

VOTER IDENTIFICATION AND VERIFICATION OF CITIZENSHIP - BACKGROUND MEMORANDUM

Section 1 of 2015 House Bill No. 1302 directs the Legislative Management to study voter registration and policies to implement a system of voter registration, including provisions necessary to allow same-day voter registration. Section 1 of 2015 House Bill No. 1389 directs the Legislative Management to study issues relating to verification of citizenship status for the purpose of voting, including absentee and mail ballot voting. It also directs the Legislative Management to study the process the Department of Transportation (DOT) uses to verify citizenship status in the issuance of driver's licenses and nondriver identification cards and the feasibility and desirability of requiring the department to include on a driver's license or nondriver identification card of a noncitizen a notation indicating the individual is not a citizen of the United States.

PREVIOUS STUDIES AND LEGISLATION

During the 1975-76 interim, the Legislative Council's Judiciary "A" Committee was directed to revise and modernize the state's election laws. The 1977 Legislative Council report indicated the subject of voter registration was thoroughly discussed, however, there was no general consensus on the need for a voter registration system. The committee heard proposals on voter registration ranging from a completely voter-initiated system to a completely government-initiated system. The government-initiated system involved door-to-door canvassing of every household in the state to determine qualified electors. The committee also considered proposals to provide branch offices for registration and to allow registration by mail. At the time, committee members were concerned that voter registration might become a deterrent to voting, especially in rural areas where voter identification was a minor problem. Other members believed the existing affidavit system did not prove whether there was fraudulent voting in the state. As a compromise, the committee recommended a bill providing for statewide voter registration, which allowed any county containing no city with a population of 5,000 or more to be exempt from the system by resolution of the board of county commissioners. The bill, 1977 House Bill No. 1050, failed to pass the House.

The 1999-2000 interim Judiciary Committee was the most recent committee assigned to study voter registration and residency requirements. The committee focused on voter registration and the federal National Voter Registration Act of 1993, residency requirements, and challenged voters. The committee recommended 2001 House Bill No. 1047 to permit election board members and poll challengers to request identification from challenged voters to address voting eligibility concerns, which passed, and 2001 House Bill No. 1048 to provide a provisional ballot procedure for the ballots of challenged voters, which failed to pass the House.

In addition to the voter registration studies, several interim committees have been assigned studies relating to the state's election laws. During the 1989-90 interim, the Elections Committee was assigned to study all aspects of the election process with an emphasis on new voting concepts that would make the process more timely and cost-effective and a study of the primary election process. The 1991-92 interim Legislative Redistricting and Elections Committee was assigned a study of North Dakota election laws.

Since the 1975-76 interim, several voter registration bills have been introduced. Senate Bill No. 2522 (1987), would have required all electors to be registered before being permitted to vote in any statewide special, primary, or general election. A similar bill, Senate Bill No. 2413, was introduced in 1991. Senate Concurrent Resolution No. 4039 (1997) proposed a study of the feasibility and desirability of implementing voter registration, however, the resolution failed to pass the House.

VOTER REGISTRATION

Although a number of states provide for same-day registration, North Dakota is the only state that does not require some form of voter registration. The Legislative Assembly enacted a bill requiring voter registration in 1895. The bill provided for voter registration two weeks before every general or municipal election in all cities and villages exceeding 1,000 in population. Voters who failed to have their names properly registered on the first day were permitted to have their names added by the local election board, which also served as the registration board, one week before the election. Even then, an unregistered voter could appear at the polls and vote by filing an affidavit supported by the oath of a householder or registered voter attesting that the prospective voter was in fact a resident entitled to vote.

The Legislative Research Committee, predecessor of the Legislative Council, studied the state's voter registration laws during the 1949-50 interim. As a result of the study, Senate Bill No. 61 was introduced during the 1951 legislative session. The bill repealed mandatory voter registration and left registration

optional with the governing boards of the municipalities. The 1951 Legislative Research Committee report stated "[t]he present system is cumbersome and of limited effect since it does not apply to primary elections, usually the most important elections in the state." Senate Bill No. 61 passed unanimously in the Senate and passed in the House with a vote of 95 to 5.

