until a new statement is filed, and preserve statements filed pursuant to this chapter by those candidates who are not elected or appointed for a period of one year after the date of receipt.

16.1-09-06. Procedure for enforcement - Investigation by attorney general or state's attorney. Upon a complaint, signed under penalty of perjury, by any person, or upon the motion of the attorney general or a state's attorney, the attorney general or state's attorney shall investigate any alleged violation of this chapter. The investigation and its proceedings are confidential until a determination has been reached by the investigating officer that enough incriminating evidence exists to bring an action and such action is commenced in the appropriate district court.

16.1-09-07. Effect of intentional violation of chapter - Penalty. Any person who intentionally violates a provision of this chapter is guilty of a class B misdemeanor and his appointment, nomination, or election, as the case may be, must be declared void. Any vacancy that may result from the intentional violation of this chapter must be filled in the manner provided by law. This section does not remove from office a person who is already in office and who has entered upon the discharge of his duties where such office is subject to the impeachment provisions of the Constitution of North Dakota.

CHAPTER 16.1-10 CORRUPT PRACTICES

16.1-10-01. Corrupt practice - What constitutes. A person is guilty of corrupt practice within the meaning of this chapter, if he willfully engages in any of the following:

1. Expends any money for election purposes contrary to the provisions of this chapter.
2. Engages in any of the practices prohibited by section 12.1-14-02 or 12.1-14-03.
3. Is guilty of the use of state services or property for political purposes.

16.1-10-02. Use of state services or property for political purposes.

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, or commission thereof, for any political purpose.
2. The following definitions must be used for the purposes of this section:
 - a. "Political purpose" means any activity directly undertaken by a candidate for any office in support of his own election to such office; or aid and assistance to any candidate, political party, political committee, or organization, but does not include activities undertaken in the performance of a duty of state office.
 - b. "Property" includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
 - c. "Services" includes, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

16.1-10-03. Political badge, button, or insignia at elections. No person may, on the day of an election, buy, sell, give, or provide any political badge, button, or any insignia to be worn at or about the polls on that day. No such political badge, button, or insignia may be worn at or about the polls on any election day.

16.1-10-04. Publication of false information in political advertisements - Penalty. No person may knowingly sponsor any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a candidate's prior public record, which the sponsor knows to be untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether such publication is by radio, television, newspaper, pamphlet, folder, display cards,

signs, posters or billboard advertisements, or by any other public means. Any person who violates the provisions of this section is guilty of a class A misdemeanor.

16.1-10-04.1. Certain political advertisements to disclose name of sponsor - Name disclosure requirements. Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, or by any other public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, must disclose at the bottom of the advertisement the name or names of the sponsor or sponsors of the advertisement, and the name or names of the person, persons, associations, or partnerships paying for the advertisement. If the name of an association or partnership is used, the disclaimer must also include the name of the chairman or other responsible person from the association or partnership. The name or names of the person, persons, associations, or partnerships paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of an association or partnership is used, the disclaimer must also include the name of the chairman or other responsible person from the association or partnership. In every political advertisement in which the name of the sponsor or person, association, or partnership paying for the advertisement is disclosed, the first and last name of any named person must be disclosed. This section does not apply to campaign buttons.

16.1-10-05. Paying owner, editor, publisher, or agent of newspaper to advocate or oppose candidate editorially prohibited. No person may pay or give anything of value to the owner, editor, publisher, or agent of any newspaper or other periodical, or radio or television station, to induce him to advocate editorially or to oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent may accept such inducement.

16.1-10-06. Electioneering on election day - Penalty. Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day 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, is guilty of an infraction. 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.

16.1-10-06.1. Paying another person for attendance at polls, transporting persons, registering, and personal services prohibited. No person may pay another person for:

1. Any loss or damage due to attendance at the polls;
2. Registering;
3. The expense of transportation to or from the polls; or
4. Personal services to be performed on the day of a caucus, primary election, or any election which tend in any way, directly or indirectly, to affect the result of such caucus or election.

The provisions of this section do not apply to the hiring of a person whose sole duty it is to act as a challenger and to watch the count of official ballots.

16.1-10-06.2. Sale or distribution at polling place. No person may approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. This prohibition applies in any polling place or within one hundred feet [30.48 meters] from any entrance leading into a polling place on election day.

16.1-10-07. Candidate guilty of corrupt practice to vacate nomination of office. If any person is found guilty of any corrupt practice he must be punished by being deprived of his government job, or his nomination or election must be declared void, as the case may be. This section does not remove from office a person who is already in office and who has entered upon the discharge of his duties where such office is subject to the impeachment provisions of the Constitution of North Dakota.

16.1-10-08. Penalty for violation of chapter. Any person violating any provision of this chapter, for which another penalty is not specifically provided, is guilty of a class A misdemeanor.

CHAPTER 16.1-11
NOMINATIONS FOR OFFICE - PRIMARY ELECTION

16.1-11-01. Primary election - When held - Nomination of candidates - Nomination for special elections. On the second Tuesday in June of every general election year, a primary election must be held for the nomination of candidates for the following offices in the years of their regular election: member of the United States house of representatives, county officers, state officers, judges of the supreme court and district court, members of the legislative assembly, county commissioners, and United States senators. In special elections the nominations for the officers enumerated in this section must be made as provided in this title.

16.1-11-02. Presidential preference contest - Time for holding. In a presidential election year, there must be conducted a presidential preference contest on the last Tuesday in February of that year. The presidential preference contest may be used only to instruct delegates to a national political convention and may not further the electoral process for any other purpose. No other election or vote on a measure of any kind may be held in conjunction with the presidential preference contest.

16.1-11-02.1. Presidential preference contest conduct - Mail ballot election. As applicable and except as otherwise provided in this chapter, the presidential preference contest must be governed by the requirements of this title applicable to primary elections, including deadlines for ballot preparation and election official appointments. The presidential preference contest may be conducted pursuant to the mail ballot election procedures established by chapter 16.1-11.1. The cost of the contest must be paid in the same manner as provided for a statewide special election under section 16.1-01-02.3.

16.1-11-02.2. Presidential preference contest - Requirements. Notwithstanding any other provision of law, the secretary of state shall adopt rules relating to the presidential preference contest, including rules providing for the reduction of poll workers, the reduction of poll hours, the reduction of precincts, the arrangement of the names of candidates on the official ballot, the publication of the sample ballot, and open voting within cities or counties.

16.1-11-03. Political parties authorized to conduct presidential preference contest. Every political party entitled to a separate column under section 16.1-11-30 is entitled to conduct a presidential preference contest. A political party subject to subsection 4 of section 16.1-11-30 shall meet the requirements of subsection 4 of section 16.1-11-30 by filing the petition with the secretary of state before four p.m. of the sixtieth day before the presidential preference contest.

16.1-11-04. Presidential preference contest. Unless specifically forbidden by national party rules, the delegates selected by political parties at a presidential preference contest are bound to cast their first ballots at the party national convention in such a manner that each candidate at the party's presidential preference contest receives a proportion of the total votes cast by the delegates equal to the proportion received by that candidate of the total votes cast for all candidates for president of that party at the contest. In computing the number of delegates a candidate may be entitled to on the first ballot, if party rules do not allow apportionment of a

delegate and such an apportionment appears necessary because no candidate received more than five-tenths of a delegate, then that delegate must be assigned to the candidate receiving the highest number of votes in the contest. If a candidate withdraws before the first ballot voting begins, delegates obligated to vote for that candidate on the first ballot are released from that obligation.

16.1-11-05. Secretary of state to give notice to county auditor of officers to be nominated. Between the first day of March and the first day of April in each primary election year, the secretary of state shall cause to be delivered to the county auditor of each county a notice specifying all the officers to be nominated in that county at the next primary election. The publication of the sample ballot by the county auditor constitutes the notice of the secretary of state in regard to the officers and candidates to be voted upon at the primary election.

16.1-11-05.1. Participation in endorsements for nomination. No person may participate directly or indirectly in the endorsement for nomination of more than one person for each office to be filled, except a person may sign a petition for placement of a candidate's name on the primary ballot:

1. For more than one person for each office for an office not under party designation.
2. For more than one person for each office for an office under party designation only if all the candidates for whom the person signs a petition for an office are running under the same party designation.

Except for persons allowed to seek nomination to more than one office pursuant to section 16.1-12-03, no person may accept endorsement for nomination by certificate or petition to more than one office. No political party is entitled to endorse for nomination by certificate more than one set of nominees.

16.1-11-06. State candidate's petition or political party certificate of endorsement required to get name on ballot - Contents - Filing. Every candidate for United States senator, United States representative, a state office except the office of state senator or state representative, and judges of the supreme and district courts shall, not more than seventy nor less than sixty days, and before four p.m. of the sixtieth day, prior to any primary election, present to the secretary of state either:

1. A certificate of endorsement signed by the state chairman of any legally recognized political party containing the candidate's name, post-office address, the title of the office to which he aspires, and the party which he represents; or
2. A petition containing the following:
 - a. The candidate's name, post-office address, and the title of the office to which he aspires.
 - b. The name of the party the candidate represents if the petition is for an office under party designation.
 - c. The signatures of qualified electors, the number of which must be determined as follows:

- (1) If the office is under party designation, the signatures of three percent of the total vote cast for the candidates of the party with which the candidate affiliates, for the same position at the last general election. However, no more than three hundred signatures may be required.
 - (2) If there was no candidate of a party for a position at the preceding general election, at least three hundred signatures.
 - (3) If the office is under the no-party designation, at least three hundred signatures.
- d. The mailing address and the date of signing for each signer.

If the petition or certificate of endorsement is for the office of governor or lieutenant governor, it must contain the names and other information required of candidates for both those offices. If the petition or certificate of endorsement is mailed, it must be in the possession of the secretary of state before four p.m. of the sixtieth day prior to the primary election.

16.1-11-07. Presidential candidates on ballot - Filing time. Presidential candidates, representing parties qualified to conduct a presidential preference contest, desiring to be on the presidential preference contest ballot shall file an affidavit, and either a certificate of endorsement signed by the chairman of the party's state committee, or a petition in the same form and with the same number of signatures as a candidate for state office. The certificate and affidavit, or petition and affidavit, must be filed with the secretary of state not more than seventy nor less than sixty days, and before four p.m. of the sixtieth day before the presidential preference contest, and for the purposes of the presidential preference contest only, political parties may file certificates for more than one presidential candidate. The secretary of state shall certify the names to the county auditors for ballot preparation.

16.1-11-08. Reference to party affiliation in petition and affidavit prohibited for certain offices. No reference may be made to a party ballot or to the party affiliation of a candidate in a petition and affidavit filed by or on behalf of a candidate for nomination in the primary election to an elective county office, the office of judge of the supreme court, judge of the district court, commissioner of labor, or superintendent of public instruction.

(For effective date, see Note) Reference to party affiliation in petition and affidavit prohibited for certain offices. No reference may be made to a party ballot or to the party affiliation of a candidate in a petition and affidavit filed by or on behalf of a candidate for nomination in the primary election to an elective county office, the office of judge of the supreme court, judge of the district court, or superintendent of public instruction.

16.1-11-11. County and legislative district candidates' petitions - Filing - Contents.

Every candidate for a county or legislative district office shall present, not more than seventy nor less than sixty days and before four p.m. of the sixtieth day before any primary election, to the county auditor of the county in which the candidate resides either:

1. A certificate of endorsement signed by the district chairman of any legally recognized political party containing the candidate's name, post-office address, the title of the office to which the candidate aspires, and the party that the candidate represents; or
2. A petition containing the following:
 - a. The candidate's name, post-office address, and the title of the office to which the candidate aspires.
 - b. The name of the party the candidate represents, only if it is a petition for an office that is under party designation.
 - c. The signatures of qualified electors, the number of which must be determined as follows:
 - (1) If the office is a county office, the signatures of not less than two percent and not more than five percent of the total vote cast for the office at the most recent general election at which the office was voted upon.
 - (2) If the office is a county office and multiple candidates were elected to the office at the preceding general election at which the office was voted upon, the signatures of not less than two percent and not more than five percent of the votes cast for all candidates divided by the number of candidates that were to be elected to that office.
 - (3) If the office is a county office and no candidate was elected or no votes were cast for the office at any general election, the number of signers equal to the percentage as provided in paragraph 1 applied to the total average vote cast for the offices of sheriff and county auditor at the most recent general election at which those officers were elected in the petitioner's county. This average must be determined by dividing by two the total vote cast for those offices.
 - (4) If the office is a legislative office, the signatures of at least one percent of the total resident population of the legislative district as determined by the most recent federal decennial census.
 - (5) In no case may more than three hundred signatures be required.
 - d. The mailing address and date of signing for each signer.

If the petition or certificate of endorsement is mailed, it must be in the possession of the county auditor before four p.m. on the sixtieth day before the primary election.

16.1-11-12. County auditor to place applicant's name on ballot. 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 the primary election ballot in the party or appropriate column, as the case may be.

16.1-11-13. Filing petition or certificate of endorsement when legislative district composed of more than one county. When a legislative district is composed of more than one county, the certificate of endorsement or the petition provided for in section 16.1-11-11 must be filed with the county auditor of the county where the candidate resides, and that county auditor shall certify to the county auditors of the other counties comprising the legislative district the names of the candidates filing the petitions or certificates.

16.1-11-14. Application by other persons to place name on ballot - Petition - Affidavit. Repealed by S.L. 1995, ch. 207, # 20.

16.1-11-15. Nominating petition not to be circulated more than ninety days prior to filing time. No petition provided for in this chapter may be circulated or signed more than ninety days previous to the time when any petition must be filed under the provisions of this chapter. Any signatures to a petition secured more than ninety days before that time may not be counted.

16.1-11-16. Form of petition. A petition required in this chapter may be one continuous list of names under the proper political title or principle or there may be a number of petitions using the same title, containing the aggregate of names required.

16.1-11-17. Filling vacancy in party primary election ballot permissible - Petition - Affidavit. Repealed by S.L. 1995, ch. 207, # 20.

16.1-11-18. Party committees to fill vacancy occurring in nomination for party office.

