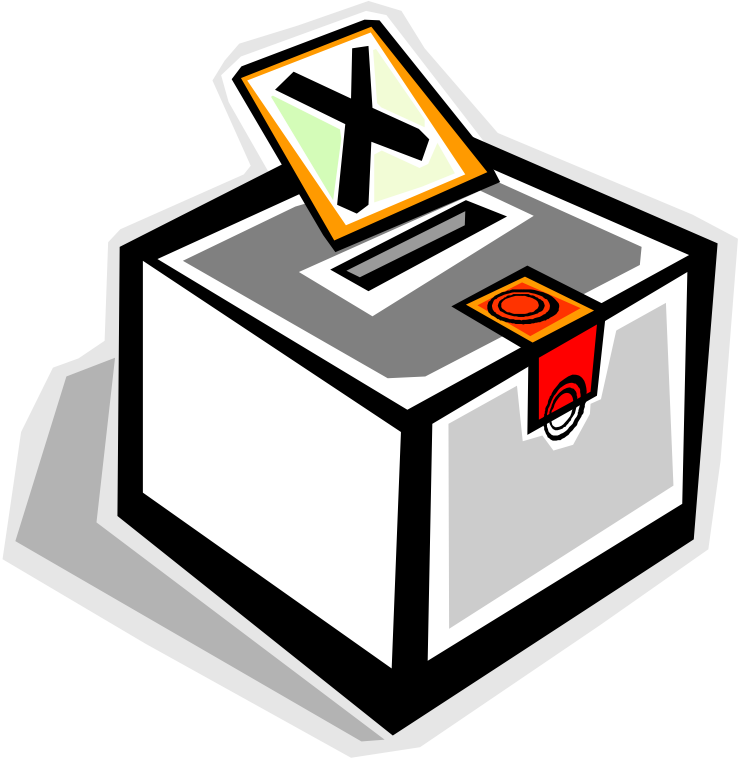
Recounts



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June 2010

The recount!

Recounts occur when the official canvassed results of a race are close and the necessary person(s) request a recount. Following is a listing of the various recounts that can occur and how they are requested, the deadlines for requesting a recount, the form to use, the official who receives the recount request and the code cited for the recount.

A ballot recount is just that; a second counting of the ballots. It does not address possible legal deficiencies in the conduct of an election. These would be dealt with in an election contest.

Recounts are governed state statute (pages 4-18) and administrative rule (pages 18-26).

There are seven types of recounts. They are as follows:

Precinct Recount

Purpose:	Used to recount the results from a specific precinct for a specific candidate or question in a county, state or federal election.
Deadline:	Within ten days after the election. Any three registered voters in the precinct.
Form:	ARSD 5:02:19:06 (page 22)
File With:	County auditor
Other:	Petitions for recounts of other precincts within the same county may be filed within three days after the first such petition in a county even if that deadline falls after the ten day deadline.
Code Cite:	SDCL 12-21-8

Candidate Recount in Close Local Election

Purpose:	Used to recount the results for a specific candidate's race which was voted on in one county or part of a county.
Deadline:	Within three days after official canvass for that office.
Who Petitions:	The losing candidate.
Required Loss:	Not exceeding two percent of total votes cast.***** (See note page 3)
Petition:	ARSD 5:02:19:05 (pages 22)
File With:	County Auditor
Code Cite:	SDCL 12-21-10

Recounts

Candidate Recount in Close Joint Legislative District

Purpose: Used to recount the results for a specific legislative candidate's race which was voted on in more than one county.
Deadline: Within three days after official state canvass for that office.
Who Petitions: The losing candidate.
Required Loss:: Not exceeding two percent of total votes cast.***** (See note on page 3)
Petition: ARSD 5:02:19:05 (pages 22)
File With: County Auditor of each county which the district encompasses.
Code Cite: SDCL 12-21-11

Candidate Recount in Close State or District Election

Purpose: Used to recount the results for a specific candidate's race (other than legislature) which was voted on in more than one county.
Deadline: Within three days after official state canvass for that office.
Who Petitions: The losing candidate.
Required Loss:: Not exceeding one-fourth of one percent of total votes cast.***** (See note on page 3)
Petition: ARSD 5:02:19:05 (pages 22)
File With: Secretary of State.
Code Cite: SDCL 12-21-12

Recount on Question Submitted to Entire State

Purpose: Used to recount the results for a specific statewide ballot question.
Deadline: Within ten days after official state canvass for that office.
Who Petitions: One thousand registered voters from at least five counties.
Required Loss:: Not exceeding one-fourth of one percent of total votes cast.
Petition: ARSD 5:02:19:07 (page 23)
File With: Secretary of State.
Code Cite: SDCL 12-21-14

School Board Candidate Recount

Purpose: Used to recount the results for a specific school board candidate's race.
Deadline: Within five days after official canvass for that office.
Who Petitions: A tied or losing candidate.
Required Loss:: Tied or defeated by a margin not exceeding two percent.
Petition: ARSD 5:02:19:05 (pages 22)
File With: School Business Manager
Code Cite: SDCL 13-7-19.1 and 19.2

Municipal Candidate Recount

Purpose: Used to recount the results for a specific municipal candidate's race.
Deadline: Within five days after official canvass for that office.
Who Petitions: A tied or losing candidate.
Required Loss:: Tied, defeated by five votes or less or defeated by a margin not exceeding two percent.
Petition: ARSD 5:02:19:05 (page 22)
File With: Municipal Finance Officer
Code Cite: SDCL 9-13-27.2 and 27.3

Municipal Ballot Question Recount

Purpose: Used to recount the results for a municipal ballot question.
Deadline: Within five days after official canvass for that question.
Who Petitions: Any three registered voters of the municipality.
Required Loss:: Defeated by a margin not exceeding two percent.
Petition: ARSD 5:02:19:10 (pages 25-26)
File With: Municipal Finance Officer
Code Cite: SDCL 9-13-27.4.

