

**HOUSE BILL NO. 1461**

Introduced by

Representatives Pollert, K. Koppelman, Louser

Senators Burckhard, Klein, Wardner

1 A BILL for an Act to create and enact a new section to chapter 16.1-13 and section 44-02-03.1  
2 of the North Dakota Century Code, relating to filling vacancies in offices of members of the  
3 legislative assembly; to amend and reenact sections 44-02-03 and 54-03-01.13 of the North  
4 Dakota Century Code, relating to filling vacancies in offices of members of the legislative  
5 assembly; and to repeal section 16.1-13-10 of the North Dakota Century Code, relating to  
6 vacancies in offices of members of the legislative assembly.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new section to chapter 16.1-13 of the North Dakota Century Code is created  
9 and enacted as follows:

10 **Death or disqualification of legislative candidate.**

11 If a candidate for an office of a member of the legislative assembly who has died or become  
12 disqualified for the office receives enough votes to be elected except for the death or  
13 disqualification, a vacancy in the office is deemed to exist, and must be filled according to  
14 section 44-02-03.1. If an individual elected to the legislative assembly dies or becomes  
15 disqualified after the election but before the individual's term of office begins, a vacancy in the  
16 office exists and must be filled according to section 44-02-03.1 as if the individual's term of  
17 office had begun. An individual is disqualified for an office if the individual fails to meet the  
18 qualifications under law for the office.

19 **SECTION 2. AMENDMENT.** Section 44-02-03 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **44-02-03. Vacancy in state or district office - How filled.**

22 Any vacancy in a state or district office, except in the office of a member of the legislative  
23 assembly, must be filled by appointment by the governor. The governor may not fill a vacancy in  
24 the office of a member of the legislative assembly. A vacancy in the office of a supreme court

1 justice or district court judge must be filled as provided in chapter 27-25. If during a vacancy in  
2 the office of governor, the lieutenant governor and the secretary of state are impeached,  
3 displaced, resign, or die, or from mental or physical disease or otherwise become incapable of  
4 performing the duties of the office of governor as provided by sections 2 and 7 of article V of the  
5 Constitution of North Dakota, then the succession to the office of governor is the speaker of the  
6 house, president pro tem of the senate, attorney general, in the order named. Each succeeding  
7 person named shall hold the office of governor until the vacancy is filled by election or until any  
8 disability of the preceding person in the line of succession is removed.

9 **SECTION 3.** Section 44-02-03.1 of the North Dakota Century Code is created and enacted  
10 as follows:

11 **44-02-03.1. Vacancy in legislative assembly.**

- 12 1. If a vacancy in the office of a member of the legislative assembly occurs, the secretary  
13 of state shall notify the chairman of the legislative management of the vacancy. The  
14 secretary of state need not notify the chairman of the legislative management of the  
15 resignation of a member of the legislative assembly when the resignation was made  
16 under section 44-02-02.
- 17 2. Upon receiving notification of a vacancy, the chairman of the legislative management  
18 shall notify the district committee of the political party the former member represented,  
19 or the member-elect or deceased or disqualified candidate would have represented, in  
20 the district in which the vacancy exists. The district committee shall hold a meeting  
21 within twenty-one days after receiving the notification and select an individual to fill the  
22 vacancy. If the former member, member-elect, or deceased or disqualified candidate  
23 was elected as an independent candidate or if the district committee does not make an  
24 appointment within twenty-one days after receiving the notice from the chairman of the  
25 legislative management, the chairman of the legislative management shall appoint a  
26 resident of the district to fill the vacancy.
- 27 3. If a vacancy occurs because a member-elect died or became disqualified, or a  
28 candidate who died or became disqualified received a sufficient number of votes to be  
29 elected except for the death or disqualification, the term of an individual appointed to  
30 fill the vacancy begins on the first day of December of the year in which the vacancy  
31 occurs.