1. If a vacancy occurs in any party certificate of endorsement at the primary election for any state or legislative district office, the proper state or district executive committee of the political party may fill the vacancy by filing another certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
2. If no party endorsement has been made by certificate and a vacancy occurs in a slate of candidates seeking party nomination by petition at the primary election, the proper state or district executive committee may fill the vacancy by filing a certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
3. If party endorsements by certificate have been made for any state or district office and a vacancy occurs in the slate of persons seeking nomination at the primary election because of the unavailability of the person who is seeking nomination by petition, that vacancy may not be filled except by petition.
4. If a vacancy occurs in a slate of candidates after the candidates have been nominated at the primary election, the proper state or district executive committee may fill any vacancy by filing a certificate of nomination with the secretary of state. The chairman and secretary of the committee shall make and file with the secretary of state the certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any

further information as may be required to be given in an original certificate of nomination. When such a certificate is filed, the secretary of state, in certifying the nomination to the various auditors, shall insert the name of the person who has been nominated to fill the vacancy in place of the original nominee. If the secretary of state already has forwarded his certificate, he forthwith shall certify to the auditor of the proper county or counties the name and post-office address of the person nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom the nominee is substituted. Failure to publish the name of a person substituted does not invalidate the election.

With the exception of vacancies filled pursuant to section 16.1-12-08, vacancies to be filled according to the provisions of subsection 1, 2, or 3 of this section may be filled not later than fifty-six days prior to the election, and vacancies to be filled according to the provisions of subsection 4 may be filled not later than fifty-five days prior to the election.

16.1-11-19. Filling vacancy existing on no-party ballot - Petition required - Time of filing. If a vacancy exists on a no-party ballot for a state office or for judge of a district court, the vacancy may be filled by filing with the secretary of state, before four p.m. on the fifty-sixth day prior to the primary election, a written petition as provided in section 16.1-11-06, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it must be in the possession of the secretary of state before four p.m. on the fifty-sixth day prior to the primary election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors equal in number to at least two percent of the total vote cast for governor at the most recent general election in the state or district at which the office of governor was voted upon, but in no case may more than three hundred signatures be required. If a vacancy exists on a no-party ballot in a county or district within a county, the vacancy may be filled by filing with the county auditor, before four p.m. of the fifty-sixth day prior to the primary election, a written petition as provided in section 16.1-11-11, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it must be in the possession of the county auditor before four p.m. on the fifty-sixth day prior to the primary election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors equal in number to at least thirty percent of the total vote cast for governor at the most recent general election in the county or district at which the office of governor was voted upon, but in no case may more than three hundred signatures be required. A vacancy in the no-party ballot must be deemed to exist when a candidate who was qualified by filing a petition pursuant to section 16.1-11-06 or 16.1-11-11 dies, resigns, or otherwise becomes disqualified to have his name printed on the ballot.

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 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 his 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.

16.1-11-21. County auditor to publish sample primary election ballot and notice of time and place of election. The county auditor shall publish in the official county newspaper, and if no newspaper is published in the county then in a newspaper published in an adjoining county in the state, the following:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballot must conform in all respects to the form prescribed for the sample primary ballot by the secretary of state. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in the county. Sample ballots with inverted columns must be printed twice in each issue of the newspaper and in such manner as to assure that the column of each political party is displayed once in each issue in an upright position. Absent voters' ballots may not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county must be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.
2. The date of the primary election.
3. The hours during which the polls will be open.
4. The statement that the primary election balloting will be held in the regular polling place in each precinct.

The notice must be published in the official county newspaper once each week for two consecutive weeks prior to the primary election.

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 principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot", and the title must be printed at both ends of the ballot so there is an upright title no matter which way the ballot is held.
2. Each party or 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 principle which it represents.
4. In each column below the party or principle title must be printed:
"You may vote for the candidates of only one party at the primary election. If you vote for candidates of more than one party, your 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."
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 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.
9. The political party or 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 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 ballot will be rejected.

16.1-11-23. Presidential preference contest ballots. The presidential preference contest ballot may allow for voting for only one of the candidates put forth by one party. Ballots must conform in form and style to other ballots as prescribed by the secretary of state and chapter 16.1-11.1.

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 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.

16.1-11-25. Preparation, printing, distributing, canvassing, and returning of no-party ballot. The no-party ballot must be prepared, printed, distributed, canvassed, and returned in the same manner provided for other primary election ballots.

16.1-11-26. Order in which names of offices shall appear on ballot. The primary election ballot for party nominations shall contain the following offices in the following order under each party column:

1. Congressional:
United States senator
representative in Congress
2. Legislative:
state senator _____ district
member of house of representatives _____ district
3. State offices:
governor and lieutenant governor
secretary of state
state auditor
state treasurer
attorney general
commissioner of insurance
commissioner of agriculture
public service commissioner
tax commissioner

16.1-11-27. Arrangement of names on ballots and voting machines.

1. On sample ballots, the names of candidates for each office must be arranged alphabetically according to surnames.
2. On the official ballot used at the election, including electronic voting system ballots, the names of candidates beside or under headings designating each office to be voted for must be alternated in the following manner:
 - a. The ballot must first be arranged with all the names for each office on the ballot in an order determined by lot by the county auditor or responsible election official, and prepared by the county auditor for all state, district, and county offices.
 - b. In printing each set of official ballots for the various election precincts, the position of the names must be changed in each office division as many times as there are candidates in the office division in which there are the most names. The same number of ballots must be printed after each change of position.
 - c. In making the changes of position, the printer shall take the candidate's name at the head of each office division and place it at the bottom of that division, moving the column up so the name that was second before the change is first after the change.
3. In precincts employing voting machines, the position of names which require alternating under the provisions of this section must be alternated so the name appearing first in one precinct will be last in the next precinct, and the name that appeared second must be first in the next precinct, and so on until each name has been moved up or over one space accordingly. This process must be continued from one precinct to another and for as

many names as are involved. There must be a different alternation sequence for each of the following, based on the geographical area by which the office is filled:

- a. Offices to be filled by the electors of the state, the entire county, or any district which includes the entire county.
 - b. Offices to be filled by the electors of districts smaller than the county, with a different rotation for each of those districts.
4. The precincts must be arranged according to the total votes cast for governor at the last general election in which the office of governor was filled, starting with the precinct having the highest total votes cast and ending with the precinct having the lowest total votes cast in that election.
 5. If there are more than three candidates for any office, and it is not possible to place all of the names on one line, the names must be placed in two or more lines having an equal or nearly equal number of names on each line; provided, that in no event may only one name appear on any line.

16.1-11-28. Piling, cutting, and blocking ballots. After the ballots are printed as provided in section 16.1-11-27, and before being cut, they must be kept in separate piles for each change of position, and then must be repiled by taking one from each pile and placing it upon the other pile to be cut, so that every other ballot in the pile of printed sheets must have names in different positions. After the piles are made in this manner, they must be cut and placed in blocks as provided by the general election laws.

16.1-11-29. Preparation of ballot. Unless otherwise provided in this chapter, the primary election ballot must be prepared as provided in chapter 16.1-06.

16.1-11-30. Separate column on primary election ballot required for each political party. The following political parties must be provided with separate columns on primary election ballots:

1. The republican party.
2. The democrat party.
3. Any party which cast five percent of the total votes cast for governor at the last general election.
4. Any other party, if a petition signed by at least seven thousand qualified electors of this state is filed with the secretary of state before four p.m. of the sixtieth day prior to a primary election, asking that a column be provided for such party, naming it, and stating the platform principles thereof. If such petition is mailed it must be in the possession of the secretary of state before four p.m. on the sixtieth day. Candidates of such party are entitled to the same rights and privileges as those of other parties.

Columns must be arranged so that any column is in an inverted position when the adjacent column or columns are in an upright position.

16.1-11-31. Tally books or sheets provided for election precincts - Form and contents.

Two tally books or two sets of tally sheets must be provided for each voting precinct not using electronic ballot counters. The books or sheets must contain a column for each political party or principle having candidates to be voted for at the voting precinct. Two tally books or two sets of tally sheets for candidates on the no-party ballot must be provided for each voting precinct. The books or sheets must be furnished by the county auditor at the same time and in the same manner as the pollbooks and ballots are furnished. The names of the candidates must be placed on the tally books or sheets in the order in which they appear on the official sample ballot, and, as appropriate, must have the proper party or no-party designation at the head thereof.

16.1-11-32. Poll lists kept by clerks of elections. The clerks of primary elections shall keep two lists of the names of all persons voting at each primary election. Each clerk shall return one list and one tally sheet, which must be a part of the records and filed with other election returns. Only two complete lists of voters may be kept whether or not a special election is held simultaneously with the primary election.

16.1-11-33. Judges of election to make statement of primary election - Contents. The judges of a primary election in each precinct shall make a separate statement, on blanks provided for that purpose, for each political party or principle, containing the names of all persons voted for at the primary election, the number of votes cast for each candidate, and for what office. The statement must be subscribed by the election judges and must be filed with the returns in the office of the county auditor.

16.1-11-34. Counting and canvassing of votes in presidential preference contest. The votes cast in presidential preference contests must be counted and canvassed as other votes, and after preparation of statements by the state canvassing board, the secretary of state shall certify the number of votes cast for each party candidate to the state chairman of each political party conducting a presidential preference contest.

16.1-11-35. Nominations by stickers. On both the party and the no-party ballot, a candidate may be nominated by having his 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.

16.1-11-36. Vote required at primary election for nomination. No person may be deemed nominated as a candidate for any office at any primary election unless he receives a number of votes equal to the number of signatures required, or which would have been required had he not had his name placed on the ballot through a certificate of endorsement, on a petition to have a candidate's name for that office placed on the primary ballot.

16.1-11-37. Vote required for nomination on no-party ballot - Partisan nominations prohibited. The number of persons to be nominated as candidates for any one no-party office must be that number of persons who receive the highest number of votes and who total twice the number of available positions for the office, if that many persons are candidates for nomination. Provided, however, that no person may be deemed nominated as a candidate for any no-party office at any primary election unless the number of votes received by him equals the number of signatures of qualified electors required to be obtained on a petition to have a candidate's name for the office placed on the primary ballot. No partisan nominations may be made for any of the offices mentioned in section 16.1-11-08.

16.1-11-38. Tie vote determination. In case of a tie vote the nominee or nominees must be determined by a coin flip, in the presence of the candidates upon at least five days' notice to each candidate, by the canvassing board or boards concerned, at a time and place designated by the board.

16.1-11-39. Persons nominated in accordance with provisions of chapter eligible as candidates in general election. All persons nominated in accordance with the provisions of this chapter are eligible as candidates to be voted for at the ensuing general election.

16.1-11-40. Primary election and ballot governed by general election provisions. Except as otherwise provided in this chapter, the primary election ballot must be arranged, and the primary election must be provided for, conducted, and the expenses thereof paid as in the case of a general election.

CHAPTER 16.1-11.1
MAIL BALLOT PRIMARY ELECTIONS

16.1-11.1-01. Counties may conduct mail ballot elections - Polling places - Records. The board of county commissioners of a county may conduct a primary election by mail ballot. The mail ballot election must include city elections administered by the county auditor, and may include any other election administered by the county auditor pursuant to an agreement with the governing body of a political subdivision within the county. The board shall designate at least one polling place in the county to be open on the day of the election for voting in the usual manner. The county auditor shall place a notice at all polling places in the county used at the last statewide election which states the location of the polling places open for the primary election. The county auditor shall keep a record of each mail ballot provided to qualified electors and provide to the election board at each polling place open on the day of the election a list of every person who applied for a mail ballot.

16.1-11.1-02. Application for mail ballots. The county auditor shall mail an application form for a mail ballot to each person listed in the pollbooks of the county from the last regular statewide election on one date no sooner than the forty-fifth day before the election and no later than the thirtieth day before the election. The county auditor, for two consecutive weeks after the date on which the mail ballot applications are mailed, shall publish in the official newspaper of the county an application form for a mail ballot and a notice that additional mail ballot applications may be obtained from the election official. The application form for a mail ballot must be in substantially the following form:

I, _____, am or will be a duly qualified elector and to my best knowledge
(please print name)

and belief and am or will be entitled to vote at the primary election. I hereby apply for an official mail ballot to be voted by me at that election. I understand that it is a criminal offense to knowingly vote when not qualified to do so.

I have or will have resided at the below address for at least thirty days before the election. My phone number is _____.

Dated this _____ day of _____, 19____.

(Signature of Applicant)

(Mailing Address)

_____, North Dakota _____

(City) (Zip Code)

16.1-11.1-03. Mail ballot distribution. The county auditor shall mail an official mail ballot with a return identification envelope and instructions sufficient to describe the voting process to each qualified elector who returns a properly completed application form to the auditor by five p.m. on the fourth day before the election. The voting instructions must contain a statement informing the elector that the elector is entitled to complete the mail ballot in secrecy. The auditor shall mail the ballot by first-class mail, addressed to the address of the elector completing and returning a mail ballot application, and placed in an envelope that is prominently marked "Do Not Forward". The return identification envelope must contain the following form:

I, _____, under penalty of possible criminal prosecution for making a
(please print name)
false statement, certify that I am or will be a qualified elector for the primary election and have not and will not vote more than one ballot in this election. I also understand that failure to complete the information below will invalidate my ballot.

(Signature of Voter)

(Mailing Address)

_____, North Dakota _____
(City) (Zip Code)

16.1-11.1-04. Voting by electors. Upon receipt of a mail ballot, an elector shall mark it, sign the return identification envelope, and comply with the instructions provided with the ballot. The elector may return the completed ballot to the county auditor by mail or, before six p.m. on the day of the election, to any other place of deposit designated by the auditor. If the elector returns the ballot by mail, the elector shall provide the postage, and the ballot must be postmarked no later than the day before the election.

16.1-11.1-05. Replacement ballots. An elector may obtain a replacement ballot if a mail ballot is destroyed, spoiled, lost, or not received by the elector. The elector seeking a replacement ballot shall sign a sworn statement that the ballot was destroyed, spoiled, lost, or not received and shall present the statement to the county auditor no later than four p.m. on the day before the election.