In the majority of the legislative sessions between 1957 and 1975, unsuccessful attempts were made to pass legislation requiring statewide registration. In 1975 a bill requiring registration passed by a vote of 56 to 41 in the House and 27 to 19 in the Senate. Governor Arthur Link vetoed the bill and in communication with the Secretary of State said:

"House Bill 1101 requires the registration of voters in North Dakota. Initial registration would be conducted at both the primary and general elections in 1976. Subsequently, registration would be open until five days prior to any statewide primary, general, or special election. The bill provides that the registration would be permanent, although names would be purged from the registration lists if a person did not vote in two consecutive general elections. Such registration lists would be available to the public, but only for political and not for commercial purposes.

This legislation offers no improvement in our election law. Rather, it appears to be a significant movement away from securing more active participation of the electorate. The low percentage of eligible voters who actually vote clearly indicates we do not need complicated registration legislation which will tend to reduce even further the number of citizens who vote.

A need for voter registration could exist if there were irregularities or fraud in North Dakota elections. There has been no indication or evidence of such election problems to justify this legislation."

NORTH DAKOTA VOTER REGISTRATION LAWS AND THE CENTRAL VOTER FILE

North Dakota Century Code Section 40-21-10, which allows a city to institute voter registration, provides that the governing body of any city may require the registration of voters in any election held or conducted within the municipality. North Dakota's election laws are contained in Title 16.1. Chapter 16.1-02 specifically addresses the maintenance of the central voter file by the Secretary of State.

Section 16.1-02-01 establishes a permanent, centralized electronic database of voters--the central voter file which must be maintained by the Secretary of State. Section 16.1-02-02 specifies that the Secretary of State is responsible for the maintenance costs incurred for the continued maintenance of the central voter file. Section 16.1-02-03 directs the Secretary of State to establish the central voter file from records maintained by DOT and each county auditor and to assign each voter a unique identifier. Section 16.1-02-04 requires the county auditor to immediately update the voter records maintained by DOT and the Secretary of State when the boundaries of a precinct are changed. Section 16.1-02-05 requires a county auditor to add any voter who is not already included in the central voter file within 45 days following an election and requires the Secretary of State to determine within 85 days of an election if any individual voted more than once. Section 16.1-02-06 requires the State Health Officer to report the name, address, date of birth, and county of residence of each individual 18 years of age or older who has died to the Secretary of State to assist the county auditor in updating the central voter file.

Section 16.1-02-07 requires the State Court Administrator to report the name, address, date of birth, and county of residence of each individual whose name was changed by divorce or any order or decree, to the Secretary of State to assist the county auditor in updating the central voter file. Section 16.1-02-08.1 requires the Director of the Department of Corrections and Rehabilitation to provide a report to the Secretary of State including the name, address, date of birth, date of sentence, effective date of sentence, and county in which a conviction occurred, of each individual who has been convicted of a felony and incarcerated under the legal and physical custody of the Department of Corrections and Rehabilitation in the last year. The Secretary of State is required to designate those individuals as ineligible to vote within the central voter file. Section 16.1-02-09 requires DOT to report any relevant changes and updates that may require changes and updates to the central voter file to be reported to the Secretary of State.

