

**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 and 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 by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, electronic voting system or counting machine authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16.1-06-26. The secretary of state, upon determining that any ballot or other material, electronic voting system or counting machine, or device is not in sufficient compliance with the law or established criteria and standards, shall direct the proper changes to be made, and in the case of electronic voting systems and counting machines, may decertify the electronic voting systems and counting machines according to the rules adopted under section 16.1-06-26.
2. In addition to other duties provided elsewhere by law, the secretary of state shall:
  - a. Develop and implement uniform training programs for all election officials in the state.
  - b. Prepare information for voters on voting procedures.
  - c. Publish and distribute an election calendar, a manual on election procedures, and a map of all legislative districts.
  - d. Convene a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state 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 or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
  - g. Require such reports from county auditors on election matters as deemed necessary.
  - h. Certify results of statewide elections.
  - i. Prepare and publish reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.
  - j. Establish standards for voting precincts and polling locations, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including but not limited to, ballots, pollbooks, and reports.
  - k. Prescribe the order in which each political subdivision will appear on an election ballot.
  - l. Develop and conduct a test election for the state's voting system prior to each statewide election utilizing the votes cast within each county according to the logic and accuracy testing required in section 16.1-06-15.
3. In carrying out the secretary of state's duties and to assure uniform voting opportunities throughout the state, and for the purpose of implementing the provisions of this title and any other requirement imposed upon the state by the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301 et seq.] not otherwise addressed in this Act, the secretary of state may from time to time issue rules the secretary of state deems necessary, which must be consistent with the provisions of this title or the Help America Vote Act of 2002 and be adopted and

published in accordance with chapter 28-32, but which need not comply with section 28-32-07.

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 the auditor's 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. Fully comply with the test election required of this section.
  - d. Carry out uniform training programs for all county and precinct election officials as prescribed by the secretary of state.
  - e. Receive and handle complaints referred to the county auditor by any voter or precinct official involving circulation of petitions, challenges to voters, actions of election officials, or irregularities of any kind in voting. The county auditor shall refer complaints to the secretary of state or the proper prosecuting authority, as the county auditor 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 the employee's 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 ninety 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 ninety 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.

#### **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. For the purposes of this title, every qualified elector may have only one residence, shown by an actual fixed permanent dwelling, establishment, or any other abode.
3. Except as otherwise provided in this section, an individual's 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 individuals convicted and sentenced for a felony must be limited according to chapter 12.1-33.
5. For the purposes of this title, an individual may not be deemed to have gained or lost a residence solely by reason of the individual's presence or absence while enrolled as a student at a college, university, or other postsecondary institution of learning in this state.
6. For the purposes of this title, a member of the armed forces of the United States may not be deemed to have gained or lost a residence in this state solely by reason of the member being stationed on duty in this state.
7. For the purposes of this title, an individual may not be deemed to have lost residence in the individual's precinct or in the state by reason of the individual engaging in temporary government service or private employment outside the individual's precinct or outside the state.
8. For purposes of this title, a qualified elector may not authorize an attorney in fact, guardian, or other individual to apply for any ballot or to vote in any election on behalf of or in the place of the qualified elector.

### **16.1-01-05. Voting by qualified elector moving from one precinct to another.**

If a qualified elector moves from one precinct to another precinct within this state, the elector is entitled to vote in the precinct from which the elector moved until the elector has established a new residence pursuant to section 16.1-01-04.

#### **16.1-01-05.1. Voter lists - Addition or transfer of names.**

Through the use of the central voter file provided for in chapter 16.1-02, the secretary of state shall establish a procedure by which a county auditor may transfer a person's name from the voter list of one precinct to the voter list of another precinct in the state if that person establishes a new residence, and by which a person who establishes residence in the state 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. 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 an electronic voting system device, 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 electronic voting system ballots are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. For two consecutive weeks before 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.