16.1-11.1-06. Canvass of votes - Special election board. The county auditor shall appoint a special election board for the purpose of counting mail ballots. The board may not begin counting the ballots until six p.m. on the day of the election. A county conducting a mail ballot election constitutes one voting area, and ballots need not be sorted according to precinct or ward unless necessary for the administration of the election.

16.1-11.1-07. Counting of mail ballots. A mail ballot may be counted only if:

1. The ballot is returned in the return identification envelope;
2. The envelope is signed by the elector to whom the ballot is issued; and
3. The signature has been verified by the election board with the signature on the elector's mail ballot application form.

16.1-11.1-08. Election laws applicable. When applicable, all election procedures provided in this title must be followed.

CHAPTER 16.1-12
CERTIFICATES OF NOMINATION - VACANCIES

16.1-12-01. Certificate of nomination - Party and independent. A certificate of nomination must be either:

1. The certificate of nomination required to be executed by the state or a county canvassing board pursuant to sections 16.1-15-40 and 16.1-15-21, respectively, for party nominations.
2. The certificate of nomination by petition for independent nominations provided for by this chapter.

16.1-12-02. Certificates of nomination by petition - Form and contents. Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. The names of nominees so nominated must appear on the ballot as independent nominations. Each certificate of nomination by petition must contain:

1. The name of the nominee.
2. The office the nominee desires to fill.
3. The post-office address of the nominee.
4. Signatures of qualified electors who reside in the state, district, or political subdivision. The signatures need not be appended to one paper, and each person signing shall add that person's mailing address and the date of signing. The signatures on the petition must be in the following number:
 - a. Except as provided in subdivision c, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.
 - b. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be at least two percent of the resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.
 - c. If the nomination is for the office of president, there must be no fewer than four thousand signatures.
5. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

3. A person 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.
4. A person who intends to be a write-in candidate for any other office shall file a certificate of write-in candidacy with the election officer with whom the candidate would otherwise file to have the candidate's name placed on the ballot. 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. A certificate under this subsection is not required when no names will appear on the ballot for that office.

16.1-12-03. Certificate of nomination to contain only one name - Person to participate in only one nomination - Exception. No certificate of nomination provided for by this chapter, except in the case of presidential electors, may contain the name of more than one nominee for each office to be filled. A person elected or appointed to an office appearing on the no-party ballot or seeking nomination and election to a no-party office may also seek nomination to legislative office and may serve in the legislative assembly, unless the no-party office is the office of district court judge, or a statewide elective office. Except as may be permitted in this section, no person may participate directly or indirectly in the nomination of more than one person for each office to be filled on the general election ballot, except a person may sign a certificate of nomination by petition for more than one person for each office, and no person may accept a nomination to more than one office on the general election ballot. No political party is entitled to more than one set of nominees on the official general election ballot.

16.1-12-04. Certificates of nomination - Time and place of filing.

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.
2. Certificates of nomination for nominees for county offices and legislative offices must be filed with the county auditor of the county in which the candidate resides. When a legislative district is composed of more than one county, the county auditor shall certify to the county auditors of the other counties comprising the legislative district the names of the candidates filing the certificates of nomination.
3. Certificates of nomination must, without regard to the means of delivery, be filed and in the actual possession of the appropriate officer not later than four p.m. on the sixtieth day prior to the day of election.

4. The secretary of state and the county auditors shall keep on file for six months all certificates of nomination filed with them under this chapter and all certificates of nomination must be open to public inspection during regular business hours.

16.1-12-05. Secretary of state to certify nominations to county auditor - Duty of county auditor. Not less than fifty-five days prior to any general or special election to fill any state or district office, the secretary of state shall certify to the county auditor of each county in which any elector may by law vote for candidates for the office, the name and post-office address of each person nominated for the office as shown on the certificates of nomination filed in his office. Upon receipt of that certification, the county auditor shall compare it with the written notice of filing of certificates of nomination filed with the auditor pursuant to this chapter, and shall report any discrepancies to the secretary of state, who shall take corrective action prior to sending the notice of officers to be chosen at the next general election as required by section 16.1-13-03.

16.1-12-06. Person nominated by more than one party - Column in which name placed. When one person has been nominated for the same office by more than one body of electors qualified to make nominations for public office, the nominee shall file with the proper officer designated in this chapter, on or before the last day fixed by law for filing certificates of nomination for the office, a signed statement designating the column on the official ballot in which the nominee desires his name to appear. The column so designated must be the column allotted to one of the bodies of electors by whom the person was nominated. In the absence of a timely written designation as provided by this section, the appropriate officer shall place the person's name in the column allotted to the body of electors from which was first received notice of the person's nomination.

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 him is filed. If the written notice is filed with the appropriate officer at least sixty days, and before four p.m. on the sixtieth 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 four p.m. on the sixtieth day before the election.

16.1-12-08. Vacancy occurring on ballot before election day but after ballots are printed - Stickers used. If a vacancy occurs before election day and after the printing of the ballots, and any person is nominated according to the provisions of this title to fill the vacancy, the officer whose duty it is to have the ballots printed and distributed shall have printed on a requisite number of stickers the name of the substitute candidate and no other name. Stickers must be printed on the same color paper as the ballots to which they will be affixed. The officer shall send the stickers by a reliable method to the judges of election in the various precincts affected by the vacancy. The judges of election whose duty it is to distribute the ballots shall affix the stickers in the proper place on each ballot before it is given to the elector and shall cross out or otherwise obliterate the name of the original nominee causing the vacancy.

16.1-12-09. Filling vacancy existing on no-party ballot - Petition required - Time of filing. Whenever a vacancy exists on a no-party ballot for a state office or for judge of a district court, such vacancy may be filled by filing with the secretary of state, at least sixty days prior to the general election and before four p.m. on the sixtieth day, a written petition as provided in section 16.1-11-06, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. If the petition is mailed, it must be in the physical possession of the secretary of state before four p.m. on the sixtieth day prior to the general election. The petition for the nomination of any person to fill such vacancy must be signed by qualified electors equal in number to at least two percent of the total vote cast for the office of governor in the state or district, at the most recent general election at which the office of governor was voted upon, but in no case may more than three hundred signatures be required.

Whenever a vacancy exists on a no-party ballot in a county or district within a county, the vacancy may be filled by filing with the county auditor at least sixty days prior to the general election and before four p.m. of the sixtieth day a written petition as provided in section 16.1-11-11, stating that the petitioner desires to become a candidate for election to the office for which a vacancy exists. If such petition is mailed or otherwise delivered, it must be in the possession of the county auditor before four p.m. on the sixtieth day prior to the general election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors equal in number to at least thirty percent of the total vote cast for the office of governor at the most recent general election in the county or district at which the office of governor was voted upon, but in no case may more than three hundred signatures be required.

A vacancy in the no-party ballot must be deemed to exist when:

1. A candidate nominated at the primary election dies, resigns, or otherwise becomes disqualified to have his name printed on the ballot at the general election.
2. No candidates were nominated at the primary election because the office did not yet exist.
3. The timing of the vacancy in an office makes it impossible to have it placed on the primary ballot.

**CHAPTER 16.1-13
GENERAL ELECTIONS**

16.1-13-01. Date of general election. The general election must be held in all the election districts of this state on the first Tuesday after the first Monday in November of each even-numbered year.

16.1-13-02. Officers to be elected at general election. All elective state, district, and county officers, and the United States senators, and the members of the United States house of representatives, must be elected at the general election next preceding the expiration of the term of each such officer. In a year when a president and vice president of the United States are to be chosen, a number of presidential electors equal to the number of senators and representatives to which this state is entitled in the Congress of the United States must be elected at such general election.

16.1-13-03. Secretary of state to give notice to county auditor of officers to be elected. Not later than seventy days prior to the date of election, the secretary of state shall direct and cause to be delivered to the county auditor of each county a notice specifying each officer to be chosen at the next general election. The publication of the sample ballot by the county auditor constitutes the notice of the secretary of state in regard to the offices and candidates to be voted upon at the general election.

16.1-13-04. Candidates' names placed on official general election ballot. The names of all candidates of each political party or principle or no-party designation, who are shown to have been nominated for the several offices in accordance with the certificates of nomination filed in his office, must be placed by the secretary of state on the official ballot to be voted for at the next general election following.

16.1-13-05. Notice of election - Contents - Publication with sample ballot. Notice of all general elections must be published by the county auditor in the official county newspaper at the same time as, and as a part of, the publication of the sample ballot preceding such election. The notice must be substantially as follows:

Notice is hereby given that on Tuesday, the _____ day of November, 19____, at the polling places in the various precincts in the county of _____, an election will be held for the election of state, district, and county officers, which election will be opened at _____ a.m. and will continue open until _____ p.m. of that day with the following exceptions:

Dated this _____ day of _____, 19_____

Signed _____

County Auditor

The county auditor shall publish a copy of the sample ballot of the general election once each week for two consecutive weeks prior to the election in the official county newspaper. If no newspaper is published in the county, the publication must be in a newspaper published in an adjoining county in the state. The form of the sample ballot as ordered and arranged by the county auditor must conform in all respects to the form prescribed by the secretary of state for the sample general election ballot. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in the county. Absentee voter ballots may not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county must be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.

16.1-13-06. Defeated primary candidate ineligible to have name printed on general ballot - Exception. Except to fill a vacancy occurring on the ballot, an individual who was a candidate for nomination by any party at any primary election in any year and who was defeated for the nomination may not have that individual's name printed upon the official ballot at the ensuing general election for the same office.

16.1-13-07. Preparation, printing, distributing, canvassing, and returning of no-party ballot. The no-party ballot must be prepared, printed, distributed, canvassed, and returned in the same manner provided for other general election ballots.

16.1-13-08. Filling vacancy in office of United States senator. When a vacancy occurs in the office of United States senator from this state, the governor shall issue a writ of election to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled, occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election or until the term expires if no election can be held.

16.1-13-09. Resignation of members of legislative assembly after certificate of election. Any person who receives a certificate of election as a member of the legislative assembly may resign such office although he may not have entered upon the execution of the duties thereof nor taken the requisite oath of office.

16.1-13-10. Vacancy existing in office of member of legislative assembly - Special election to fill. Whenever a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which such former member resides or resided shall notify the governor of the vacancy. The county auditor need not notify the governor of the resignation of a member of the legislative assembly when the resignation was made pursuant to section 44-02-02. Upon receiving such notification, the governor, if there is a session of the legislative assembly between the time such vacancy occurs and the time of the holding of the next general election, shall issue a writ of election directed to the auditor of each affected county commanding him to notify the several boards of election in the county or district in which the

vacancy exists to hold a special election to fill such vacancy at a time designated by the governor. If there is no session of the legislative assembly between the time such vacancy occurs and the time of the holding of the next general election, the special election must be held at the same time as the general election. If the term of office of the member whose office is vacated expires prior to the next session of the legislative assembly, no election shall be held to fill such vacancy.

16.1-13-11. Vacancy occurring in legislative assembly during session - Duty of governor. If a vacancy occurs in the office of a member of the legislative assembly while it is in session, the governor, immediately upon receiving official notice thereof, shall proceed in the manner prescribed in section 16.1-13-10.

16.1-13-12. Notice of special election. A notice of a special election and the copy of the sample ballot must be issued and published in substantially the form and manner prescribed by section 16.1-13-05.

16.1-13-13. Canvassing and returning votes cast at elections to fill vacancies. Votes cast at special elections must be canvassed and returned as provided for primary and general elections, and the county auditor within eight days shall forward to the secretary of state the abstracts of the same.

16.1-13-14. Special election to fill vacancies - Party committee to call convention to nominate - Individual nominations. If a special election is called to fill a vacancy in any office for which a party nomination may be made, the proper party committee shall call a convention to make a party nomination for such office, and the precinct committeemen of the district must be duly convened and shall elect the required number of delegates to such convention. Individual nominations for special elections must be made in accordance with the provisions of chapter 16.1-12.

16.1-13-15. Notice of holding convention for special election - Manner of giving. Public notice of such a nominating convention must be given at least six days before the holding of the convention by publication in the official newspaper in the county or counties in which the election will be held. Such nomination must be made by delivering to and leaving with the officer charged with directing the printing of the ballots upon which the name is to be placed, within the time prescribed in this title, a certificate of nomination for each candidate.

16.1-13-16. Basis of representation at convention - How determined. The basis of representation of delegates to a convention, unless otherwise provided by law, must be fixed and determined by the authorized district or state committee of each political party entitled by law to make nominations for office by delegate convention.

16.1-13-17. Certificate of nomination by convention - Contents - Delivery. All nominations made by a convention as provided in this chapter must be certified. The certificates of nomination must be in writing and must contain all of the following:

1. The name of each person nominated, his post-office address, and the office for which he is nominated.
2. A designation in not more than five words of the party or principle which the convention represents.
3. The signature, post-office address, and verification of the presiding officer and secretary of the convention.

The certificate as prescribed in this section must be delivered by the secretary or president of the convention by registered or certified mail or in person, without charge, to the secretary of state or the county auditor, as the case may be.

16.1-13-18. Two or more organizations filing certificates representing same party - Secretary of state to determine authorized organization - Review of determination. If two or more organizations claiming or purporting to represent the same political party shall file certificates of nomination under the same party designation, or if the certificates indicate that the nominations were made by any person or organization representing the same political party, the secretary of state, within the time prescribed by law for certifying state nominations to the county auditor, shall determine from the best available sources of information which organization filing the certificates is the legally authorized representative of the party. The decision of the secretary of state in determining which organization is the legally authorized representative of the party is subject to review by the district court in a proper action instituted for such purpose.

16.1-13-19. Election not to be held in room where alcoholic beverages sold. No election may be held in a room in which alcoholic beverages commonly are sold.

16.1-13-20. Examination of ballot box before opening of polls. 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.

16.1-13-21. Producing, opening, and delivering ballots on election day. Upon arrival at the poll of all election board members, or at the latest, upon the opening of the poll, the inspector of election shall produce the sealed package of official ballots and publicly open them.