School Ballot Question Recount

Purpose: Used to recount the results for a school district ballot question.
Deadline: Within five days after official canvass for that question.
Who Petitions: Any three registered voters of the school district.
Required Loss:: Defeated by a margin not exceeding two percent.
Petition: ARSD 5:02:19:10 (pages 25-26)
File With: School Business Manager
Code Cite: SDCL 13-7-19.3

Note:** When a voter may vote for two or more candidates for the same office, the "total vote cast for all candidates" shall be two times the average number of votes cast for the candidates officially declared nominated or elected. This provision ***does not apply to Municipal or School District recounts. See SDCL 12-21-6.

Recount Board

Upon presentation of a recount petition or notice from the Secretary of State that a recount must be held, the county auditor shall notify in writing under the seal of his office the presiding judge of the circuit court that a recount must be conducted. The presiding judge shall appoint and give notice to a recount board consisting of a referee and two voters of the county providing for representation of the different political parties. The referee must be a member of the bar of the state of South Dakota and a member of the political party which polled the

largest number of votes for Governor in the county in the last gubernatorial election. The auditor shall also notify the Secretary of State whenever a recount petition is filed for a race canvassed by the State Board of Canvassers.

In the case of a municipal or school recount, the recount board is appointed by the person in charge of the election. The board consists of one person chosen by each candidate declared elected and each candidate who is eligible to request a recount. If the board consists of an even number of persons, one additional recount board member shall be appointed who is mutually agreeable to each candidate involved in the recount. The person in charge of the election sets the time and place for the recount.

The Recount

A county recount board shall convene in the office of the county auditor on the second Monday following the filing of the recount petition at 9:00 am. The recount shall proceed as provided in SDCL 12-21-21 through 12-21-36 (pages 9-12). ARSD 5:02:19:01 through 5:02:19:04 (pages 20-21) also give guidance to the recount process. These rules cross reference several rules in ARSD 5:02:16 (pages 19-21). In counties using automated tabulating equipment, ARSD 5:02:09:05 (pages 18-19) also applies.

ARSD 5:02:19:09 (page 24-25) provides a record of the disputed ballots that the recount board finds. ARSD 5:02:19:08 (pages 24) provides the form for the official certificate of the recount board which lists both the results from the official canvass and the results from the subsequent recount. Both of these forms should be provided to the recount board by the county auditor.

For municipal or school recounts, the person in charge of the election sets the time and place for the recount. The forms provided in ARSD 5:02:19:08 and 5:02:19:09 are also used for these recounts.

Election Contest

SDCL 12-22 provides for an election contest which is "a legal proceeding, other than a recount, instituted to challenge the determination of any election..." Should a candidate wish to file an election contest, the candidate should contact a private attorney for assistance with this legal proceeding.

Municipal Elections

§ 9-13-27.3. Requests for recounts - Recount board established.

If any candidate for the municipal governing body is defeated by a margin not exceeding two percent of the total votes cast for all candidates for the office, or by a margin of five votes or less, the candidate may, within five days after completion of the official canvass, file with the municipal finance officer a written request for a recount. Upon receipt of a recount request, the finance officer shall set the time and

place for the recount. A recount board shall be established consisting of one person chosen by each candidate declared elected and by each candidate who is eligible to request a recount. If this board consists of an even number of persons, one additional recount board member shall be appointed by the finance officer who shall be mutually agreeable to each candidate involved in the recount. The person having custody of the ballot boxes containing the ballots to be recounted shall deliver them to the recount board. Any question arising on the recount shall be determined by majority vote of the recount board. The recount shall proceed expeditiously until completed.

§ 9-13-27.4. Recount on ballot question, initiative, referendum or recall.

Notwithstanding any other provisions of law, recounts of municipal ballot questions shall be conducted when, within five days after completion of the official canvass of a municipal ballot question election at which a question is approved or disapproved by a margin not exceeding two percent of the total votes cast in the election, any three registered voters of the municipality file a petition duly verified by them, setting forth that they believe a recount will change the outcome. A recount board shall be appointed by the finance officer who shall appoint one person on each side of the question and one person who shall be mutually agreed upon by the other two appointed. The recount shall be conducted according to the provisions of 9-13-27.3.

Primary and General Election Recounts

§ 12-21-1. Purpose of chapter - Liberal construction.

The intent of the provisions of this chapter is to procure a speedy and correct determination of the true and actual count of all ballots cast at an election, which ballots are valid on their face, and all provisions of this chapter shall be liberally construed to that end.

§ 12-21-2. Composition and appointment of county recount board – Oath to act in good faith and with impartiality.

The county recount board of each county which conducts a recount authorized by this chapter shall consist of a recount referee and two voters of the county to be appointed by the presiding judge of the circuit court for that county, and shall provide for representation of the two political parties with the largest party registration in that county. The recount referee shall be a duly qualified member of the bar of the State of South Dakota and a member of the political party which polled the largest number of votes for Governor in the county in the last gubernatorial election. Prior to serving, each member of the recount board shall take an oath that the member will act in good faith and with impartiality. The state board of elections shall prescribe the oath to be taken..

§ 12-21-3. Notice of appointment and time and place of recount - Notice to candidates.

The judge shall immediately give notice to the members of the recount board of their appointment to such board, and the time and the place of the recount as prescribed in § 12-21-20, and, immediately after such appointment, he shall notify all candidates for public office subject to recount of the names of the recount referee and the additional members of the recount board, and the time and place of the recount.

§ 12-21-4. Compensation of recount referee and appointive members of board.

The recount referee shall receive compensation in the same amount as court appointed counsel and the other two members so appointed to the recount board shall each receive compensation in the amount of twenty- five dollars per day or in an amount equal to the state minimum hourly wage, whichever is the greatest.

§ 12-21-4.1. Mileage allowance for recount board members.

The members of the recount board shall receive mileage for the miles traveled each day of the recount from their points of residence in an amount equal to that set by the state board of finance for state employees; provided however, that this provision shall not apply to the first ten miles traveled each day.

§ 12-21-5. Recount board for unorganized county. Repealed by S 1982, ch 28, § 46.

§ 12-21-6. Application of chapter.

Except in school and municipal elections and as provided in § 12-21-18, the provisions of this chapter apply to the recount of ballots cast in any election conducted. The provisions of §§ 12-21-47 to 12-21-61, inclusive, apply to all elections.

§ 12-21-6.1. Code of regulations to govern recounts.