**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 the secretary of state's 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 the secretary of state's 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 or referendum petitions - Signature - Form - Circulation.**

1. a. 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. The filed signature forms must be originals.
- b. Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement that fairly represents 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 "petition title", and must be placed immediately before the full text of the measure.
  - c. 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, excluding Saturdays.
2. An individual may not sign any initiative or referendum petition circulated pursuant to article III of the Constitution of North Dakota unless the individual is a qualified elector. An individual may not sign any petition more than once, and each signer shall also legibly print the signer's name, complete residential address or rural route or general delivery address, and the date of signing on the petition. Every qualified elector signing a petition shall do so in the presence of the individual circulating the petition. A referendum or initiative petition must be on a form prescribed by the secretary of state containing the following information:

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
_____ (Chairperson)	_____
_____	_____

PETITION 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 MATERIAL IS NOT UNDERSCORED OR OVERSTRUCK, THE MATERIAL IS EXISTING LAW THAT IS NOT BEING CHANGED.

[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 shall also legibly print their name, complete residential address or rural route or general delivery address, and the date of signing on the petition. Every qualified elector signing a petition must do so in the presence of the individual circulating the petition.

QUALIFIED ELECTORS

	Signed				
Month, Day, Year	Name of Qualified Elector	Printed Name of Qualified Elector	Residential Address or Complete Rural Route or General Delivery Address	City State, Zip Code	
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____



6. An initiative or referendum petition may be submitted to the secretary of state until midnight of the day designated as the deadline for submitting the petition.
7. An initiative petition may be circulated for one year from the date it is approved for circulation by the secretary of state.

**16.1-01-09.1. Recall petitions - Signature - Form - Circulation.**

1. A request of the secretary of state for approval of a petition to recall an elected official or appointed official of a vacated elected office 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 recall; the printed name, signature, and address of the committee member; and notarization of the signature. The filed signature forms must be originals.
2. An individual may not sign a recall petition circulated pursuant to article III of the Constitution of North Dakota or section 44-08-21 unless the individual is a qualified elector. An individual may not sign a petition more than once, and each signer shall also legibly print the signer's name, complete residential, rural route, or general delivery address, and the date of signing on the petition. Every qualified elector signing a petition must do so in the presence of the individual circulating the petition. A petition must be in substantially the following form:

**RECALL PETITION**

We, the undersigned, being qualified electors request that \_\_\_\_\_ (name of the individual being recalled) the \_\_\_\_\_ (office of individual being recalled) be recalled for the reason or reasons of \_\_\_\_\_.

**RECALL SPONSORING COMMITTEE**

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

		Complete Residential, Rural Route, or General Delivery Address
Name		
1.	_____ (Chairperson) _____	
2.	_____	
3.	_____	
4.	_____	
5.	_____	

**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 for thirty days, and you are a United States citizen. All signers shall also legibly print their name, complete residential, rural route, or general delivery address, and date of signing on the petition. Every qualified elector signing a petition must do so in the presence of the individual circulating the petition.

**QUALIFIED ELECTORS**

	Signed Name of Qualified Elector	Printed Name of Qualified Elector	Complete Residential, Rural Route, or General Delivery Address	City State, Zip Code
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____

8. \_\_\_\_\_  
The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter.

3. Each copy of a petition provided for in this section, before being filed, must have attached an affidavit executed by the circulator in substantially the following form:

State of North Dakota )  
 ) ss.

County of \_\_\_\_\_ )  
(county where signed)

I, \_\_\_\_\_, being sworn, say that I am a qualified elector; that I  
(circulator's name)

reside at \_\_\_\_\_;  
(address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each individual 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 individual whose name it purports to be.

\_\_\_\_\_  
(signature of circulator)

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_, at  
\_\_\_\_\_, North Dakota.