16.1-13-22. Delivering ballot to elector - Stamping. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot or ballot card, ballot stub, and ballot envelope 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 ballot is considered stamped if it is either stamped with a stamp and an inkpad or has the stamped information preprinted on the ballot, as provided in section 16.1-06-18.
2. When an electronic voting system is used, the inspector or judge delivering the ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot stub is detached by anyone except an election inspector or judge, the ballot card and ballot envelope may not be deposited in the ballot box, but must be marked spoiled and placed with the other spoiled ballots.
3. At primary elections, the inspector or judge shall also inform each elector that if the elector splits the ballot or votes for candidates of more than one party the elector's ballot will be rejected.
4. Before delivering any ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot or ballot card and ballot envelope, 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 ballot or ballot card in the proper place does not invalidate the ballot or ballot card, but a complete failure to stamp and initial a ballot or ballot card does invalidate the ballot or ballot card. Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope does not invalidate the ballot envelope, but complete failure to stamp and initial a ballot envelope that has been used to write in a vote does invalidate the ballot envelope and the vote found thereon.

16.1-13-23. Preparation of ballot by elector - Folding - Depositing. Upon receipt of a ballot, the elector, forthwith and without leaving the polling place, shall retire alone to one of the voting booths or compartments to prepare his ballot by placing a crossmark (X) or other mark which clearly shows the intention of the elector within the square opposite the name of each person for whom he 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 opposite the word or words expressing his wish. After preparing the ballot, the elector shall fold it so the face of the ballot 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 in the ballot box. In precincts which use an electronic counting device, the ballot need not be folded before handing the ballot to the judge.

16.1-13-24. Preparation of electronic voting system ballots. Except as provided in this section, voting procedures for electronic voting systems must be the same as for regular paper ballot voting. After marking the ballot envelope or punching the ballot card for electronic voting systems, the voter shall place the ballot inside the ballot envelope and return it to the election judge. The judge shall remove the stub and deposit the envelope with the ballot inside the ballot box. The ballot stub must be deposited in an envelope provided for that purpose. Ballot cards

from which the ballot stub has been detached by anyone except an election judge may not be deposited in the ballot box, but must be marked spoiled and placed with other spoiled ballots.

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 ballot or ballot envelope the name of any person for whom he desires to vote, and such vote must be counted the same as if printed on the ballot and marked by the elector.

16.1-13-26. Name written or pasted on ballot evidence of vote without marking "x". If a name has been written or pasted opposite an office to be voted for, it must be deemed sufficient evidence that the person depositing the ballot or ballot envelope intended to vote for the person whose name is written or pasted thereon, and not for the person whose name originally was printed on the ballot, whether or not the elector made a mark or cross opposite the written or pasted name.

16.1-13-27. Disability of elector - Polling place accessibility. Any elector who declares to the judges of the election that the elector cannot read the English language, or that because of blindness or other disability is unable to mark the elector's ballot, upon request, may receive the assistance of any person of the elector's choice, other than the elector's employer, officer or agent of the elector's union, a candidate running in that election, or a relative of a candidate as provided in subsection 2 of section 16.1-05-02, in marking the elector's ballot. If the elector requests the assistance of a member of the election board, however, the elector shall receive the assistance of both election judges in the marking of the elector's ballot. No one assisting any elector in marking a ballot under this chapter may give information regarding the ballot. No elector, other than one who is unable to read the English language or one who because of disability is unable to mark a ballot, may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark the elector's ballot. Parking facilities at polling places must be accessible to the elderly and the physically disabled and must be clearly marked.

16.1-13-28. Penalty for requesting voter to vote in certain manner. Any person chosen to assist a voter who shall request the voter he is assisting to vote for or against any person, or any issue, is guilty of a class B misdemeanor.

16.1-13-29. Election booths or compartments - Number required - Expense. The inspector of elections shall provide a sufficient number of voting booths or compartments in his polling place which must be designed to enable the elector to mark his ballot screened from observation. The number of booths or compartments in precincts in which voting machines are not used may not be less than one for each fifty electors or fraction thereof in the precinct. The expense of providing the booths or compartments must be paid in the same manner as other election expenses. One voting machine or electronic voting system device must be provided for each two hundred electors or fraction thereof in the precinct.

16.1-13-30. One person to occupy booth - Time limit in booth. Not more than one person may be permitted to occupy any one voting booth or compartment at one time except when providing lawful assistance. No person may remain in or occupy a booth or compartment longer than necessary to prepare his ballot.

16.1-13-31. Removal of ballot from polling place before closing of polls - Prohibited. No person may take or remove any ballot from the polling place before the close of the polls.

16.1-13-32. Securing new ballot upon spoiling of others. If any elector spoils a ballot, including an electronic voting system ballot, he may obtain others successively, one at a time, not exceeding three in all, upon returning each spoiled ballot. Each ballot returned must be canceled immediately and, together with those not distributed to the electors, must be preserved and secured in sealed packages and returned to the county auditor from whom received.

16.1-13-33. Voting machines - Electronic voting systems - Election laws apply. All provisions of law relating to the conduct of elections apply as closely as possible to elections at which voting machines or electronic voting systems are used.

CHAPTER 16.1-14
PRESIDENTIAL ELECTORS

16.1-14-01. Canvassing votes for presidential electors - Tie vote. The state canvassing board in examining and making a statement of the votes for, and in determining and certifying the persons chosen as, presidential electors shall proceed in the manner prescribed in this title for the canvass of votes for state officers. The secretary of state likewise shall file and record such statement and determination. In canvassing the returns for presidential electors, the group of electors having the greatest number of votes is to be declared elected. If two or more groups of electors are found to have an equal and the greatest number of votes, the election of one group must be determined by a coin flip, with the governor flipping the coin in the presence of the other members of the state canvassing board.

16.1-14-02. Secretary of state to prepare certificates of election. The secretary of state shall prepare certificates of election for each presidential elector chosen at the election. Each certificate must be signed by the governor and the secretary of state and the great seal of the state must be affixed thereto. One certificate must be delivered to each of the electors chosen.

16.1-14-03. Proclamation of result by governor - Publishing - Certificate of election. Within ten days after the state canvassing board completes the canvass of the votes cast for presidential electors, as certified by the auditors of the respective counties, the governor shall declare by proclamation, to be printed in the official county newspaper printed and published at the seat of government, the names of the persons who have received the highest number of votes returned for such office. If the election of such persons has not been contested by notice of contest having been filed with the governor within ten days after the date of such proclamation, then such persons must be deemed elected, and the governor shall transmit to each person so chosen a certificate of election.

16.1-14-04. Meeting of presidential electors. Presidential electors shall meet at one p.m. in the office of the governor in the state capitol on the first Monday after the second Wednesday in December next following their appointments by election for the purpose of casting their ballots as members of the electoral college. The secretary of state shall notify the electors of the date of the meeting.

16.1-14-05. Filling of vacancy existing in office of presidential elector. If a vacancy exists in the office of an elector for any reason, the electors present at the meeting provided for in section 16.1-14-04 shall first proceed to fill such vacancy by ballot by a plurality of the votes. When all the electors appear, or the vacancies have been filled as provided in this section, they shall proceed to perform the duties required of them by the constitution and laws of the United States.

16.1-14-06. Compensation of presidential electors. The electors provided for in this chapter shall receive the same per diem and the same mileage as members of the legislative assembly.

16.1-14-07. Board for trial of contest of presidential electors - How constituted - Oath.

The board for the trial of contests of elections for presidential electors shall consist of the chief justice of the supreme court, who must be president of the board, and two judges of the district court designated by the governor. If the chief justice is unable to attend at such trial, the next senior judge on the supreme court shall preside in place of the chief justice. The secretary of state must be the clerk of the board, or in his absence or inability to act, the clerk of the supreme court must be the clerk. Each member of the board, before entering upon the discharge of his duties, shall take an oath, before the secretary of state or some other officer qualified to administer oaths, that without fear, favor, affection, or hope of reward, he will, to the best of his knowledge and ability, administer justice according to law and the facts of the case.

16.1-14-08. Contestant may apply to board. A group of electors appearing, by the proclamation of the governor, to have received not less than one-fifth of the votes cast at an election for presidential electors, may apply to the board provided for in section 16.1-14-07 for a declaration of election as presidential electors.

16.1-14-09. Application to state grounds of contest. The application provided for in section 16.1-14-08 must be made by petition in writing to be filed in the office of the secretary of state within ten days from the date of the proclamation provided for in section 16.1-14-03. The petition, regardless of its mode of delivery, must be in the possession of the secretary of state before four p.m. on the tenth day as provided in this section, and the secretary of state shall convene the board forthwith. The petition must set forth the names of the persons whose election is contested and the ground for such contest. The petitioner, before any proceedings are had upon the petition, except the convening of the board, shall file a bond to this state in a sum and with such surety as the board shall order, conditioned for the payment of all costs incurred in the prosecution of such contest in the case the contestants do not prevail.

16.1-14-10. Notice to persons contested. Upon the filing of the petition and bond as provided in section 16.1-14-09, the board for the trial of an election contest shall order written notice of the petition to be given to the governor and to the persons whose election is contested. Notice must also be published in a newspaper as the board shall order. Notices provided for by this section must contain a concise statement of the facts alleged in the petition and a designation of the time and place fixed by the board for the hearing, which must be not less than three nor more than fifteen days from the filing of the petition.

16.1-14-11. Appearance by parties to contest. At the time fixed for the hearing, the petitioners shall appear and produce their evidence, and the persons whose election is contested may appear and produce evidence in their behalf. Any party to the contest proceedings may appear in person or by attorney, and no other person is entitled to be made a party to the proceedings or to be heard personally or by counsel therein. If more than one petition is pending, the board, in its discretion, may order the contests to be heard together.

16.1-14-12. Hearing - How conducted. The board shall hear the contest and decide all questions of law and fact involved. The burden of proof in each case must be upon the petitioners, and the hearing must be confined to the grounds stated in the petition, but the board in its discretion may allow the petition to be amended. No ex parte affidavits shall be competent evidence at the hearing. No person may be excused from testifying or from producing papers or documents at the hearing on the ground that such testimony will tend to incriminate him, but no person so testifying may be subject to any suit or prosecution, civil or criminal, for any matter or cause in respect to which he is examined or to which his testimony relates. The board has the same power to compel the attendance of witnesses as the district courts of this state possess, and nothing contained in this chapter may be held to limit the power of the board to make such regulations as to the conduct of the proceedings as it may deem proper, not inconsistent with the provisions of this chapter. The board has all powers necessary to the complete performance of the duties and authority conferred upon it by this chapter.

16.1-14-13. Certification of determination of board. The board shall determine in each case which of the parties to the proceedings are entitled to the office of elector, and shall cause its determination to be entered of record in a manner and form as it shall direct, and shall certify the same to the governor and secretary of state. The certified determination is final and conclusive that the persons stated therein are duly elected. The governor shall transmit to such persons certificates of their election, and every such certificate must recite that it is issued pursuant to a determination under the provisions of this chapter.

16.1-14-14. Failure of petitioners to appear - Effect. If any petitioners fail to appear and prosecute their petition against the persons who have been made respondents thereto, according to the requirements of this chapter and of any rules made by the board, the board shall determine that they have failed, and shall cause the determination to be entered of record in such manner and form as it shall direct, and forthwith shall certify the determination to the governor and secretary of state. The determination is a final and conclusive bar to the claim of the petitioners against such respondents as fully and completely as if the claim had been heard and determined on its merits, and the governor shall issue certificates of election as provided in section 16.1-14-13.

16.1-14-15. Costs - Taxation. The costs of an election contest under the provisions of this chapter must be taxed under the direction of the board. If two or more cases are heard together, the costs must be apportioned as the board shall direct. In each case in which the petitioners do not prevail, the costs must be paid by them, and in each case in which the petitioners prevail, the costs must be paid by the state. If the costs are required to be paid by the state, the board shall certify the costs to the state auditor, who shall issue his warrant upon the state treasurer in payment of the same.

16.1-14-16. Determination of final hearing. The final hearing and determination under the provisions of this chapter must be by a majority of the board, but any single member may exercise any of the other powers given to the board by this chapter.

Subscribed and sworn to before me this _____ day of _____, 19____.

Signed _____

(Title and name of officer
authorized to administer oaths)

16.1-14-21. Mailing duplicate application. The county auditor shall immediately mail to the appropriate official of the state in which the applicant last resided the duplicate of the application.

16.1-14-22. Filing and indexing information from other states. The county auditor shall file each duplicate application or other official information received by him from another state indicating that a former resident of this state has made application to vote at a presidential election in another state and shall maintain an alphabetical index thereof, for a period of four months after the election.

16.1-14-23. Delivery of ballot to applicant. If satisfied that the application is proper and that the applicant is qualified to vote at the presidential election, the county auditor shall deliver to the applicant a ballot for presidential electors no sooner than thirty days nor later than one day prior to the next presidential election.

16.1-14-24. Voting by new residents.

1. The applicant, upon receiving the ballot for presidential electors, shall immediately mark the ballot in the presence of the county auditor but in a manner that the official cannot know how the ballot is marked. He shall then fold the ballot in the county auditor's presence to conceal the markings, and deposit and seal it in an envelope furnished by the county auditor.
2. The voter shall enclose the envelope containing the ballot in a carrier envelope which must be securely sealed. There must be imprinted on the outside of the carrier envelope a statement substantially as follows:

CERTIFICATION OF NEW RESIDENT VOTER

I have qualified as a new resident voter in this state to vote for presidential electors. I have not applied nor do I intend to apply for an absent voter's ballot from the state from which I have removed. I have not voted and I will not vote otherwise than by this ballot.

Dated _____

Witness _____

County Auditor

(Signature of Voter)

The voter shall sign the certification upon the carrier envelope as set forth above, and shall then deliver the sealed carrier envelope to the county auditor, who shall keep the carrier envelope in his office until delivered by him to the inspector of elections of the precinct in which the applicant resides.

16.1-14-25. List of applicants open for public inspection. The county auditor shall keep open to public inspection a list of all persons who have applied to vote as new residents with their names, addresses, and application dates for a period of two years.