The state board of election may by rule, in accordance with chapter 1-26, adopt a code of regulations to govern the conduct of recounts.

§ 12-21-7. Conditions under which recount made.

Such recount shall be made under any of the conditions described in §§ 12-21-8 to 12-21-15, inclusive.

§ 12-21-8. Precinct recount on petition by voters of precinct.

When within ten days after an election any three registered voters of a precinct file with the officer in charge of the election a petition, duly verified by them, setting forth that they believe that the official returns from such precinct as to a specified candidate or as to a specified referred or submitted question are erroneous, the votes of such precinct as to the office or position specified or as to the question specified shall be recounted.

§ 12-21-9. Extended time for filing additional precinct recount petitions.

When as to any candidate or any submitted or referred question a petition or petitions are filed under § 12-21-8 as to any particular precinct or precincts within a county, similar petitions as to the same question or candidate may be filed within three days thereafter as to another precinct or precincts within the county, even though the specified period of ten days from the election expires within such three

days. But such three-day extension shall only apply as from the filing of the first petition as to any such candidate or any such question.

§ 12-21-10. Complete recount on candidate's petition in close local election.

A candidate for any office, position, or nomination which is voted upon only by the voters of one county or part thereof may ask for a recount of the official returns if such candidate is defeated, according to the official returns, by a margin not exceeding two percent of the total vote cast for all candidates for such office, position, or nomination. Any candidate for nonlegislative office shall file a verified petition with the county auditor within three days after the election returns have been canvassed by the official county canvass. Any candidate for legislative office shall file a verified petition with the county auditor within three days after the election returns have been canvassed by the official state canvass. The petition shall state that the candidate believes a recount will change the result of the election and that all of the votes cast for the office, position, or nomination should be recounted. A recount shall then be conducted.

§ 12-21-11. Complete recount on candidate's petition in close election in joint legislative district.

If any legislative district comprises more than one county, any candidate for election to or nomination for the Legislature who, according to the official returns, has been defeated by a margin not exceeding two percent of the total vote cast for all candidates for such office may, within three days after completion of the official canvass of the returns, file a petition as set forth in § 12-21-10 with the county auditor of each county. Each county auditor shall then conduct a recount.

§ 12-21-11.1. Notice to secretary of state of petition filed with county auditor.

Whenever a petition for recount is filed with the county auditor for an election which has been canvassed by the state board of canvassers, the county auditor shall notify the secretary of state of the petition for recount.

§ 12-21-12. Candidate's petition for recount in close state or district election - Notice to county auditors.

If any candidate for an office, position, or nomination other than the Legislature is voted upon in more than one county, and has been defeated according to the official returns by a margin which does not exceed one-fourth of one percent of the total vote cast for all candidates for such office, position, or nomination, the candidate may within three days after completion of the official canvass by the State Board of Canvassers file a petition with the secretary of state setting forth that the candidate believes a recount will change the result and that all of the votes cast for the office, position, or nomination should be recounted. The secretary of state shall, by registered or certified mail, notify each county auditor that has precincts included in the petition. Each county auditor shall then conduct a recount.

§ 12-21-13. Computation of total vote where two or more candidates elected to same office.

When in any election a voter may vote for two or more candidates for the same office, such as members of the Legislature, the total vote cast for all candidates for such office shall for the purposes of §§ 12-21-10 to 12-21-12, inclusive, be deemed to be two times the average number of votes cast for the candidates officially declared nominated or elected as shown by the official returns.

§ 12-21-14. Voters' petition for recount on question submitted to entire state - Form of petition - Notice to county auditors.

Whenever any referred or submitted question is voted upon throughout the state and is determined according to the official canvass by a margin of not exceeding one-fourth of one percent of the total vote cast for and against on such question, there may be filed with the secretary of state within ten days after the completion of the official canvass by the state board of canvassers a petition signed by not less than one thousand registered voters of the state, and representing at least five counties of the state, setting forth that petitioners believe a recount will change the result and praying that such recount shall be had in all the precincts involved. Such petition may consist of different petitions bound together and signed and verified substantially as provided by law with regard to petitions to invoke the referendum. Upon the filing of such petition, the secretary of state shall forthwith by registered or certified mail notify each county auditor whose county voted upon the question and such recount shall then be conducted in all of the precincts in each of such counties.

§ 12-21-15. Petition for recount in close presidential election - Time of filing - Notice to county auditors.

Whenever according to the official returns as publicly announced and compiled, although not yet officially canvassed, it fairly appears that one group of candidates for presidential electors has been elected over another group of such candidates by a margin not exceeding one-fourth of one percent of the total of votes cast for both such groups, the chairman of the state central committee of the political party which nominated either of such groups, or any two or more candidates of either such group, may file with the secretary of state at any time after the election and prior to the canvass by the state board of canvassers, a petition setting forth that in the opinion of the petitioner or petitioners all votes cast for presidential electors should be recounted. Upon the filing of such petition, the secretary of state shall forthwith by registered or certified mail notify each county auditor in the state thereof, and such recount shall then be conducted in all of the precincts in all of such counties.

§ 12-21-16. Tie vote certified by canvassing board - Automatic recount.

Whenever by reason of a tie vote found to exist upon the canvass of the original official returns, it is impossible to declare who has been elected or nominated to an office or position, it shall thereupon be the duty of the official board making such canvass to certify said vote to the county auditor where the election involved is confined to or within the limits of a county, and to the secretary of state as to all other elections. Thereupon such county auditor or such secretary of state, as the case may be, shall proceed exactly as if a petition had been duly filed under §§ 12-21-7 to 12-21-15, inclusive, requiring a recount to be made of all votes involved, and such recount shall proceed accordingly. This section shall not apply to school and township elections.

§ 12-21-17. Chapter not applicable where state convention must nominate - Exceptions for close contest. Repealed by S 1985, ch 110, § 4.

§ 12-21-18. Chapter not applicable where runoff election required.

The provisions of this chapter shall not apply to any election which must be followed by a second or runoff election by reason of no majority choice, according to the official returns.

§ 12-21-19. Joint petition by defeated candidates.