- 1       4. Except as provided in subsection 6:
- 2           a. If the office with the vacancy would not have been placed on the next general  
3           election ballot after the vacancy occurs had the member, member-elect, or  
4           candidate whose death, disqualification, or resignation created the vacancy been  
5           able and qualified to fulfill the term, the individual appointed to fill the vacancy  
6           shall serve until a successor is elected at and qualified following the next general  
7           election that is at least ninety-four days after the vacancy occurs.
- 8           b. If the office with the vacancy would have been placed on the next general  
9           election ballot after the vacancy occurs had the member, member-elect, or  
10          candidate whose death, disqualification, or resignation created the vacancy been  
11          able and qualified to fulfill the term and:
- 12           (1) The next general election is scheduled to take place less than ninety-four  
13           days after the vacancy occurs:
- 14           (a) The individual appointed to fill the vacancy shall serve until a  
15           successor is elected at and qualified following the next general  
16           election that is at least ninety-four days after the vacancy occurs; and
- 17           (b) The elected successor shall serve through November thirtieth of the  
18           following even-numbered year.
- 19           (2) The next general election is scheduled to take place at least ninety-four  
20           days after the vacancy occurs, the individual appointed shall serve until a  
21           successor is elected at and qualified following the next general election.
- 22       5. If a special election to fill the vacancy is called by the governor according to  
23       subsection 6, the individual elected at the special election shall serve for the  
24       remainder of the term of office which would have been served by the individual whose  
25       death, disqualification, or resignation created the vacancy.
- 26       6. The qualified electors of a legislative district in which a vacancy in the office of a  
27       member of the legislative assembly occurs due to the death, disqualification, or  
28       resignation of a member of the legislative assembly during the member's term of office  
29       may petition for a special election to be called by the governor to fill the vacancy. The  
30       petition must include the signatures of qualified electors equal in number to at least  
31       four percent of the resident population of the legislative district as determined by the

1 last federal decennial census and must be presented to the secretary of state within  
2 thirty days following an appointment being made according to subsection 2. If the  
3 secretary of state determines the petition contains the required number of signatures  
4 of qualified electors of the affected legislative district, the secretary of state shall notify  
5 the governor that a special election is required to be called to fill the vacancy. Upon  
6 receiving the notice, the governor shall issue a writ of election directed to the secretary  
7 of state commanding the secretary of state to hold a special election to fill the vacancy  
8 at a time designated by the governor. A special election under this section must  
9 conform to the applicable election deadlines found in title 16.1 and may be called to  
10 coincide with a regularly scheduled primary or general election provided the special  
11 election is called by the fifteenth day before the deadline for candidates to file for office  
12 before a regularly scheduled primary or general election. A special election under this  
13 section may not be scheduled to occur during the time from a general election through  
14 eighty days following the adjournment of the next ensuing regular session of the  
15 legislative assembly.

16 7. The secretary of state must be notified of an appointment made by a district committee  
17 or the chairman of the legislative management according to this section. Upon  
18 notification, the secretary of state shall issue the appointee a certificate of appointment  
19 and an oath of office for the appointee to complete and file with the secretary of state.

20 8. For purposes of addressing vacancies in offices of members of the legislative  
21 assembly, an individual is disqualified for an office if the individual fails to meet the  
22 qualifications under law for the office.

23 **SECTION 4. AMENDMENT.** Section 54-03-01.13 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **54-03-01.13. Staggering of terms of members of the legislative assembly.**

- 26 1. A senator and two representatives must be elected from each even-numbered district  
27 in 2012 for a term of four years.
- 28 2. A senator and two representatives must be elected from each odd-numbered district in  
29 2014 for a term of four years. However, a senator and two representatives from district  
30 seven must be elected in 2012 for a term of two years.

- 1           3. Except as provided in subsection 4, the term of office of a member of the legislative  
2           assembly elected in an odd-numbered district in 2010 for a term of four years and who  
3           as a result of legislative redistricting is placed in an even-numbered district terminates  
4           December 1, 2012.
- 5           4. A member of the legislative assembly who was elected from an odd-numbered district  
6           in 2010 for a term of four years and who as a result of legislative redistricting is placed  
7           in an even-numbered district may continue to serve the remainder of the term for  
8           which the member was elected beyond December 1, 2012, if the member changes the  
9           member's place of residence to a location in the odd-numbered district which is within  
10          the geographic area of the odd-numbered district from which the member was elected  
11          by March 15, 2012, and certifies in writing to the secretary of state and the chairman of  
12          the legislative management that the member has established a new residence in that  
13          district as determined by section 54-01-26. If the member does not establish residency  
14          within the district from which the member was elected by March 15, 2012, the term of  
15          office of that member terminates on December 1, 2012.
- 16          5. The term of office of a member of the legislative assembly in an odd-numbered district  
17          with new geographic area that was not in that member's district for the 2010 election  
18          and which new geographic area has a 2010 population that is more than twenty-five  
19          percent of the ideal district population terminates on December 1, 2012.
- 20          6. ~~Notwithstanding section 16.1-13-10, a vacancy caused in an odd-numbered district as~~  
21          ~~a result of legislative redistricting must be filled at the 2012 general election by electing~~  
22          ~~a member to a two-year term of office.~~

23          **SECTION 5. REPEAL.** Section 16.1-13-10 of the North Dakota Century Code is repealed.