16.1-14-26. Delivery and processing of presidential elector ballots.

1. The county auditor shall deliver the ballots for new residents to the inspector of elections in the manner prescribed by law for absentee ballots. The ballots must be processed in accordance therewith.
2. The inspector of elections shall record the new resident voter's name with a notation designating him as a new resident voting for presidential electors only.

16.1-14-27. Application of other statutes. Except as provided in sections 16.1-14-18 through 16.1-14-27, the provisions of law relating to absent voters' ballots apply also to the casting and counting of ballots of new residents, the furnishing of election supplies, ballots, canvassing of ballots, and making proper returns of the results of the election.

16.1-14-28. Definition of state. As used in sections 16.1-14-18 through 16.1-14-27 "state" includes the District of Columbia.

CHAPTER 16.1-15
CANVASS OF VOTES - CANVASSING BOARDS

16.1-15-01. Ballots void and not counted - Part of ballot may be counted. In the canvass of the votes at any election, a ballot is void and may not be counted if:

1. It is not endorsed with the official stamp and initials as provided in this title; or
2. It is impossible to determine the elector's choice from the ballot or parts of a ballot.

If a ballot is marked so only a part of the voter's intention can be determined, the election judges shall count such part. If a voter votes for more than the number of persons to be elected to any office, his ballot may be invalidated only insofar as his vote for such office is concerned, and the balance of his ballot, if otherwise proper, may not be invalidated. However, at primary elections only, a ballot is void if the elector votes for candidates of more than one party.

16.1-15-02. Board of election to canvass votes - Location - Public may attend. After the polls are closed, the inspector of elections and the judges shall immediately place the stamp and inks pad in the manila wrapper provided by the county auditor and seal it with the seal provided by the county auditor and then they shall open the ballot boxes and count and compare the ballots with the poll clerks' lists. If the ballots compare and are equal in number with the names on the poll clerks' lists, the election board shall proceed immediately to canvass the votes. The canvass shall continue without adjournment until completed, and must be open to the public. Except in unusual and compelling circumstances, the vote canvass shall occur at the polling place. If good and substantial reasons exist for the removal of the ballots and election records to another location for canvass, the other location must be in the same precinct and the removal must be approved by the election board. In no case may the ballots be removed to another location for tally after the ballot boxes have been opened. Upon approval of a change of location by the election board as provided in this section, the approximate time and location of the canvass must be prominently posted on the main entrance to the polling place, the ballots and records must be moved in the presence of the election board, and the canvass as provided in this chapter must proceed immediately upon arrival at the alternate location.

16.1-15-02.1. Alternative method for canvassing election for counties using or sharing electronic voting systems or electronic counting machines - County resolution board. At the option of the county auditor in any county using or sharing with another county electronic voting systems or electronic counting machines, the county resolution board, in lieu of the election boards, shall canvass the votes for those precincts using either device. The county auditor shall select the county resolution board, which must consist of one independent representative and an equal number of representatives from each political party represented on the election board. The county auditor shall designate the public place where the ballots from all precincts in the county must be delivered by the election inspector and an election judge from each political party represented on the election board. If the public place is other than the location of the canvass the county auditor and a representative of each political party represented on the election boards shall arrange for the removal of the ballots from the public place to the location of the canvass and shall provide notice of the time and location of the canvass on the main entrance of each

polling place. The board shall canvass the votes in the same manner as required for the election boards insofar as those provisions are applicable. The auditor shall notify the county resolution board of this duty not less than one week before the election. This procedure is in addition to the canvass of returns that the county canvassing board must perform as provided in this chapter.

16.1-15-03. Manner of canvassing election. The canvass provided for in section 16.1-15-02 must be conducted in the following manner: as each ballot is counted, the inspector and the election judges shall examine the ballot to ascertain the persons voted for, and either the inspector or one of the judges shall announce the votes disclosed by the ballot, which must be marked in the tally books by two poll clerks of different political parties. After all of the votes are counted, the election board shall compare the count as disclosed by the poll clerks' books with the total number of ballots cast, and if there are any mistakes in the books kept by the clerks, they must be corrected to conform exactly to the number of ballots cast. As soon as the count is completed, the inspector shall announce publicly the result thereof, specifying the whole number of votes cast for each office and for each candidate, and the number of votes cast for and against each proposition voted upon at the election.

16.1-15-04. Duplicate reports prepared by election board - Tally of votes separate for each political party. The election board shall prepare duplicate reports of the total votes cast for each candidate or measure. The figures must agree with the poll clerks' books and the number of ballots. The ballots may not be sealed, nor may the election tally books or the duplicate report be signed, by the election board or poll clerk until the figures and counts in the poll clerks' books and in the duplicate reports and the number of ballots cast all show the same totals. The tally of the votes must be separate for each political designation or principle and must be returned as such by the judges and inspector of elections, who shall give the full vote for each candidate.

16.1-15-05. Oath required of members of election board upon completion of canvass - Contents. At the conclusion of the canvass of the votes, each member of the election board shall sign an affidavit to the effect that the ballots have been counted and the votes canvassed as provided in this chapter, and that the returns as disclosed by the tally books of election kept by the poll clerks, and the duplicate reports, agree with the number of ballots cast and are true and correct of his own knowledge.

16.1-15-06. Reports and pollbooks sent to county auditor - Compensation for making returns - County auditor to forward pollbook to clerk of United States district court and to the clerk of the North Dakota district court. By twelve noon of the day following an election except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by the inspector of elections, personally shall deliver the duplicate reports provided for in section 16.1-15-04 to the county auditor. The reports, carefully sealed under cover, accompanied by both of the pollbooks provided for in section 16.1-06-21, and the wrapped and sealed stamp and inkpad, with the oaths of the inspector and poll clerks affixed thereto, must be delivered properly to the county auditor. The person making the return shall receive compensation therefor in accordance with section 16.1-05-05. However, no compensation and no mileage may be paid if delivery of the ballots is not made by twelve noon on the day following the election. The compensation and mileage must be paid out of the county

treasury on a warrant of the county auditor, and is full compensation for returning all used or voided ballots and for delivering the ballot boxes to the proper official. Within thirty days after receipt thereof following each presidential election, each county auditor shall forward one of the pollbooks to the clerk of the United States district court for the district encompassing that county for the clerk's official use. The county auditor shall request return of the pollbook thirty days after receipt thereof by the clerk of the United States district court. The county auditor shall provide the clerk of the North Dakota district court of said county with a pollbook to be used by the clerk for jury selection.

16.1-15-07. County auditor not to refuse election returns if delivered in undirected manner - Informality in holding election. A county auditor may not refuse any election returns because they may have been returned or delivered to him in a manner other than that directed by this chapter, nor may he refuse to include any returns because of any informality in holding an election or in making returns thereof.

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. Ballots used with any electronic voting system or counted by an electronic counting machine must be sealed and returned as provided in this section.

16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns. Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots shall have tabulating equipment that has an element that generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be

equipped with an element that generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records must be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number that must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the district judge or to the clerk of district court.

16.1-15-10. Failure of automatic tabulating or electronic counting equipment - Counting by alternate method. If the automatic tabulating or electronic counting equipment used as part of any electronic voting system or any electronic voting machine fails to operate during the ballot count at any election, the ballots must be counted by an alternate method.

16.1-15-11. Locking and examination of voting machines - Tally of voting machine votes - Certification to district judge or clerk of district court. Voting machines must remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine must be made by the inspector and the election judges at the time votes are tallied. This record shall agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate or measure. The record shall then be certified by the inspector and the election judges, and one copy shall be delivered to the district judge or to the clerk of district court at the same time as the ballots are delivered to the judge or clerk pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

16.1-15-12. Ballot boxes delivered to officers for custody. In organized townships or in cities, the inspector of elections, if he is not himself the officer in question, shall deliver the ballot boxes to the chairman of the board of supervisors of the township, or to the executive officer of the city, in which the election precinct is situated, as the case may be. The officer shall keep the boxes in safe custody until the next election or hand them over to his successor in office to be kept safely by him until such time. At the following general or primary election, the officers shall hand the ballot boxes over to the inspector of elections. In unorganized townships, the inspector of elections shall cause the ballot boxes to be delivered to the county auditor at the same time the ballots are returned to him.

16.1-15-13. District judge or clerk of district court to keep ballots forty-five days - Exception - Use of ballots as evidence. Immediately upon receiving the ballots as provided in section 16.1-15-08, the district judge or the clerk of district court shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes that shall be securely locked. The boxes must be placed in a fireproof vault and must be kept securely for forty-five days. They may not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the district judge or the clerk of district court that no contest is pending, the ballots must be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots may not be destroyed until the contest or prosecution is finally determined. The ballots returned to the district judge or clerk of district court as provided in this section must be received in evidence without introducing further foundation.

16.1-15-14. Failure to comply with formalities not to invalidate election - Evidence of compliance. Failure by election board officers to comply with any of the formalities required by this chapter as to the return of the ballots does not invalidate any election nor cause any ballot otherwise regular to be disregarded. Any omission or irregularity in the manner of identifying or returning the ballots of any precinct may be obviated by proof under the ordinary rules of evidence.

16.1-15-15. County canvassing board - Composition. The county canvassing board must be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and a representative of the district committee of all legislative districts which wholly or partly fall within the boundaries of the county as appointed by the district chairmen of the two political parties which received the highest number of votes cast for governor at the most recent general election at which a governor was elected. For any special county election when the county is composed of more than one legislative district and the election does not involve any legislative or statewide office, the county canvassing board must be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners, and one representative as appointed by the state chairman for each of the two political parties that received the highest number of votes cast for governor at the most recent general election at which a governor was elected.

16.1-15-16. Qualifications of members of canvassing board - Replacements - Quorum. No member of the county canvassing board who would not be eligible to serve as a member of the election board pursuant to subsection 2 of section 16.1-05-02 may serve on the county canvassing board. If any of the members of the board other than the representatives of the two political parties are disqualified or cannot serve for any other reason, the county commissioners who would be qualified to serve on the board shall appoint alternates to serve in the place of those members of the board who are disqualified. If any of the representatives of the district committees of the two parties are disqualified or cannot serve for any other reason, the district chairmen shall appoint an alternate from their respective district committees to act as a member of the county canvassing board. A majority of the members of the board or their duly appointed

alternates constitute a quorum and may make the canvass provided for in this chapter and certify the results thereof.

16.1-15-17. Time of county canvassing board meeting - Oath required - Reconsideration of canvass. As soon as the returns are received by the county auditor, but not later than six days after each election, the county canvassing board shall meet and, after taking the oath of office, shall proceed to open and publicly canvass the returns. After the initial meeting of the board as provided in this section, any two or more members may call a meeting of the board and upon approval of a majority of the members, the board shall recanvass the results of the election or any portion thereof and may correct any previous canvass or certification or both in regard to the election. Any correction of any previous certification of election results as provided in this section must be immediately dispatched to the secretary of state who shall call a meeting of the state canvassing board as provided in section 16.1-15-35 for the purpose of recanvassing and, if necessary, correcting any previous certification of the election results.

16.1-15-18. Compensation as members of board. Each member of the county canvassing board who is not a paid official of the county, while serving as a member of the county canvassing board, shall receive compensation in accordance with section 16.1-05-05. The compensation and mileage must be audited, allowed, and paid by the board of county commissioners in each county.

16.1-15-19. County canvassing board to disregard technicalities, misspelling, and abbreviations - Votes from unestablished precincts disregarded. In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office, if it can be ascertained for whom the vote was intended. The board may not count votes polled in any place except at established precincts.

16.1-15-20. County canvassing board may subpoena members of election board to correct errors - Failure to obey subpoena is a contempt. When the returns of the election board officers are made to the county canvassing board, if any provision of law relative to the duties of the election board officers has not been complied with by said officers and the provision of law is capable of correction by the election board, the county canvassing board may issue its subpoenas to the election board officers of the precinct wherein the defect occurs. The subpoenas must require the election board officers to appear forthwith before the county canvassing board to correct any omission or mistake according to the facts. The amended or corrected returns then must be acted upon by the board. If any election board officer, subpoenaed as provided in this section, neglects or refuses to obey the subpoena, the person so neglecting or refusing must be arrested upon a bench warrant issued out of the office of the clerk of the district court in the county where the proceedings occur. The person arrested must be brought before the county canvassing board and shall make the necessary correction. A refusal on the part of an election board officer to make a correction must be deemed a contempt of the district court.

16.1-15-21. Primary election statement prepared by county canvassing board - Contents. The county canvassing board, upon canvassing the returns of a primary election, shall prepare a statement signed by the members of the board and filed in the office of the county auditor. The statement must contain all of the following:

1. The names of all candidates voted for at the primary election, with the number of votes received by each and for what office. The statement must be made separately for each political party or principle.
2. The names of the persons or candidates of each political party or principle who receive the highest number of votes for the respective offices. If more than one person is required to be elected to a given office at the next ensuing general election, there must be included in the statement the names of so many of the candidates of the party receiving the next highest number of votes for that office as there are persons to be elected to the office at said ensuing general election. The statement must be made separately for each political party.
3. The total number of ballots cast at the primary election.

A separate statement of the votes cast for United States senator, United States representative, state officers, judges of the supreme court, judges of the district courts, and members of the legislative assembly must be transmitted to the secretary of state as provided in this chapter.

16.1-15-22. County auditor to transmit abstract of votes to secretary of state after primary election. The county auditor of each county, under his official seal, shall return to the secretary of state by registered or certified mail within ten days after the day of any primary election, a certified abstract, under separate political designation or principle, or no-party designation, as the case may be, of the total number of votes cast in his county and the votes cast for every candidate for nomination for United States senator, United States representative, state officers, judges of the supreme court, judges of the district court, and members of the legislative assembly. The county auditor also shall file with the secretary of state a certificate showing the names and addresses of the persons nominated under the several political designations and principles in his county. The certified abstract and the certificate of nomination to be mailed under the provisions of this section must be in the possession of the secretary of state before four p.m. on the tenth day after the primary election.