In any case where a voter may vote for two or more persons for the same office, nomination, or position, such as members of the Legislature, delegates to a convention, or presidential electors, and more than one defeated candidate desires such recount, such candidates may at their option file joint instead of individual petitions under this chapter.

§ 12-21-20. Notice to circuit judge of recount petition - Appointment and convening of recount board.

The county auditor, immediately on the filing of any petition for a recount or upon receipt from the secretary of state of notice of such filing with the secretary of state, shall notify in writing, with the seal of the auditor's office, the presiding judge of the circuit court for the auditor's county. The presiding judge shall appoint a board, pursuant to § 12-21-2, for each county in the circuit in which a recount is to be conducted. The presiding judge may appoint the board anytime within thirty days prior to a primary or general election or upon the filing of the petition for recount. The board shall then convene in the office of the county auditor on the second Monday at nine a.m. following the filing of the petition. However, if the second Monday is a legal holiday, the board shall convene at nine a.m. of the day following. The county auditor shall provide the recount board with laws, rules, and forms to use in conducting the recount. The board shall then proceed with the recount.

§ 12-21-20.1. Appointment of additional recount board.

If the presiding circuit court judge in consultation with the county auditor determines that a single recount board in a county is unlikely to complete the recount in five working days, the presiding judge may appoint more than one recount board for that county. The presiding judge shall determine which precincts each recount board shall be appointed to recount.

§ 12-21-21. Adjournment by board to another place.

Any county recount board, after convening at the time and place provided by this chapter, may adjourn its proceedings to any other more convenient public place at the county seat.

§ 12-21-22. Adjournment to permit combining separate recounts of same ballots.

Whenever a county recount board is required to make two or more different recounts of the same ballots, such board may, by written order, filed as a public record in the office of the county auditor, adjourn any recount, other than a recount of votes for presidential electors, so that all such recounts may be at the same time.

§ 12-21-23. Majority vote of county recount board - Quorum.

All questions arising on such recount shall be determined by majority vote of such board, and at least two members of such board shall be present at all times. When only two members are present, the presence of the third member may be required for the purpose of determining any disputed question on which the two members present are unable to agree.

§ 12-21-24. Ballot boxes produced before recount board.

The county auditor shall provide the pollbooks, automatic tabulating system election night printouts, sealed ballot boxes, any provisional ballots which were determined countable pursuant to § 12-20-13.2, any uncounted provisional ballots, and any unopened absentee ballot envelopes to the recount board. The recount board is authorized to make a determination whether any provisional ballots or absentee ballots which were determined not to be countable, shall be counted, and those votes shall be added to the recount tally.

§ 12-21-25. Recount to proceed expeditiously.

The recount shall proceed as expeditiously as reasonably possible until completed.

§ 12-21-26. Candidates' right to witness recount - Witnesses to recount on submitted question.

Each candidate for any office, nomination, or position involved in any such recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots. If the recount is upon a referred or submitted question, any registered voter of the state favoring either side as to such question may be present and represent such side, and if more than one person favoring such side is present, they shall designate one of their number to represent such side, who shall have full opportunity to witness the opening of all ballot boxes and the recount of all ballots.

§ 12-21-27. Segregation and identification of disputed ballots.

If any such candidate or any such representative, protests the ruling of such board as to any ballot, such ballot shall be adequately identified by the board as an exhibit and segregated by the board as a disputed ballot.

§ 12-21-28. Identification of ballots disputed in two or more recounts - Substitution of memorandum describing ballot.

When upon consolidated recounts as described by § 12-21-22 it becomes necessary, under the provisions of this chapter, to identify and segregate the same ballot as disputed in two or more such recounts, such board shall determine and designate the recount as to which such ballot shall be segregated and sealed, but shall also identify it as an exhibit as to each of the other recounts, and in the sealed envelope in which disputed ballots are segregated in each of the other recounts, shall substitute in lieu of such ballot a memorandum briefly describing such ballot as to the question which is raised with reference thereto, how it has been identified as an exhibit, and the identification of the envelope in which it is sealed.

§ 12-21-29. Opening of segregated ballot for purpose of different recount - Identification and substitution of memorandum if disputed - Resealing.

When in any recount, ballots have, in a previous recount, been identified and sealed as disputed but are still in the custody of the county auditor, the circuit court for the county shall, upon application to the county auditor, order the opening of such sealed envelopes solely for the purposes of the recount, and such envelopes may then be opened by such board in the presence of all persons entitled to appear at such recount and the ballots in such envelopes recounted. If it becomes necessary to identify any such ballot as disputed, it shall be marked as an exhibit, and in the sealed envelope in which disputed ballots are segregated in the pending recount, such board shall substitute in lieu of such ballot a memorandum briefly describing such ballot as to the question that is raised with reference thereto, how it has been identified as an exhibit and the identification of the envelope in which it was sealed in the previous recount. After such ballots have been recounted, they shall be resealed in the same identical envelope from which they were taken.

§ 12-21-30. Opening of segregated ballots involved in previous judicial proceedings - Court order to preserve rights.

When any such sealed ballots have been certified to any court in judicial proceedings, the court which has custody thereof shall, on application of such board or any person interested in a pending recount, make such order as may be necessary to permit a recount of such ballots, and to preserve the rights of all persons interested with regard to all questions and to safeguard the rights of the parties in the pending proceeding.

§ 12-21-31. Return and resealing of undisputed ballots - Certification of disputed ballots.

At the conclusion of the recount of each precinct the undisputed ballots shall be returned to the ballot box and resealed, and the disputed ballots, if any, shall be certified pursuant to § 12-21-33.

§ 12-21-32. Certification of recount result - Contents and execution - Transmittal to secretary of state.

Upon the conclusion of the recount of all ballots to be recounted the county recount board shall certify the result. The certificate shall be signed by at least two members of the board, attested under seal by the county auditor. The certificate shall set forth in substance the proceedings of the board and appearances of any candidates or representatives, shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made as to the office, nomination, position, or question involved, and the correct vote of such precinct as to the office, nomination, position, or question as determined by the board through the recount. The certificate shall be made in duplicate, and either the original or duplicate original shall be transmitted to the secretary of state by mail in any recount affecting a certificate to be issued by the secretary of state.

