

## VOTER REGISTRATION - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4043 (copy attached as an appendix) directs the Legislative Council to study voter registration.

The testimony received during the hearing on Senate Concurrent Resolution No. 4043 indicated North Dakota is the only state that does not have voter registration. The testimony further indicated there is some evidence of voter fraud in the state. A study of voter registration was encouraged to address how the provisions of federal voter registration legislation impact North Dakota.

Senate Bill No. 2311, which would have provided for voter registration, failed to pass the Senate. Testimony in opposition to the bill indicated that the present system of having no voter registration has served the voters of North Dakota for 48 years and has worked well during that period of time. In the testimony it was estimated that the costs to implement a voter registration program during the 1999-2001 biennium could range up to \$875,000 and would impact the budgets of three state agencies.

### BACKGROUND

North Dakota is the only state in the United States which does not require some form of voter registration. A number of states, however, do provide for same day registration.

The North Dakota 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 still 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 North Dakota 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 The bill repealed mandatory voter registration and left registration optional with the governing boards of the municipalities.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." A report issued in 1974 by the Bureau of Governmental Affairs entitled *Fraud-Free*

*Elections Are Possible Without Voter Registration* explained:

At that time, North Dakota was a 1-party Republican state in which major electoral contests occurred in the June party primaries between two major factions of the Republican party. Typical of 1-party states, the final decisions were really being made in the primaries. Apparently, the study committee felt there was so little merit to continuing registration that no serious consideration was given the idea of including the primary elections in the registration system.

Senate Bill No. 61 passed unanimously in the Senate and passed in the House with a vote of 95 to 5. Since that time, North Dakota Century Code (NDCC) Section 40-21-10 has provided for optional registration of voters within municipalities.

In the majority of the legislative sessions between 1957 and 1975, unsuccessful attempts were made to pass legislation again requiring mandatory 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 the communiqué to 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.

We need legislation to make the ballot more accessible to the citizen. We do not need

additional roadblocks to keep voters from the polls. Therefore, I veto House Bill 1101.

### **NORTH DAKOTA VOTER REGISTRATION LAWS**

North Dakota Century Code Section 40-21-10, which allows a city to institute voter registration, provides:

**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.

North Dakota's election laws are contained in NDCC Title 16.1 and one of the 18 chapters in that title, Chapter 16.1-02, is reserved for electors registration.

### **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 Legislative Council report in 1977 said, in reference to voter registration:

The subject of voter registration was thoroughly discussed by the committee many times during the interim. There was no general consensus on the need for a voter registration system, so the committee is submitting a bill on the subject as part of its responsibility to review all areas of the election process. It is submitted to the Legislative Council without specific approval or recommendation. The committee believes the subject will arise during the 1977 Legislature, and that a basis from which to work will be necessary.

The committee heard proposals on voter registration ranging from a completely voter-initiated system to a completely government-initiated system. The government-initiated system involves 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. Committee members were concerned that voter registration might become a deterrent to voting, especially in rural areas where voter identification is a minor problem. Other members believe the existing affidavit system does not prove whether or not there is fraudulent voting in the state, and believe a system of voter identification is necessary.

As a compromise measure, the bill provides for statewide voter registration, but allows 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 requirements of registration under the

bill would first apply to the 1978 statewide primary election.

The bill (House Bill No. 1050) failed to pass the House with a vote of 47 to 50.

Since the 1975-76 interim, several voter registration bills have been introduced. In 1987 Senate Bill No. 2522 would have required all electors to be registered before being permitted to vote in any statewide special, primary, or general election. The bill failed in the Senate by a vote of 24 to 27. A similar bill, Senate Bill No. 2413, was introduced in 1991. The bill failed to pass the Senate by a vote of 18 to 30. In 1997 Senate Concurrent Resolution No. 4039 proposed a study of the feasibility and desirability of implementing voter registration. The resolution failed to pass the House.

Several recent 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. Neither interim committee addressed the issue of voter registration or voter residency requirements.

### **FEDERAL VOTER REGISTRATION LAWS**

The 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 military recruiting offices. The individual may decline the opportunity simply by failing to sign the voter registration application. Information regarding an individual's failure to sign the voter registration application cannot be used for any purposes other than voter registration.

Federal legislation passed in 1998 requires all institutions of higher learning to "make a good faith effort" to offer voter registration to students enrolled in a degree or certificate program.

Provisions of the Act include Section 1973gg-4(a)(1), which provides that all states must accept and use the mail voter registration forms prescribed by the Federal Election Commission and Section 1973gg-4(a)(2), which provides that states are also allowed to use their own form provided it meets the requirements of the Act. The Act limits the data elements that can be required on mail voter registration forms to those that are "necessary to enable the appropriate state election official to assess

the eligibility of the applicant. . . ." Section 1973gg-5(a) requires that states establish agency-based registration by designating various public and private agencies for registration of voters for federal elections; Section 1973gg-5(a)(2)-(3) of the Act requires that all public offices in the states that provide public assistance, unemployment compensation or related services and all agencies and offices in the states that provide state-funded programs primarily engaged in providing services to persons with disabilities offer registration of voters; and Section 1973gg-5(a)(3)(B)(i) provides that discretionary agency programs may include public libraries, public schools, hunting and fishing license bureaus, offices of city and county clerks, government revenue offices, and any other nonmandated agency or office that provides services to persons with disabilities.

The Act does not mandate "same day registration" that allows people to register on the day of the election. Maine, Minnesota, and Wisconsin allow for some form of same day registration.

### **SUGGESTED STUDY APPROACH**

A possible approach to the study of voter registration and voter residency requirements in the state would be to:

1. Specifically review the federal National Voter Registration Act and its impact on North Dakota if voter registration was implemented;
2. Receive testimony from the Secretary of State, the Department of Human Services, Job Service North Dakota, the Department of Transportation, the State Board of Higher Education, county auditors, and other state and local election officials on the impact of voter registration in the state;
3. Receive testimony on the voter registration laws and registration costs of other states;
4. Receive testimony from interested groups, such as political parties and voter advocacy groups; and
5. Receive information on whether North Dakota, if voter registration is enacted, can later repeal voter registration without approval by Congress.

ATTACH:1

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine**

**SENATE CONCURRENT RESOLUTION NO. 4043  
(Senators Watne, St. Aubyn)**

A concurrent resolution directing the Legislative Council to study voter registration.

**WHEREAS**, North Dakota is the only state that does not require qualified electors to register to vote; and

**WHEREAS**, proponents of voter registration contend that the likelihood of voter fraud would be reduced if electors were required to register prior to elections; and

**WHEREAS**, because North Dakota has no voter registration requirements, the state is currently exempt from the National Voter Registration Act of 1993, commonly referred to as the motor voter law; and

**WHEREAS**, because the benefits and detriments to implementing voter registration are not easily identified, a comprehensive study of voter registration should be undertaken before the Legislative Assembly attempts to implement a program of voter registration;

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the Legislative Council study voter registration; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.