16.1-15-23. Notice of nomination given candidate for county office by county auditor - Publication of findings of canvassing board. Upon the completion of the canvass of the returns of a primary election by the county canvassing board, the county auditor shall mail or deliver in person to each candidate nominated for any county office a certificate of his nomination and notice that his name will be placed on the official ballot. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to section 16.1-16-01, the county auditor may not prepare or deliver the certificate of nomination until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. Nomination notices for other than county offices must be given by the secretary of state pursuant to section 16.1-15-40. The county auditor shall cause a

copy of the findings of the canvassing board to be published in the official newspaper of the county.

16.1-15-24. Abstracts of votes of general election made by county canvassing board - Contents. The county canvassing board, when canvassing the returns of a general election, shall make abstracts of votes from the certified reports of the inspectors of elections in the following manner:

1. The abstract of votes for United States senator, United States representative, all state officers, judges of the district courts, all initiated or referred measures, and constitutional amendments, shall be on one sheet.
2. The abstract of votes for members of the legislative assembly must be on one sheet.
3. The abstract of votes for county officers must be on one sheet.

16.1-15-25. County auditor to forward abstract of votes of general election to secretary of state - Contents - Abstract for presidential electors. Within ten days and before four p.m. on the tenth day following any general election, the county auditor of each county, under official seal, shall return to the secretary of state a certified abstract of the votes cast in the county at the election for each candidate for state and congressional offices, judges of the district courts, candidates for the legislative assembly, and for amendments to the constitution and other measures. In presidential years, the county auditor shall make a separate certified abstract of the votes cast for electors for president and vice president of the United States. The separate abstract for presidential electors must be sealed, endorsed "presidential election returns", and must be transmitted by registered or certified mail to the secretary of state. At the time the county auditor transmits the certified abstract of the votes cast in the county, the county auditor shall file with the secretary of state the names and addresses of the persons who were elected to the various county offices in the county.

16.1-15-26. Memorandum of date of receiving returns in secretary of state's office. A memorandum of the date of reception of all returns of votes in the secretary of state's office must be made on the envelope containing the returns.

16.1-15-27. Abstract of votes - Secretary of state to record - Failure of county auditor to send - Messenger dispatched. Upon receipt of the certified abstract of votes from the county auditors as provided in section 16.1-15-25, the secretary of state shall record the result of the election by counties and shall file and carefully preserve the certified statements received from the county auditors. If no certified statement is received by the secretary of state from the county auditor of any county prior to the time specified for the meeting of the state canvassing board, the secretary of state shall dispatch a special messenger to obtain the statement at the expense of the county. Upon demand, the county auditor shall make and deliver the required statement to the special messenger who shall deliver it to the secretary of state to be recorded and filed as provided in this section. The messenger shall receive the same mileage expense as other state officers and employees. The state treasurer shall present a bill for the amount audited against the county failing to send returns as provided in this section, and the bill must be audited by the

board of county commissioners of the county and paid by the county treasurer to the state treasurer.

16.1-15-28. Certificate of election for officers elected in county at general election. Immediately after the canvass of the general election returns by the county canvassing board, the county auditor shall prepare a certificate of election for each of the persons having the highest number of votes for county offices, and shall deliver the certificate to the person entitled thereto on his making application to the county auditor therefor. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to section 16.1-16-01, the county auditor may not prepare or deliver the certificate of election until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later.

16.1-15-29. Determining tie vote in county offices. If the requisite number of county officers are not elected because two or more persons have equal and the highest number of votes for one and the same office, a recount must be done pursuant to section 16.1-16-01. If a recount results in a tie vote, the county auditor shall give notice to the persons to appear at his office at a time appointed by him. The persons then shall publicly decide by a coin flip which of them must be declared elected. The county auditor shall prepare and deliver to the person elected an election certificate as provided in this chapter.

16.1-15-30. Determining tie vote for legislative assembly. If the requisite number of persons are not elected to the state senate or house of representatives because two or more persons have equal and the highest number of votes for one and the same office, a recount must be done pursuant to section 16.1-16-01. If a recount results in a tie vote, the county auditor, if the legislative district in question is within one county, shall notify the secretary of state. The secretary of state shall notify the persons with equal and the highest number of votes to appear in the office of the secretary of state at a time fixed by the secretary of state. The time fixed may not be more than five days from the date the tie is determined by the county auditor. On the date fixed, the persons notified to appear shall publicly decide by the toss of a coin which of them must be declared elected, and the secretary of state shall prepare and deliver to the person elected a certificate of election as provided in this chapter. If the legislative district in question is within the boundaries of more than one county, the county auditor of the county which cast the greater number of votes for the office of governor at the last election at which a governor was elected shall proceed in accordance with this section.

16.1-15-31. County auditor to make certificate for payment of election officials - Payment. Upon receipt of the returns of any election, the county auditor shall prepare his certificate stating the compensation to which the inspectors, judges, and clerks of election are entitled for their services. He shall deliver the certificate to the board of county commissioners at its next session and the board shall order the compensation to be paid out of the county treasury.

16.1-15-32. County auditor to publish returns of election. The county auditor shall cause to be published in tabular form in the official county newspaper the vote by precincts for each officer and each proposition voted for at any primary, special, or general election. The publication must be paid for at a rate not to exceed the rate paid for publishing the proceedings of the board of county commissioners.

16.1-15-33. State canvassing board - Membership - Oath - Quorum - Compensation. The clerk of the supreme court, the secretary of state, the state treasurer, and the chairman, or his designee, of the state committee of the two political parties which cast the highest vote for governor at the last general election at which a governor was elected shall constitute the state canvassing board. The duties of the state canvassing board are ministerial, mandatory, and nondiscretionary, and consist of canvassing the results received from the various counties, computing the final results, and certifying the results on the basis of the canvass. After taking the oath required of civil officers, the board shall proceed to canvass publicly the election returns made by the county auditors. Three members of the board constitute a quorum and may make the canvass provided for in this chapter and certify to the result thereof. If less than a quorum attend on the day appointed for a meeting of the board, the members attending may summon other state officers until there is a sufficient number to constitute a quorum. Any other state officer, upon being notified by the members of the board, shall attend without delay and act as a member of the board. Members of the board may be compensated only for their expenses incurred in attending meetings in accordance with sections 44-08-04 and 54-06-09. The compensation must be paid from the appropriation to the secretary of state.

16.1-15-34. Member of state canvassing board - When disqualified. When a member of the state canvassing board is a candidate for any office for which he canvasses the votes, the governor shall designate some other state officer to act in his stead at the session of the board while the votes given for that member are being canvassed.

16.1-15-35. Meeting of state canvassing board. Not later than seventeen days next following a primary, general, or special election, the state canvassing board shall meet at the office of the secretary of state for the purpose of canvassing and ascertaining the result of the election. The secretary of state shall notify the members of the board of the date of the meeting.

16.1-15-36. Returns to be canvassed by state canvassing board. The state canvassing board, in canvassing to ascertain the result of any election, shall canvass only the regular returns made by the county canvassing board as provided in this chapter.

16.1-15-37. Examination of abstracts by state canvassing board - Messenger dispatched to county when error discovered. After the state canvassing board is formed, it shall examine the certified abstracts of the county canvassing boards and if it appears that:

1. Any material mistake has been made in the computation of votes cast for any person; or
2. The county canvassing board in any county has failed to canvass the votes or any part thereof cast in any precinct in its county, the board may dispatch a messenger to the county auditor of the county, at the expense of the county, with the board's requirement

in writing to the county auditor to certify the fact concerning the mistake or the reason why the votes were not canvassed. The county auditor, to whom the requirement is delivered, shall make a true and full answer thereto under his hand and official seal and shall deliver the answer with all convenient dispatch to the secretary of state.

16.1-15-38. Adjournment of state canvassing board. The state canvassing board may adjourn from day to day, not exceeding three days in all, except that the board may adjourn for the time necessary to await the return of a messenger dispatched as provided in section 16.1-15-37.

16.1-15-39. Disagreements in canvassing returns by canvassing board - Disregarding technicalities, misspelled words, and abbreviations. In canvassing the returns, a majority of the members of the state canvassing board shall decide all matters of disagreement. The board shall disregard all technicalities, misspelling, the use of initial letters, and the abbreviations of the names of candidates, if it can be ascertained from the returns for whom the votes were intended.

16.1-15-40. Statement prepared by state canvassing board for primary election - Contents - Signing - Candidate notified of nomination. The state canvassing board shall prepare the statement required by subsections 1, 2, and 3 of section 16.1-15-21 for primary elections. The certificate must be signed by the members of the board and filed in the office of the secretary of state. Upon completion of the canvass, the secretary of state shall mail to each candidate nominated a notice of his nomination stating that his name will be placed upon the official ballot to be voted for at the ensuing general election. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to section 16.1-16-01, the secretary of state may not prepare or deliver the notice of nomination until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. The secretary of state shall file a copy of the findings of the board and shall publish those findings in a newspaper printed in Burleigh County.

16.1-15-41. Statements of general or special election prepared by state canvassing board - Contents. Upon receiving the certified abstracts on file with the secretary of state, the state canvassing board shall proceed publicly to examine and make statements of the whole number of votes cast at any general or special election for all state or district offices. The statements must show the names of the persons for whom the votes were cast for the offices and the whole number of votes for each, distinguishing the several districts and counties in which they were cast.

16.1-15-42. Certificate of result of general or special election by state canvassing board - Secretary of state to receive. The statements provided for in section 16.1-15-41 must be certified by the members of the state canvassing board, who shall subscribe their names to the statements. The board then shall determine what persons have been duly elected to the offices and shall prepare and subscribe on each statement a certificate of that determination and shall deliver the same to the secretary of state. The candidate or candidates to be elected for each office receiving the highest number of votes must be duly elected to the office. No person who was entitled to have his name appear on the primary election ballot, but whose name was not

placed on the primary election ballot, may be elected to a no-party office as a write-in candidate unless that person receives a number of votes equal to or more than the number of signatures which would have been required to have his name placed on the primary election ballot.

16.1-15-43. When special election ordered. If there is no choice for a district office, other than member of the legislative assembly, or a state office because any two or more persons have equal and the highest number of votes, the governor, by proclamation, shall order a new election.

16.1-15-44. Secretary of state to record statement of general or special election, prepare certificates of election, publish statement. After receiving each certified statement and determination made by the state canvassing board, the secretary of state shall record the same in his office and shall prepare, and transmit to each of the persons declared to be elected, a certificate of election as provided in this chapter. If the election results indicate that any candidate is entitled to a recount or to demand a recount pursuant to section 16.1-16-01, the secretary of state may not prepare or deliver the certificate of election until the time to demand a recount has expired, or the recount results have been determined and the winner declared, whichever is later. The secretary of state shall cause a copy of the certified statement and determination to be published in the official newspaper of Burleigh County.

16.1-15-45. Form of certificate of election for state officers - Signatures. A certificate of election must be prepared by the secretary of state for each person elected to a state or a district office. The certificate, in substance, must be in the following form:

At an election held on the _____ day of _____, 19____,
_____ was elected to the office of _____ of this state for the term of
_____ years from the _____ day of _____ in the year
_____ (or, if to fill a vacancy, for the residue of the term ending on the
_____ day of _____, 19____), and until his successor is duly elected and
qualified. Given at Bismarck this _____ day of _____, 19____.

The certificate must be signed by the governor and the secretary of state, and must have the great seal of the state affixed thereto, and must be attested by at least one of the other members of the state canvassing board.

16.1-15-46. Members of legislative assembly to receive certificates of election. At the time election certificates are issued to state and district officers, the secretary of state shall issue certificates of election to all members of the legislative assembly.

16.1-15-47. Certificate of election to member of Congress - Signing - Delivering. The certificate of election to a member of Congress must be signed by the governor with the great seal affixed and must be countersigned by the secretary of state. The governor shall cause the certificate to be delivered to the person elected.

16.1-15-48. Canvassing returns of constitutional amendment or other proposition - Certified statement of result - Contents. For the purpose of canvassing and ascertaining the result of the votes cast at any election upon any proposed amendment to the constitution, or any other proposition submitted to a vote of the people, the state canvassing board shall proceed to examine the statements received by the secretary of state from the county auditors to ascertain and determine the result. The board shall certify a statement of the whole number of votes cast for and the whole number of votes cast against an amendment or proposition, and it shall determine whether the amendment or proposition has been approved and ratified by a majority of the electors voting thereon, and a certificate of that determination must be prepared and subscribed on the statement.

16.1-15-49. Certified statement and determination of results of constitutional amendments and propositions recorded by secretary of state - Publishing. The certified statement and determination provided for in section 16.1-15-48 must be recorded by the secretary of state. If it appears that a constitutional amendment or other proposition has been approved, ratified, or adopted, the secretary of state shall arrange for the text of the amendment or proposition and a record of the votes cast for and against it to be published in the session laws published after the next succeeding session of the legislative assembly.

CHAPTER 16.1-16
CONTEST OF ELECTIONS

16.1-16-01. Election recounts. A recount of any primary, special, or general election for nomination or election to a congressional, state, district, legislative, or county office, or for the approval or disapproval of any measure or question submitted to the qualified electors of this state or one of its counties must be conducted as follows:

1. A recount must be conducted when:
 - a. Any person failed to be nominated in a primary election by one percent or less of the highest vote cast for a candidate for the office sought.
 - b. Any person failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.
 - c. A question or measure submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.
2. A demand for a recount may be made by any of the following:
 - a. Any person who failed to be nominated in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate for the office sought.
 - b. Any person who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.
3. A demand for a recount must be made within three days after the canvass of the votes by the county canvassing board in the case of county elections, and by the state canvassing board in the case of congressional, state, district, or legislative elections. The demand must be in writing, must recite one of the conditions in subsection 2 as a basis for the recount, must contain a bond in an amount previously established by the auditor or auditors doing the recount sufficient to pay the cost of the recount, and must be filed with:
 - a. The secretary of state when the recount is for a congressional, state, district, or legislative office.
 - b. The county auditor when the recount is for a county office.
4. Within four days after the canvass of the votes by the state canvassing board in the case of congressional, state, district, or legislative elections, the secretary of state shall notify all the county auditors to conduct recounts as required by subsection 1 and, when a timely recount demand is received and it is in proper form, as required by subsection 2. The secretary of state shall fix the date of the recounts within seven days after giving notice that the auditor must conduct the recount. Within four days after the canvass of votes by the county canvassing board, the county auditor shall fix the date for recounts limited to his county. The date must be within eight days after the canvass. In all recount proceedings, the county auditor shall send notice of the date, place, and time of the recount to all candidates and petitioners involved by certified mail.