§ 12-21-33. Sealing and certification of disputed ballots.

Disputed ballots shall be securely sealed in a separate envelope for each precinct. The county recount board shall also make a separate and distinct certificate, signed by at least two members of such board

and attested by the county auditor under seal, setting forth the number of such disputed ballots as to each precinct, and adequately identifying the envelope in which the same are sealed.

§ 12-21-34. Filing and preservation of certificates - Court order required to open.

The certificate as to the result of the recount and the certificate as to disputed ballots shall be filed and preserved by the county auditor as public records.

§ 12-21-35. Certification of recount result to canvassing board - Recount result in lieu of official returns.

Whenever a recount is completed by the county recount board prior to the official canvass of the vote as to the office, position, nomination, or question, involved in such recount, the county recount board shall forthwith upon such completion, certify the result directly to the official, board, or tribunal making such canvass, and the result determined on such recount shall be included in the official canvass in lieu of the result as determined by the official returns as to all precincts involved in the recount.

§ 12-21-36. Recanvass and corrected abstract of votes in local election.

In the case of a recount as to any local election, it shall be the duty of the county recount board forthwith to recanvass the official returns as corrected by the certificate showing the result of the recount, and to make a new and corrected abstract of the votes cast as to such office, nomination, position, or question, which corrected abstract shall be signed by at least two members of said board and filed as a public record in the office of the county auditor and a certified copy of the certificate shall be transmitted to the officer in charge of that election.

§ 12-21-37. New certificate of election or nomination to local office when result changed by recount.

If such corrected abstract by the county recount board shows no change in the result as previously found on the official returns, no further action shall be taken. But if there is a change in such result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated as the case may be, which certificate shall be signed by at least two members of such board, and shall set forth the nomination or election of such person as to such office or position.

§ 12-21-38. Certification to local authorities of result of recount on submitted question. Repealed by S 1974, ch 118, § 200.

§ 12-21-39. Reconvening of state canvassers after recount - Recanvass and corrected abstract.

The secretary of state shall file all certificates involved in the recount as to any office, nomination, position, or question that have been received from the county recount boards. The secretary of state shall fix a time and place as early as reasonably possible for reconvening the State Board of Canvassers and shall notify the members of the State Board of Canvassers. The State Board of Canvassers shall reconvene at the time and place so designated and recanvass the official returns as to the office, nomination, or position, as corrected by the certificates. The State Board of Canvassers shall make a

new and corrected abstract of the votes cast and declare the person elected or nominated as the case may be or the determination of any question. The corrected abstract shall be signed by the members of the State Board of Canvassers in their official capacities and shall have the great seal of the state affixed. The corrected abstract shall be filed by the secretary of state.

§ 12-21-40. New certificate of election or nomination on change of result by corrected abstract of state returns.

If such corrected abstract by the state board of canvassers shows no change in the result previously found on the official returns, no further action shall be taken. If there is a change in such result, a new certificate of election or nomination shall be issued in the same manner and by the same authority as the certificate of election or nomination previously issued to each candidate found to have been elected or nominated as the case may be. Such certificate shall set forth the fact of the nomination or election of such person to such office or position, and that the certificate supersedes the certificate previously issued, which shall be adequately identified.

§ 12-21-41. Original certificate of nomination or election superseded by certificate issued after recount - Rights of holder.

Any certificate of nomination or election issued under the provisions of this chapter shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued which shall be adequately identified which is inconsistent with such new certificate, and the holder of any certificate of nomination or election issued under this chapter shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had.

§ 12-21-42. Original determination on submitted question superseded by determination after recount.

The determination, as provided in this chapter, of a corrected and changed result upon a recount as to any referred or submitted question shall have the effect of superseding and rendering null and void the result as found upon the original canvass.

§ 12-21-43. Tie vote after recount determined by lot - Issuance of certificate.

When a tie vote between candidates is found to exist on the basis of any such recount, and by reason of such tie vote it cannot be determined who has been nominated or elected, it shall be the duty of the authority charged by law with the responsibility of issuing the certificate of election or nomination to fix a time and place for the drawing of lots by such candidates involved in such tie vote, giving reasonable notice of such time and place to each of such candidates. Each such candidate may appear at the time and place designated either in person or by a representative, whereupon in the presence of such authority charged with the responsibility of issuing the certificate of nomination or election, the candidate or candidates entitled to the certificate or certificates of nomination or election shall be determined by drawing of lots in the manner directed by such authority, and the certificate or certificates of nomination or election shall be issued accordingly.

§ 12-21-44. Second recount prohibited - Exception.

Whenever the ballots cast in any precinct have been recounted as to any office, nomination, petition, or question, such ballots shall not thereafter, except as specifically provided in § 12-21-45, be recounted as to the same office, nomination, position, or question.

§ 12-21-45. Court order for second recount - Grounds - Time of filing petition.

At any time while any recount is pending before a county recount board, the circuit court for such county, on petition of any interested person, and upon due notice to such board, if satisfied that such board has acted fraudulently or arbitrarily and in disregard of law, and in such a way as likely to reach an unfair result, may order any ballots already recounted to be recounted a second time. Such petition, however, must be filed prior to final certification of the recount, and to give opportunity for hearing and decision, the court may enjoin such certification for a period not exceeding three days.

§ 12-21-46. Court removal and replacement of recount board member not acting in good faith.

When satisfied on any such petition that the conduct of such board, or any member thereof, has been fraudulent, or deliberately and willfully in disregard of law, and not in good faith, the court may remove such member or members guilty of such conduct and appoint in the place of such member or members removed any registered voter or voters of the county who shall thereupon assume the duties and responsibilities of such removed member or members for the purpose of such recount.

§ 12-21-47. Persons entitled to certiorari for review of recount - Time of filing of petition.

Whenever any candidate is aggrieved by the final determination made as a result of any recount, he may have the proceedings of such recount board reviewed upon certiorari as provided by this chapter. Such review may also be obtained as to any submitted or referred question by any voter who was entitled to vote thereon, but only with the approval of the court in which such review is asked, or of a judge of such court, which approval must be endorsed upon the petition before it is filed. The petition for the writ must be filed within five days after the filing of the recount certificate with the secretary of state or county auditor.