(city)

(Notary Seal)

\_\_\_\_\_  
(signature of notary)

Notary Public

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 individual being recalled, the office from which that individual is being recalled, and a list of the names and addresses 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. For the recall of an elected official under article III of the Constitution of North Dakota, circulators have one year to gather the required number of signatures of qualified electors on the recall petition from the date the secretary of state approves the recall petition for circulation. For the recall of an elected official under section 44-08-21, circulators have ninety days from the date the secretary of state approves the recall petition for circulation to submit the recall petition to the appropriate filing officer.
6. A petition may not be circulated under the authority of article III of the Constitution of North Dakota or section 44-08-21 by an individual who is less than eighteen years of age, nor may the affidavit called for by subsection 3 be executed by an individual 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.
7. When recall petitions are delivered to the secretary of state or other filing officer with whom a petition for nomination to the office in question is filed, the chairman of the sponsoring committee shall submit to the secretary of state or other filing officer an affidavit stating that to the best of that individual's knowledge, the petitions contain at least the required number of signatures. Upon submission of the petitions to the appropriate filing officer, the petitions are considered filed and may not be returned to the chairman of the sponsoring committee for the purpose of continuing the circulation process or resubmitting the petitions at a later time. An elector's name may not be removed by the elector from a recall petition that has been submitted to and received by the appropriate filing officer.
8. The filing officer has a reasonable period, not to exceed thirty days, in which to pass upon the sufficiency of a recall petition. The filing officer may 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 filing officer to be invalid may not be counted and all violations of law discovered by the filing officer must be reported to the state's attorney for possible prosecution.

9. The filing officer shall call a special recall election to be held no sooner than ninety days nor later than one hundred days following the date the filing officer certifies the petition valid and sufficient. No special recall election may be called if that date would be within ninety days of the next scheduled election.
10. A notice of the recall election must be posted in the official newspaper thirty days before the candidate filing deadline, which is by four p.m. on the sixty-fourth day before the election. The official notice must include the necessary information for a candidate to file and have the candidate's name included on the ballot.
11. An official may not be recalled if the recall special election would be held during the same year in which the official's office would be included on the ballot.

**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.**

1. It is unlawful for an individual or organization to:
  - a. Fraudulently alter another individual's ballot or substitute one ballot for another or to otherwise defraud a voter of that voter's vote.
  - b. Obstruct a qualified elector on the way to a polling place.
  - c. Vote or offer to vote more than once in any election.
  - d. Knowingly vote in the wrong election precinct or district.
  - e. Disobey the lawful command of an election officer as defined in chapter 16.1-05.
  - f. Knowingly exclude a qualified elector from voting or knowingly allow an unqualified person to vote.
  - g. Knowingly vote when not qualified to do so.
  - h. Sign an initiative, referendum, recall, or any other election petition when not qualified to do so.
  - i. Circulate an initiative, referendum, recall, or any other election petition not in its entirety or circulate such a petition when unqualified to do so.
  - j. Pay or offer to pay any individual or organization, 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, in the case of initiative and referendum petitions, fully disclose all contributions received

pursuant to chapter 16.1-08.1 to the secretary of state upon submission of the petitions. The disclosure of contributions received under this section does not affect the requirement to file a preelection report by individuals or organizations soliciting or accepting contributions for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly under chapter 16.1-08.1. Any signature obtained in violation of this subdivision is void and may not be counted.