5. Recounts must be conducted by the county auditor who may employ up to four qualified electors of the county to assist in the recount. The county auditor shall review all paper, machine, electronic voting system, and absentee ballots, whether or not the ballots were counted at the precinct or the county canvass, to determine which ballots were cast and counted according to the law. The county auditor shall check the precinct count and the count of the county canvassing board. If the county auditor is a candidate involved in the recount, the county auditor shall be disqualified from acting thereon, and the clerk of the district court of the county shall perform the duties required of the county auditor by this section.
6. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor shall count the challenged ballot as he deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor shall submit all challenged ballots to the recount board for decision. The recount board must be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. No person may serve on the recount board if he would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners who would be qualified to serve on the board shall appoint disinterested qualified electors of the county to serve as alternates. The recount board shall review all challenged ballots, and on majority vote shall decide how they shall be counted. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor shall take appropriate steps to safeguard the ballots.

7. The county auditor shall certify the results of the recount no later than three days after the recount. The recount result shall become the official result of the election in the county. The county auditor shall prepare a corrected abstract of the votes. In a recount limited to the county, if the corrected abstract shows no change in the outcome of the election, no further action shall be taken. If the corrected abstract changes the outcome of the election, the county auditor shall issue certificates of nomination or election accordingly, and shall certify the new result of a question submitted to the qualified electors.

8. In congressional, statewide, district, or legislative recounts, the county auditor shall, no later than three days after the recount, send by certified mail a certified copy of the corrected abstract to the secretary of state. The secretary of state shall immediately assemble the state canvassing board, who shall canvass the corrected abstracts and certify the election results. The secretary of state shall issue certificates of election or nomination or record the approval or disapproval of a question submitted to the qualified electors accordingly.
9. The expenses incurred in a recount of a county election must be paid by the county on a warrant by the county auditor. The expenses incurred in a recount of a congressional, state, or legislative election must be paid by the state from the general fund, upon approval by the secretary of state of a statement of expenses received from the county auditors. The expenses incurred in a recount demanded under subsection 2 of section 16.1-16-01 must be paid by the secretary of state or county auditor from the bond submitted by the person requesting the recount.

16.1-16-02. Who may contest election. A defeated candidate or ten qualified electors may contest the nomination or election of any person or the approval or rejection of any question or proposition submitted to a vote of the electorate, pursuant to chapters 16.1-04, 16.1-05, 16.1-06, 16.1-07, 16.1-08, 16.1-09, 16.1-10, and 16.1-11. In a county election to change the county seat or to change the boundaries of the county, the complaint must be filed against the board of county commissioners, who shall appear and defend the contest action.

16.1-16-03. Commencement of action - Parties - Status of contestee. An action to contest an election must be commenced by service of a summons and verified complaint. The party instituting the action must be known as the contestant, and the party against whom the action is instituted must be known as the contestee. In a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest action is finally decided.

16.1-16-04. Time for commencement of action. Any action to contest an election must be commenced and the complaint must be filed in the district court of the contestee's county of residence within five days after final certification of a recount by the appropriate canvassing board, or within fourteen days after the final certification by the appropriate canvassing board if no recount is to be conducted. However, if the grounds for the action is the illegal payment of money or other valuable thing subsequent to the filing of any statement of expenses required by this title, or if the contestee does not or cannot meet the qualifications to hold the office as required by law, the action may be commenced at any time. The contestee shall serve and file an answer within fourteen days after service of the contest summons and complaint.

16.1-16-05. Grounds for election contest. An election contest may be commenced for any of the following causes:

1. If the contestee does not or cannot meet the qualifications to hold the office as required by law.
2. Because of illegal votes or erroneous or fraudulent voting, count, canvass, or recount of votes.

16.1-16-06. Election contest to be tried as civil action - Precedence on court calendar. Election contest actions must be tried as civil actions to the court without a jury. The district court shall set the hearing on the contest action not more than ten days after the filing of the contest answer. Election contests must take precedence over regular court business so elections are determined as soon as practicable. The district court judge shall order a special term of the court if no term is in progress when the election contest complaint is filed.

16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots. Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the district judge or to the clerk of district court of any county where the contestant or the contestee desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the district judge or the clerk of district court to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

16.1-16-08. Judgment in election contest action.

1. The judge in an election contest action shall pronounce judgment on which candidate was elected or nominated and whether any question or proposition was approved or rejected.
2. The appropriate officer shall issue a certificate to the person declared elected or nominated in accordance with the judgment. Any certificate of nomination or election previously issued that is in conflict with the judgment is annulled by the court's judgment.
3. If the court declares that the election resulted in a tie, the election must be determined by law.
4. If the court declares that no one was elected or nominated and sets aside the election, the office must be deemed vacant and any certificate of election or nomination previously issued is annulled. The vacancy must be filled according to law. This subsection does not apply if an incumbent is in office and is entitled to serve until his successor is duly elected and qualified, in which event the incumbent may only be removed by impeachment.

5. In the discretion of the court, court costs may be awarded on the following bases:
 - a. If the contest action is dismissed for insufficient evidence or want of prosecution, or if the court confirms the election results, judgment for costs must be for the contestee and against the contestant.
 - b. If an election is annulled for errors or malfeasance of any election official during any part of the election procedure, the costs must be a charge against the state or political subdivision in which the election was held.
 - c. When an election is annulled on any other ground or when the contestant is declared elected, judgment for costs must be for the contestant and against the contestee.

6. Nothing in this chapter may be construed to authorize a nomination or election to be set aside because of illegal votes unless either of the following is shown, that:
 - a. The contestee had knowledge of or connived in the illegal votes.
 - b. If the number of illegal votes is taken from the contestee, it would reduce the number of his legal votes below the number of votes cast for some other person for the same nomination or election, after deducting any illegal votes from the other person.

16.1-16-09. Appeal of election contest judgment. An appeal to the supreme court of the judgment in an election contest action may be had by filing a notice of appeal with the clerk of the trial court within ten days of the date of the service of notice of entry of the judgment. Appeals of election contest actions must be conducted in the manner provided by the North Dakota Rules of Appellate Procedure. Election contest appeals must take precedence over regular court business so election results can be determined as soon as practicable. An appeal may be brought on for hearing before the supreme court at any time upon ten days' notice by either party and must be determined in a summary manner.

16.1-16-10. Legislative contest of election. Legislative election contests must be determined in court as provided in this chapter for other contests. No legislative election may be contested before either house of the legislative assembly.

16.1-16-11. Answer to legislative statement of contest. Repealed by S.L. 1987, ch. 259, # 15, effective March 30, 1987.

16.1-16-12. Depositions - Subpoenas - Time limits. Repealed by S.L. 1987, ch. 259, # 15, effective March 30, 1987.

16.1-16-13. Preservation of ballots. Repealed by S.L. 1987, ch. 259, # 15, effective March 30, 1987.

16.1-16-14. Testimony and records filed with secretary of state - Secretary of state to deliver to presiding officer. Repealed by S.L. 1987, ch. 259, # 15, effective March 30, 1987.

16.1-16-15. Determination of contest - Certificate of election. Repealed by S.L. 1987, ch. 259, # 15, effective March 30, 1987.

16.1-16-16. Fees of officers and witnesses. Repealed by S.L. 1987, ch. 259, # 15, effective March 30, 1987.

16.1-16-17. Payment for prosecuting or defending legislative election contest prohibited. Repealed by S.L. 1987, ch. 259, # 15, effective March 30, 1987.

CHAPTER 15-28
PUBLIC SCHOOL DISTRICT ELECTIONS

15-28-01. School board members, number, and terms - Elections to be at large - Reorganized districts vote once.

1. Each school board of a public school district in this state must be composed of five members, unless:
 - a. Such district has increased its membership under the provisions of this section;
 - b. Such district has increased its membership under the provisions of any prior law permitting such increase; or
 - c. Such district is, at the time of July 1, 1971, operating with a school board composed of other than five members, in which case the number of members of such board must remain unchanged unless increased under the provisions of subsection 2.

2. The number of school board members in any public school district may be increased to either five, seven, or nine or decreased to seven or five if a petition signed by at least one-third of the qualified electors of the school district as determined by the number of persons voting at the most recent annual school district election is filed with the school board asking for such change, and the change is approved by a majority of the qualified electors of the district voting at a special election called for that purpose. If approved, the additional members must be elected to the board at the next annual school district election in the same manner as other school board members. If the total number of board members after the increase is approved is five, two shall serve until the first annual election, two until the second annual election, and one until the third annual election thereafter. If the total number of board members after the increase is approved is seven, three shall serve until the first annual election, two until the second annual election, and two until the third annual election thereafter. If the total number of board members after the increase is approved is nine, three shall serve until the first annual election, three until the second annual election, and three until the third annual election thereafter. All such members shall serve for the terms prescribed above and until their successors are elected and qualified, and the length of the respective terms of those members elected as a result of the increase in membership of the board shall be determined by lot. The length of any term which existed prior to the increase in membership and which is held by a member who has duly qualified, may not be modified by such determination. Terms subsequent to the first must be for the normal term of three years, and until a successor is elected and qualified. School board members must be elected at large, except that if the district in which they are elected has been reorganized, such members may be elected either at large or by geographical area. In reorganized districts, in which an increase in the membership of the board is proposed, the election on the reorganization proposal takes the place of the petition and election requirements of this subsection, and approval of the reorganization proposal has the same effect as if the approval were by the election provided for in this subsection. Should a decrease to not fewer than five members be approved by the qualified electors voting, the excess number of members will serve out existing terms until the number approved by the qualified electors has been reached.

3. If a school board has elected to convert to four-year terms of office for school board members as provided for in subsection 3 of section 15-28-03 and has also increased the number of board members pursuant to subsection 2 of this section, the board by lot or by some other random selection method shall provide for such a combination of initial terms of office not to exceed four years for the new board members. Such a combination must equalize to the greatest extent feasible the number and length of terms for old and new members to be elected during the next three election years. The members' terms must be staggered and must expire in even-numbered years.

15-28-02. Rural members of school board - Definitions. When a school district is composed of six or more sections of land having a city within its boundaries and when the population of the school district does not exceed two thousand persons, at least two members of the school board must be residents upon farms outside the corporate limits of the city. When a school district is composed of six or more sections of land and has within its boundaries a city with a population of more than two thousand but less than fifteen thousand persons, and has at least twenty-five families residing upon farms outside the corporate limits of the city but upon farmsteads located within the school district and sending children to school in such school district, at least one member of the board must be a resident upon a farm outside the corporate limits of the city. However, if the taxable valuation of agricultural property in the rural area of a school district containing a city is greater than the taxable valuation of the urban area of the district, the majority of the members of the school board shall reside upon farms outside the corporate limits of the city; provided, that all voters of the school district, regardless of whether the district is reorganized, are entitled to vote for each candidate to the school board whenever the variance in population between any of the geographic voting areas of the school district is in excess of ten percent.

For purposes of this section, school board members must be considered as rural members and as residing upon a farm if they reside within a city that according to the latest federal census has a population of two hundred or less and is located within a school district that has four or more incorporated cities within its boundary. For purposes of this section:

1. "Agricultural property" means property outside the limits of an incorporated city and zoned agricultural.
2. "Rural" means property outside the limits of an incorporated city.

15-28-03. Annual and special elections - When held - Officers elected Terms - Optional joinder with city election or primary election.

1. An annual election must be held in each public school district on a date between April first and June thirtieth, at the discretion of the school board. At each annual election, members of the school board must be elected to fill all vacancies caused by the expiration of terms of office or otherwise. Each member elected shall serve for a term of three years, except when elected to serve an unexpired term. The term of any elected member commences at the annual meeting in July following the member's election, and continues until a successor is elected and qualified. In addition to the annual election, a special

election may be held at any time, if approved by a resolution of the school board, for any purpose provided for by law.

2. The annual election provided for in this section may, upon resolution of the school board, be held in conjunction with the regularly scheduled city election, established by state law or established pursuant to the home rule powers of the city, held in a city located wholly or partially within that school district. The school board may enter into an agreement with the governing body of the city concerning the sharing of election personnel, the printing of election materials, the use of one set of pollbooks, and the apportioning of election expenses. If only one set of pollbooks is used, the pollbook must contain a reference indicating the voter's eligibility to vote in the city or school board election, or both. References in this chapter to the date of school board elections, insofar as they relate to a school board that holds its elections in conjunction with a city, are deemed to mean or to refer to the date of the applicable city election.
3. A school board may convert the terms of office of its members to four years rather than three years in order that school board elections like city elections may be held biennially rather than annually. A school board may convert the future terms of its members to four years by passing a resolution requiring the conversion. Upon the expiration of the three-year term of each incumbent in office on the date the resolution is passed, the term of office for that position on the board is four years, except that the resolution may provide that one of the positions being converted to a four-year term must first be converted to one two-year term before becoming a four-year term. If the resolution provides for one two-year term, that term must be chosen by lot. If the extension of a term to four years results in the term ending in an odd-numbered year, one additional and transitional term of three years must be provided before the term becomes a four-year term of office. Once the school board has accomplished the transition to biennial elections, references in this title to annual elections as they apply to the school board are deemed to mean biennial elections, and the election held pursuant to section 15-28-11 must be held in even-numbered years.
4. A school board that has converted the terms of its members to four years may revert to three-year terms by passing a resolution providing for the reversion. When the four-year term of each board member holding office on the date of the resolution's passage expires, the term of office for that position becomes three years.
5. If the school election is held in conjunction with the primary election, the school board may enter into an agreement with the governing body of the county or counties in which the district lies concerning use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses.