§ 12-21-48. Original jurisdiction of certiorari proceedings.

Original jurisdiction of such certiorari proceeding shall be as follows:

(1) Where the same involves a submitted or referred question voted upon in more than one county, or the nomination or election of presidential electors, United States senator, representative in Congress, member of the Legislature, or any state or judicial officer, in the Supreme Court;

(2) In all other cases in a circuit court of a county which includes the locality where the election or some part thereof was conducted.

§ 12-21-49. Form and contents of petition for certiorari.

The petition for the writ, if involving a nomination or election as to any office or position, shall denominate the candidate seeking the review as plaintiff, and shall name the candidate or candidates

declared elected as defendants. If the petition seeks a review as to a determination of any submitted or referred question, it shall be entitled: "In the matter of petition for writ of certiorari as to determination of election on (specifying the question submitted or referred)." In any case the petition shall concisely set forth the nature of the election involved, the result thereof as pronounced by the official returns, the basis for and proceedings had upon the recount, the respects in which any county recount board, or other authority, is claimed to have exceeded its jurisdiction, and a brief summarized statement of the particulars in which it is claimed any county recount board, or other authority, has misapplied the law in the determination of questions concerning disputed ballots.

§ 12-21-50. Issuance of writ of certiorari - Officials to whom addressed - Contents.

If the court concludes that the facts set forth in the petition, if true, are sufficient to justify the issuance of the writ, the same shall be issued. It shall be addressed to each county recount board, and to each other authority which the plaintiff claims to have exceeded its jurisdiction, including misapplication of the law in determination of questions concerning disputed ballots, and shall command each such board or authority at or before a time specified to certify to the court all its records and proceedings with reference to such matter. If questions as to validity of any disputed ballots are involved, the writ shall command the county auditor having custody thereof to return at the time designated the sealed envelopes containing the disputed ballots in question.

§ 12-21-51. Service of writ of certiorari - Persons on whom served.

Such writ shall forthwith be served personally, or by registered or certified mail, on each county auditor as to any county where the county recount board or such auditor is claimed to have exceeded jurisdiction, and in the same manner upon the secretary of state in case the secretary of state, or the state board of canvassers, is claimed to have exceeded jurisdiction. Only one writ need be issued, and shall be sufficient irrespective of the number of officials, boards, or tribunals from which certification of records or proceedings may be required. The writ and petition shall also be served forthwith upon all defendants named in case the proceeding involves election or nomination to any office or position, and upon the attorney general, in case the proceeding involves a submitted or referred question voted upon in more than one county. In any case where the proceeding involves the vote upon a submitted or referred question within a single county, the court shall in the writ direct additional service of the writ and petition on such officer or officers, or person or persons, whom the court believes might be interested in resisting the relief asked.

§ 12-21-52. Intervention in certiorari involving submitted question.

In any such proceeding involving a submitted or referred question, the court may upon good cause shown, either ex parte or otherwise, permit any officer or person desiring to be heard to intervene, either as a party plaintiff or party defendant.

§ 12-21-53. Answer to petition for certiorari - Joint or several answer.

On or before the return day of the writ, the defendant must serve and file his answer to the petition, and if there are several defendants, they may answer jointly or severally, at their option. In the case of a

proceeding involving a vote on a referred or submitted question, any officer or person, on whom the writ is served, may interpose an answer, or several such officers or persons may unite in a single answer.

§ 12-21-54. Defenses set forth in answer to certiorari - New allegations - Petition for additional writ.

All defenses, either of fact or of law, must be set forth in the answer and no other pleading in response to the petition shall be permitted. Such answer may also allege matters showing error by any county recount board or boards, or other official, tribunal, or authority not covered by such petition, and pray for an additional writ for certification of additional proceedings and records relative thereto, in which event such additional writ may be granted in the same manner, and with the same procedure and effect as the original writ.

§ 12-21-55. Insufficient certification - Further certification required.

When any certification is insufficient to show adequately the proceedings had, the court may by order require further certification of records and proceedings.

§ 12-21-56. Hearing on certiorari - Conference to narrow issues.

Upon the returns made as required by the writ, the court shall hear the parties, and if further hearing is deemed necessary to determine the case, the court may make such order as deemed advisable fixing such further procedure as may be conducive to expeditious and just determination of the proceeding, including a requirement for a conference of all parties appearing and their attorneys designed to narrow the issues inasmuch as reasonably possible through eliminating questions as to ballots, when such questions are not seriously urged, and the offsetting against each other of ballots which are marked for opposing candidates involved, or on opposite sides of the question, and which present identical issues as to validity, and through segregation of ballots remaining disputed into classes or groups where different classes or groups of ballots present identical questions.

§ 12-21-57. Scope of review on certiorari - Correction of errors.

In such proceedings the court may review completely all of the proceedings had relative to such recount as shown by such certifications, and correct any errors made in the determination of questions as to validity of ballots, and in computation of returns, and any errors which may be manifest from such certifications.

§ 12-21-58. Procedure as in other cases of certiorari.

Except as otherwise specifically provided and so far as applicable the practice and procedure shall be the same as in other cases of review on certiorari.

§ 12-21-59. Judgment on certiorari.

The judgment rendered by the court shall be such as the court deems required by the law as applied to the facts disclosed by the record presented, and shall pronounce what the court deems the correct result of the election involved as shown by the record.

§ 12-21-60. Right of appeal to Supreme Court from judgment on certiorari.

As to any such judgment of a circuit court any party to the proceeding aggrieved thereby may appeal to the Supreme Court in the manner provided by § 12-21-61. For the purposes of this section, any person or official who has been permitted to appear in the proceeding shall be deemed a party thereto.

§ 12-21-61. Procedure on appeal to Supreme Court - Provisions to secure speedy determination.