Section 16.1-02-10 requires each county auditor to post the voting history for each individual who voted in an election within 75 days of the election. At the end of each even-numbered calendar year, the Secretary of State is required to determine whether to change the status of each individual to "inactive" in the central voter file. Section 16.1-02-11 provides the Secretary of State the authority to adopt rules and procedures for the purpose of maintaining the central voter file. Section 16.1-02-12 provides the information required to be included for each

individual in the central voter file, such as an individual's complete legal name, date of birth, residential address, mailing address, and the unique identifier assigned to the individual. Section 16.1-02-13 requires each county auditor to generate a pollbook for each precinct in the county from the central voter file by the day before an election. Section 16.1-02-04 requires the Secretary of State to provide the State Court Administrator with the central voter file for the purpose of compiling the master list of jurors. Section 16.1-02-15 provides a voter list or a report generated from the central voter file may be made available to a candidate, political party, or a political committee for election-related purposes. Section 16.1-02-16 provides that an individual who intentionally violates any provision of Chapter 16-02 is guilty of a Class A misdemeanor.

Section 16.1-05-07 addresses verification of the eligibility of an individual seeking to vote. Under that section, when verifying an individual's eligibility or when entering the name of an individual into the pollbook, the poll clerks at a precinct are required to request, correct, and update any incorrect or incomplete information about an individual required to be included in the pollbook. If the individual's name is in the pollbook, the poll clerks are required to verify the individual's address. If the individual's name is not in the pollbook but the individual is determined eligible to vote, the poll clerks are required to record the individual's name in the pollbook.

NATIONAL VOTER REGISTRATION ACT OF 1993

The federal National Voter Registration Act of 1993 [42 U.S.C. § 1973gg] requires that individuals be given an opportunity to register to vote in elections for federal office when applying for or renewing a driver's license or other personal identification document issued by a state motor vehicle authority; when applying for or receiving certain types of public assistance and other services; by mail, using either an appropriate state form or a national form, and at a military recruiting office. The Act prohibits the purging of voters' names from voter registration lists solely for failure to vote and requires a program for positively confirming the accuracy and currency of the registration lists. The Act sets out very specific and detailed requirements for the maintenance of voter lists that require multiple confirmation mailings in most cases. The Act provides for certain "fail-safe" voting mechanisms to ensure that the right to vote prevails when a voter's name is eliminated or not included on a voter registration list. According to the testimony, these fail-safe voting procedures were incorporated under the principle that once registered, a voter should remain on the voter registration list as long as the individual remains eligible to vote in that jurisdiction. The Act requires states to report to the Federal Election Commission the impact of administering elections according to the requirements of the Act.

North Dakota is currently the only state that is exempt from complying with the Act because North Dakota is the only state without voter registration. Only the states that had "same-day" registration in place at the time of the enactment of the Act were permitted to continue with that type of registration. If North Dakota implemented voter registration, it would immediately fall under the requirements of the Act.

VERIFICATION OF CITIZENSHIP

Verification of U.S. Citizenship is a responsibility of the United States Citizenship and Immigration Services of the United States Department of Homeland Security (USDHS). The 2015 House Judiciary Committee received testimony from DOT indicating that to verify citizenship for each applicant, DOT would be required to work with USDHS to establish processes that USDHS deems satisfactory. The Department of Transportation would be required to prove an applicant's citizenship. A verification process would require DOT to verify and scan documents including some form of identification allowed by USDHS, such as a passport, birth certificate, certificate of citizenship, or certificate of naturalization. To prove residency, DOT also likely would request to scan a document such as a utility bill or mortgage document that ties the individual to a physical address.

SUGGESTED STUDY APPROACH

A possible approach to the study of voter registration and verification of citizenship in the state would be to:

1. Review the requirements and impact of the federal National Voter Registration Act of 1993;
2. Receive testimony from the Secretary of State, the Department of Human Services, Job Service North Dakota, DOT, the State Board of Higher Education, county auditors, and other state and local election officials regarding the impact of voter registration and verification of citizenship in the state;
3. Receive information regarding the voter registration laws and registration costs of other states;
4. Receive information regarding verification of citizenship laws of other states;
5. Receive testimony from interested groups, such as political parties and voter advocacy groups; and
6. Receive information regarding whether North Dakota, if voter registration is enacted, could later repeal voter registration without approval by Congress.