- k. 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.
  - l. Willfully violate any rule adopted by the secretary of state pursuant to this title.
  - m. 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 the individual's or organization's care.
  - n. Destroy ballots, ballot boxes, election lists, or other election supplies except as provided by law.
  - o. Sign a name other than that individual's own name to an initiative, referendum, recall, or any other election petition.
2.
    - a. A violation of subdivisions a through l of subsection 1 is a class A misdemeanor.
    - b. A violation of subdivision m of subsection 1 is a class C felony.
    - c. A violation of subdivision n of subsection 1 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.
    - d. A violation of subdivision o of subsection 1 is a class A misdemeanor if an individual signs one or two names other than the individual's own name to a petition and is a class C felony if an individual signs more than two names other than the individual's own name to a petition.
    - e. An organization, as defined in section 12.1-03-04, that violates this section is subject to the organizational fines in section 12.1-32-01.1. The court in which the conviction is entered shall notify the secretary of state of the conviction and shall order the secretary of state to revoke the certificate of authority of any convicted organization or limited liability company. The organization may not reapply to the secretary of state for authorization to do business under any name for one year upon conviction of a class A misdemeanor and for five years upon conviction of a class C felony under this section.
    - f. An individual who is a member of an organization may be convicted of a violation as an accomplice under section 12.1-03-01.
  3. 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. (See note for contingent effective date) 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 Constitution of the United States, and our duty to elect United States senators, under the seventeenth amendment to the Constitution of the United States.
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 person twenty-eight years old to the senate or require a religious test for a federal legislator.
5. Assert that, aside from the requirements explicitly imposed by the Constitution of the United States, our power with respect to election of federal legislators is plenary.
6. Note that, under the Constitution of the United States, 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 section 1 of article III of the Constitution of North Dakota.
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. President Madison's 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. President Madison's 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 counterproductive 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 ensure 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.

**16.1-01-15. Secretary of state to establish and maintain an election fund.**

The secretary of state shall establish and maintain a fund, known as the election fund, in the state treasury for the purpose of depositing payments and grants made to the state under the provisions of sections 101, 101(c), and 906, and title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301, 42 U.S.C. 15545, 42 U.S.C. 15481-15502] and funds appropriated by the state. The moneys in the election fund and any interest earnings on the election fund must be used for the exclusive purpose of carrying out activities of the Help America Vote Act of 2002 and are subject to chapter 54-16.

**16.1-01-16. Secretary of state to establish a uniform state-based administrative complaint procedure.**

The secretary of state shall establish a uniform state-based administrative complaint procedure to remedy grievances according to section 402 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15512]. The complaint procedure must be uniform and nondiscriminatory and address complaints of violations of any provision of title III of the Help America Vote Act of 2002, including a violation that has occurred, is occurring, or is about to occur. A complaint filed under the complaint procedure must be in writing, notarized, and be signed and sworn by the person filing the complaint. The secretary of state is authorized to consolidate complaints. At the request of a complainant, the secretary of state shall establish a procedure for providing a review on the record. If the secretary of state determines there is a violation of a provision of title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15481-15502], the secretary of state shall determine and provide an appropriate remedy. If the secretary of state determines that a violation of title III of the Help America Vote Act of 2002 has not occurred, the secretary of state shall dismiss the complaint and publish the results of the review. The secretary of state shall make a final determination with respect to a complaint within ninety days of the date the complaint is filed with the secretary of state, unless the complainant consents to a longer period of time for the secretary of state to make a determination. If the secretary of state fails to meet the ninety-day deadline for determining a complaint, the complaint must be resolved within sixty days under an alternative dispute resolution procedure.

**16.1-01-17. Estimated fiscal impact of an initiated measure.**

At least ninety days before a statewide election at which an initiated measure will be voted upon, the legislative council shall coordinate the determination of the estimated fiscal impact of the initiated measure. Upon notification from the secretary of state that signed petitions have been submitted for placement of an initiated measure on the ballot, the legislative management shall hold hearings, receive public testimony, and gather information on the estimated fiscal impact of the measure. Each agency, institution, or department shall provide information requested in the format and timeframe prescribed by the legislative council for identifying the estimated fiscal impact of an initiated measure. At least thirty days before the public vote on the measure, the legislative council shall submit a statement of the estimated fiscal impact of the measure to the secretary of state. Upon receipt, the secretary of state shall include a notice

within the analysis required by section 16.1-01-07 specifying where copies of the statement of the estimated fiscal impact can be obtained. Within thirty days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the legislative management under this section shall submit a report to the legislative council on the actual fiscal impact for the first complete fiscal year resulting from provisions of the initiated measure and a comparison to the estimates provided to the legislative management under this section and the legislative council shall issue a report of the actual fiscal impact of the initiated measure.