Such appeals shall be taken and perfected in the same manner as appeals from other judgments, except:

(1) Such appeal must be taken within twenty days of the entry of such judgment;

(2) Forthwith upon such appeal the entire record shall be certified by the clerk of the circuit court and transmitted to the clerk of the Supreme Court;

(3) A stay of proceedings shall be within the discretion of the circuit court, subject to review by the Supreme Court, and shall be granted only upon adequate bond with sufficient security for payment to the respondent of all damages of any kind whatever resulting from the delay, and the court shall determine the terms of the bond so as adequately to protect the respondent from such damage;

(4) The Supreme Court may on its own motion, or on motion of any party, make such order as it deems advisable to bring about a speedy determination of the appeal, including shortening of the time for filing briefs, dispensing with printing briefs, or dispensing entirely with briefs; and assigning date for oral argument.

Automatic Tabulating Systems

§ 12-17B-16. Recount Procedures

Automatic tabulating equipment shall be tested prior to a recount or election contest as provided in § 12-17B-5, and then the official ballots shall be recounted. The new returns printed by the automatic tabulating equipment shall be certified by the recount board as the official returns for the election. They shall be signed and sealed by the person in charge of the election and made public.

School District Elections

§ 13-7-19.2. Close margin in school board election - Request for recount - Recount board established.

If any candidate for the school board is defeated by a margin not exceeding two percent of the total votes cast for all candidates for the office, the candidate may, within five days after completion of the official canvass, file with the business manager of the school district a written request for a recount. Upon receipt of a recount request, the business manager shall set the time and place for a recount. A recount board shall be established consisting of one person chosen by each candidate declared elected

and by each candidate who is eligible to request a recount. If this board consists of an even number of persons, one additional recount board member shall be appointed by the business manager who shall be mutually agreeable to each candidate involved in the recount. The person having custody of the ballot boxes containing the ballots to be recounted shall produce the ballot boxes before the recount board. All questions arising on the recount shall be determined by majority vote of the recount board. The recount shall proceed as expeditiously as reasonably possible until completed.

§13-7-19.3. Close margin in school election - Petition for recount - Appointment of recount board - Production of ballot boxes - Disputes.

A recount shall be conducted if, within five days after completion of the official canvass of a school district regular or special election at which a question is approved or disapproved by a margin not exceeding two percent of the total votes cast in the election, any three registered voters of the school district file a petition duly verified by such voters, setting forth that they believe a recount will change the outcome. A recount board shall be appointed by the business manager who shall appoint one person on each side of the question and one person who shall be mutually agreed upon by the other two appointed. The person having custody of the ballot boxes containing the ballots to be recounted shall produce the ballot boxes before the recount board. Any question arising on the recount shall be determined by majority vote of the recount board. The recount shall proceed as expeditiously as reasonably possible until completed.

§ 13-7-19.4. Compensation of recount board.

In school district election recounts there shall be paid out of the general fund of the school district to the members of the recount board compensation set by the school board, to be not less than the minimum wage established by **§** 60-11-3.

ARSD 5:02:09
Automated Tabulating Equipment Voting

5:02:09:05. Recount procedure.

The following procedure shall be used in recounting any election counted by an automatic tabulating system:
(1) If a discrepancy in the number of ballots for a precinct is discovered during ballot tabulation and is not resolved at that time, the county auditor shall make every effort to resolve the discrepancy following the official county canvass and prior to the convening of the recount board;
(2) The recount board shall first examine each ballot to determine if the official stamp has been placed on the ballot and may not count any vote on an unstamped ballot;
(3) If any discrepancy remains after subdivisions (1) and (2) have been completed and the total number of ballots in a precinct exceeds the number of names in the pollbook, the ballots shall be placed in a box and the recount board shall draw from the box the number of ballots that is equal to the excess and place these in an envelope labeled “ballots drawn by recount board to justify totals”;
(4) The recount board shall review ballots for proper marking procedure according to the voting instructions. Each ballot marked in a manner other than as provided in the instructions to voter and

which may not be counted by the machine shall be hand counted or duplicated in the manner used by a resolution board and the duplicate counted by machine. The recount board shall determine the voter's intent based on the standards found in §§ 5:02:09:22;
(5) The recount board shall review each ballot to determine if there are any write-in votes. Any write-in vote may not be counted but all other votes for which the voter's intent can be determined shall be counted;
(6) The recount board shall examine the ballots reviewed by the resolution board to determine the correctness of the initial rejection or duplication. The recount board shall rule on whether each mark is to be counted or rejected according to § 5:02:09.22;
(7) The recount board shall test the automatic tabulating equipment according to § 5:02:09:01.02. The board may conduct additional tests of the equipment including a comparison with hand-counted results from a precinct;
(8) The recount board shall count the ballots with the automatic tabulating equipment or by hand;
(9) The recount board shall complete the Certificate of Disputed Ballot as provided in § 5:02:19:09;
(10) Any question arising on the recount shall be determined by majority vote of the recount board; and
(11) The recount board shall certify the new returns as printed by the automatic tabulating equipment or as hand counted as the "Official Returns" for the election by completing the Certificate of Recount as provided in § 5:02:19:08. The Certificate of Recount shall be filed with the person in charge of the election and shall constitute the final returns for the election in that jurisdiction. If the recount involved an election canvassed by the State Board of Canvassers a duplicate original of the Certificate of Recount shall be forwarded to the secretary of state to be incorporated into the statewide totals as provided by SDCL 12-21-39.

Law Implemented: SDCL 12-17B-7, 12-17B-16.

5:02:09:22 Counting imperfectly marked optical scan ballots.

A mark that touches the oval on an optical scan ballot shall be counted as a vote; any mark that does not touch the oval and is not in the oval may not be counted as a vote.

Source: 28 SDR 99.

ARSD 5:02:16
Counting and Canvassing of Ballots

5:02:16:00. Definitions.

Terms used in this chapter mean:

(1) "Counted ballot," a voted ballot counted by the election or counting board in at least one race;
(2) "Duplicate ballots," two or more identical ballots stuck together given to one voter;
(3) "Metal seal," a device to seal ballot boxes, such as a metal closure designed to be broken or a padlock;
(4) "Over vote," a race in which more votes were cast on a ballot than allowed for that race;
(5) "Rejected ballot," or "ballot voted but not counted," a voted ballot which was not counted for any reason, including an unstamped ballot or an excess ballot;

(6) "Spoiled ballot," a ballot marked by a voter but never placed in the ballot box at any time. A voted ballot not counted by the board is not a spoiled ballot;
(7) "Unused ballot," a ballot never stamped or marked by a voter;
(8) "Unvoted ballot," a ballot never placed in the ballot box;
(9) "Voted ballot," a ballot placed in the ballot box at any time;
(10) "Write-in vote," a name written on a ballot in an attempt to indicate a vote for that person.