15-28-04. Election precincts, polling places, and officers. At least thirty-five days prior to the date chosen for the annual election, the school board of each public school district, by motion or resolution, shall designate one or more precincts and polling places for the school election. The precincts must be arranged so as to divide the electors in the district as nearly equally as possible, and no precinct may have a population in excess of six thousand residents as shown by the last federal decennial census. The polling places established in the precincts must be located as conveniently as possible for the voters in the precinct, and a polling place once established by the board must remain the polling place for the precinct until it is changed by subsequent action of the board. The board shall appoint two persons to act as judges and two persons to act as clerks of the election in each precinct. Before opening the polls, each of the judges and clerks shall take an oath or affirmation to perform the duties of judge or clerk, as the case may be, according to law and to the best of the judge's or clerk's ability. The oath or affirmation may be administered by any officer authorized to administer oaths, or by any of the judges or clerks to the others.

15-28-05. Compensation of election officials. Election officials at public school district elections shall receive compensation as determined for election officials in section 16.1-05-05. The amounts determined to be due election officials at public school district elections must be paid from the funds of the public school district holding the election.

15-28-06. Annual and special elections - Notice. Notice of the annual school district election and notice of special school elections must be given by the school board. At least fourteen days before the date the election is to be held the school board must cause to be published, in the official newspaper of the school district, notice of the election. Such notice must be signed by the business manager of the school district, or in the business manager's absence by the president of the school board, and must state the time and place of holding the election, and the matter to be voted upon.

15-28-07. Notice of election - Form. The notice of election must be in substantially the following form:

Notice is hereby given that on _____, (insert the day of the week) the _____ day of _____, _____, annual elections will be held for the purpose of electing member(s) of school boards, and the polls will be open at _____ a.m. _____ (insert time standard) and will close at _____ p.m. _____ (insert time standard) of that day.

15-28-08. Hours polls open. At all elections held in a public school district, the polls must be opened at eleven a.m. or such earlier hour, but not earlier than seven a.m., as may be designated by the school board, and must remain open until seven p.m. on the day of election, or such later hour not exceeding eight p.m. as may be designated by the school board. The school board shall designate in the notice of election the time standard to be used for polling hours.

15-28-09. Election - Candidates - Ballots - Stickers.

1. Except as otherwise provided in subsection 2, any candidate for election as a member of the school board of a school district shall file with the business manager of the school district, not less than thirty-three days before the election and before four p.m. on the thirty-third day, a statement setting forth the candidate's name and the position for which that person is a candidate. A statement which is mailed to the business manager must be in the business manager's physical possession before four p.m. on the thirty-third day before the election. 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 persons who have filed as herein provided. The arrangement of the names of the candidates upon the ballot must be determined by lot by such business manager in the presence of the candidates or their representatives. The ballot must be headed "official ballot", must be nonpartisan in form, and must contain the following:
 - a. The name of the district.
 - b. The date of the election.
 - c. The number of persons to be elected to each office.
 - d. Blank spaces below the names listed as candidates for each office in which names not stated on the ballot may be written.
2. When a school annual election or special election is held in conjunction with a statewide election, any candidate for election as a member of the school board of a school district shall file with the business manager of the school district, not less than sixty days before the election and before four p.m. on the sixtieth day, a statement setting forth the candidate's name and the position for which that person is a candidate. A statement which is mailed to the business manager must be in the business manager's physical possession before four p.m. on the sixtieth day before the election.
3. Nothing herein prevents any person who is qualified to hold the office, who desires to be a candidate at the election, and who has failed to file as herein provided, from providing stickers to be attached to the official ballot by the electors. A sticker may not be more than one-half inch [12.7 millimeters] in width and must have printed thereon the name and address of one person.

15-28-10. Duties of election officials - Other statutes applicable. Sections 16.1-08.1-03.3, 16.1-10-01, 16.1-10-06, 16.1-10-06.1, 16.1-10-07, 16.1-10-08, 16.1-13-22, 16.1-13-23, 16.1-13-30, 16.1-15-01, 16.1-15-04, and 16.1-16-04 apply to elections held under sections 15-28-06 and 15-28-09. All expenses of elections held by a school district must be paid by the district.

15-28-11. Publication of school board proceedings - Electorate to decide biennially. Biennially, at the annual election of school board members held in each school district, the question of whether a record of the proceedings of the school board shall be published in the official newspaper of the school district must be submitted to the electors of the district. If the publication of such proceedings is approved by a majority of the electors voting thereon, the records of the school board, including an itemized list of obligations approved for payment, must

be published in the official newspaper of the school district. When applicable, these proceedings must be identified in the newspaper as being published subject to review and revision by the school board. These proceedings must be given to the newspaper by the school district's business manager within a reasonable time after each school board meeting for the succeeding two years, or until disapproved at a succeeding school board election.

CHAPTER 15-47
GENERAL PROVISIONS (EDUCATION)

15-47-05. Qualifications of school electors and officers. Any person who is a qualified elector of this state is qualified to vote for the election of school officers in any school district in which he is a resident, and is eligible to the office of business manager of the school district, or member of the school board, or may be appointed as a judge or clerk of election. The business manager of the school district need not be a resident of the district. For the purposes of elections held pursuant to chapter 15-28 only, a person who resides on an air force base is a resident of a school district if the school district receives students from the air force base pursuant to contract and receives impact aid pursuant to Public Law 81-874, as amended [64 Stat. 1100; 20 U.S.C. 236 et seq.].

15-47-06. Election procedure in all school districts—Canvass of boards—Tie vote—Absent voters—Recounts. An election in a public school district, except as otherwise provided in this title, must be conducted and the votes must be canvassed in the manner provided by the laws of this state for the election of county officers. Immediately after the polls are closed, the judges shall count and canvass the votes for each office and within forty-eight hours after the polls are closed, the returns must be signed by the judges and clerks of the election and filed with the business manager of the school district. If the election results in a tie, the business manager of the district immediately, and in writing, shall notify the candidates between whom the tie exists, and within three days after the election, and at a time agreed upon by the candidates, the election must be decided in the presence of the judges and clerks of election in a manner agreed upon by the candidates. A record of the proceedings must be made in the records of the business manager of the district. The school board shall canvass all election returns and shall declare the result of any election within three days of the election, and in the case of a tie, within three days of the breaking of the tie pursuant to this section. The result of the election must be entered upon the records of the board. The person receiving the highest number of votes for each office in the district must be declared elected. Absent voters' ballots must be available in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to public school district elections, except the members of the school board not subject to a recount and not disqualified under subdivision c of subsection 2 of section 16.1-05-02 shall perform the duties of the recount board, the school district business manager shall perform the duties of the county auditor, the school board takes the place of the county canvassing board, and all expenses of the recount must be paid as provided in section 15-28-10.

15-47-07. Certificate of election - Notice to county superintendent of schools. Within five days after any school district election, the business manager of the school district shall notify each person elected to a school district office, by written notice, of his election and of his duty to take the oath of office as such officer. The business manager of the school district, within ten days after the election, shall certify the persons so elected and the terms to the county superintendent of schools.

15-47-08. Oath of office of school district officers. Each person elected or appointed as a member of the school board or as a business manager of the school district, before entering upon the duties of his office, shall take and file with the business manager of the school district the oath prescribed for civil officers.

CHAPTER 40-21 MUNICIPAL ELECTIONS

40-21-01. Qualified electors in municipal election - Restrictions. Every resident of a municipality who is qualified to vote therein at general elections may vote at all municipal elections held therein. When elections are held by wards or precincts, no person may vote in any place other than the ward or precinct of which he is a resident.

40-21-02. City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors. Biennial municipal elections must be held on the second Tuesday in June in each even-numbered year. Ten days' notice of the time and place of the election and of the offices to be filled at such election must be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09. The governing body of a city shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses. For city elections that are not held under an agreement with any county the governing body of the city shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. For a city election that is not held under an agreement with any county in a precinct in which seventy-five or fewer votes were cast in the last city election, the governing body of the city may appoint one inspector and one judge.

40-21-03. Elections in council cities - Polling places - Polls open - Notice - Judges, clerks, and inspectors - Agreements with counties. Repealed by S.L. 1995, ch. 390, # 3.

40-21-03.1. Designation of polling places for municipal elections. The governing body of any city at the time of calling any general or special municipal election, or prior to the time of registration for said election, if such registration is required by law, where officers of said city are not to be elected by wards or districts, may by resolution, designate such voting precincts and polling places for said election as it may deem necessary for the conduct of the same, and shall in giving notice of said election, designate such voting precincts and polling places.

40-21-04. Annual election held in villages - Board of trustees to be inspectors. Repealed by S.L. 1967, ch. 323, # 285.

40-21-05. Compensation of inspectors, judges, and clerks at municipal elections. Each inspector, judge, or clerk of any regular or special municipal election shall receive compensation as determined for election officials in section 16.1-05-05. The amounts determined to be due election officials at municipal elections shall be paid from the funds of the municipality holding the election. In the event a special municipal election is held on the same date as a statewide, districtwide, or countywide election, and if the same election officials perform services for both elections, the city shall not be required to pay the election officials, except for any extra officials necessary for such special municipal election.

40-21-06. Reference to party ballot or affiliation in petition of candidate for municipal office prohibited. No reference may be made to a party ballot nor to the party affiliation of a candidate in a petition to be filed by or in behalf of a candidate for nomination to a public office in any incorporated city in this state.

40-21-07. Petition for nomination of elective official in cities - Signatures required - Contents. A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least sixty days and before four p.m. on the sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before four p.m. on the sixtieth day prior to the holding of the election. However, no more than three hundred signatures may be required and the signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petition the petitioner's mailing address. If a city election is not held in conjunction with a state or county election, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before four p.m. on the thirty-third day before the holding of the election.

40-21-08. Ballots in municipalities - Arrangement. The auditor of the city shall place only the names of the persons nominated upon the ballot. The auditor shall arrange the offices upon the ballot in the order in which they are named in the statutes. The auditor shall determine the arrangement of the names of the candidates upon the ballot by lot in the presence of the candidates or their representatives at noon on the day following the last day for the filing of the nomination papers.

40-21-09. Election districts in council cities - Division and consolidation by ordinance - Ballots to be kept separate by wards. Each city operating under the council form of government in which council members are elected at large constitutes an election district or voting precinct, and in all other cities each ward constitutes an election district or voting precinct. Whenever the number of electors in any two or more contiguous wards does not exceed one hundred as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate those two or more wards into one precinct for voting purposes. In any city containing less than four hundred electors as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate all the wards of the city into one precinct for voting purposes. An ordinance dividing or consolidating wards must be passed and takes effect before the time of giving notice of the election. Wards and precincts established under this section constitute election districts for all state, county, and city elections. In city elections, separate ballot boxes and pollbooks must be provided and kept for each precinct. The

terms “wards”, “precincts”, and “election districts” have the same meaning except where two or more wards are consolidated into one precinct for voting purposes or where one ward is divided into more than one precinct for voting purposes. This section does not prohibit the use of one building as the election polling place for more than one ward or the installation of voting machines from separate wards in one building.

40-21-10. Registration of voters. The governing body of any city may require the registration of voters in any election held or conducted within the municipality at such time and place or places as the governing body may designate.

40-21-11. Clerks appointed to fill vacancies - Oath, powers, and duties of judges and clerks of municipal elections. When necessary, the judges of election at a municipal election shall appoint clerks to fill vacancies. The judges and clerks of a municipal election shall take the same oath and have the same powers and authority as judges and clerks of general state elections.

40-21-12. Counting ballots - Returns - Canvass of returns by governing body of municipality. The ballots cast in a municipal election shall be counted and the returns of the election prepared by the election board immediately after the closing of the polls. The ballots and the returns of the election shall be returned to the city auditor under seal within two days and before four p.m. on the second day after the election. Thereafter, the governing body of the municipality shall canvass the returns and declare the result of the election and cause a statement thereof to be entered in its books of minutes.

40-21-13. Municipal elections to be governed by rules applicable to county elections - Absent voting. The manner of conducting, voting at, keeping poll lists, and canvassing votes at municipal elections, and contests of the results of the elections is governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. Absent voters’ ballots must be available in municipal elections in accordance with chapter 16.1-07.

40-21-14. City auditor to notify of election or appointments. The city auditor, within five days after the result of an election is declared or the appointment of an officer is made within the municipality, shall notify each person elected or appointed to municipal office of that person’s election or appointment. Within the same period of time, the city auditor shall also notify the state supreme court of the election or the appointment of any municipal judge or alternate judge.

40-21-15. New election upon failure to elect. If there is a failure to elect an officer required to be elected, the governing body of the municipality may order a new election.

40-21-16. Special elections conducted in same manner as general elections. Special municipal elections to fill vacancies or for any other purpose shall be held and conducted by the inspectors and judges of election of the several precincts in the same manner and the returns shall be made in the same form and manner as at regular municipal elections.

40-21-17. Highest number of votes elects in municipal election - Procedure on tie vote.

The person having the highest number of votes for any municipal office shall be declared elected to such office. In case of a tie vote in the election of any municipal officer, the choice shall be determined by a coin flip in the presence of the governing body of the municipality and in such manner as it shall direct.

CHAPTER 12.1-14
OFFICIAL OPPRESSION - ELECTIONS - CIVIL RIGHTS

12.1-14-02. Interference with elections. A person is guilty of a class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because he is or has been voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in any primary, special, or general election.
2. Injures, intimidates, or interferes with another in order to prevent him or any other person from voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in any primary, special, or general election.

12.1-14-03. Safeguarding elections. A person is guilty of a class A misdemeanor if, in connection with any election, he:

1. Makes or induces any false voting registration;
2. Offers, gives, or agrees to give a thing of pecuniary value to another as consideration for the recipient's voting or withholding his vote or voting for or against any candidate or issue or for such conduct by another;
3. Solicits, accepts, or agrees to accept a thing of pecuniary value as consideration for conduct prohibited under subsection 1 or 2; or
4. Otherwise obstructs or interferes with the lawful conduct of such election or registration therefor.

As used in this section, "thing of pecuniary value" shall include alcoholic beverages, by the drink or in any other container.

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