Law Implemented: SDCL 12-20-1, 12-15-14, 12-15-14.1.

5:02:16:10. Unstamped ballots.

In the counting of the official vote, any ballot not covered by §§5:02:16:07, 5:02:16:08, or 5:02:16:09.01 which is not endorsed by the official stamp is void and may not be counted. All such ballots shall be endorsed "unstamped ballot."

Law Implemented: SDCL 12-20-6.

5:02:16:17.01 Write-in votes not counted.

As each ballot is being examined to determine how the vote was cast for each office, the counting board shall determine if any write-in was placed on the ballot. The write-in may not be counted as a vote but all other valid marks shall be counted.

Law Implemented: SDCL 12-18-21.1.

5:02:16:17.02 Counting imperfectly marked paper ballots.

A mark that touches the circle or square on a paper ballot shall be counted as a vote; any mark that does not touch the circle or square and is not in the circle or square may not be counted as a vote.

Law Implemented: SDCL 12-1-9(4).

5:02:16:21. Voter's intent to be determined

If in accordance with this chapter it is impossible to determine the voter's intent on any ballot or part of a ballot, that portion of the ballot shall be void and shall not be counted as to those races for which the voter's intent cannot be determined.

Law Implemented: SDCL 12-20-7.

5:02:16:22.01. Use of prior court decision.

In using a court decision for construing a counting requirement, the election board or counting board shall determine which laws were in effect when the court decision was rendered and determine if these decisions are still applicable to present laws and rules.

Law Implemented: SDCL 12-20-52.

5:02:16:43. Purpose of this chapter.

This chapter is designed to assist in the counting of ballots and is not to be construed to encourage voters to mark their ballots in any way other than (X) or (□) in the box.

Law Implemented: SDCL 12-20-52.

ARSD 5:02:19
Recounts

5:02:19:01. Reconvening of a recount

The recount board may recess from time to time, however, the recount shall not reconvene nor shall the ballots be handled until the appointed time for reconvening. Notice of time and place of meeting shall be given to all three members of the recount board.

Law Implemented: SDCL 12-21-21, 12-21-25.

5:02:19:02. Staff for recount board

The county auditor shall be responsible for providing administrative support and staff for the recount board.

Law Implemented: SDCL 12-21-25.

5:02:19:03. Precautions to insure against tampering

The county auditor shall take precautions to insure against tampering with the ballots.

Law Implemented: SDCL 12-21-24, 12-21-27, 12-21-28, 12-21-29, 12-21-30, 12-21-31, 12-21-33.

5:02:19:04. Counting rules to apply

The rules in chapters 5:02:09 and 5:02:16 regarding the counting of ballots also apply to recounts.
Law Implemented: SDCL 12-21-1.

5:02:19:05. Candidate's petition for recount

Legislative and local candidates shall file the petition for recount with the applicable county auditors. All other candidates shall file the petition with the secretary of state. A candidate's petition for recount shall be in the following form:

CANDIDATE'S PETITION FOR RECOUNT

Recounts

I, _____, candidate for the office of _____, believe that a recount will change the result of the election held on the ____ day of _____, _____, and I petition for a recount of all votes cast for this office in every precinct which has not previously been recounted.

(Signed) _____

STATE OF SOUTH DAKOTA)
) ss. VERIFICATION
COUNTY OF _____)

I, _____ , under oath, state that I read and signed the foregoing petition and know its contents and that, to the best of my knowledge and belief, the statement is true.

(Signed) _____

Sworn to before me this ____ day of _____ , _____ .

(Seal)

_____
Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Law Implemented: SDCL 12-21-10, 12-21-11, 12-21-12.

5:02:19:06. Precinct voters' petition for recount

The precinct voters' petition for recount shall be filed with the person in charge of the election and shall be in the following form:

PRECINCT VOTERS' PETITION FOR RECOUNT

WE, THE UNDERSIGNED qualified voters of the _____ precinct in the County of _____ , believe that the official returns from that precinct are erroneous for the following specified candidate or question, _____ , and we petition for a recount of all votes cast in that precinct for the office or question for the election held on the _____ day of _____, _____ .

(Signed)_____
(Signed)_____
(Signed)_____

STATE OF SOUTH DAKOTA)
) ss. VERIFICATION
COUNTY OF _____)

We, under oath, state that we read and signed the foregoing petition and know its contents and that, to the best of our knowledge and belief, the statement is true.

(Signed) _____

(Signed) _____
(Signed) _____

Sworn to before me this _____ day of _____ , 19 ____ .

(Seal)

_____
Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Law Implemented: SDCL 12-21-8.

5:02:19:07. Voters' petition for recount on questions submitted to the entire state

The voters' petition for recount on questions submitted to the entire state shall be filed with the secretary of state after being signed by not less than one thousand voters from at least five different counties and shall be in the following form:

VOTERS' PETITION FOR RECOUNT
ON QUESTIONS SUBMITTED TO THE ENTIRE STATE

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, believe that a recount will change the result of the General Election held on the _____ day of November, 19 ____ , for the following question: _____ and we petition for a recount of all votes cast for or against this question in every precinct which has not previously been recounted.

The balance of the petition form is as prescribed in § 5:02:08:00.03.

Law Implemented: SDCL 12-21-14.

5:02:19:08. Certificate of recount

The Certificate of Recount shall be in the following form:

STATE OF SOUTH DAKOTA)
) ss. **CERTIFICATE OF RECOUNT**
COUNTY OF _____)

WE, THE UNDERSIGNED members of the _____ (insert jurisdiction) recount board, do hereby certify the results of the recount for the following specified candidates or question _____ for the election held on the ____ day of _____, ____ . We completed the recount on the ____ day of _____, ____.

PRECINCT NAME	CANDIDATE NAME OR YES VOTES		CANDIDATE NAME OR NO VOTES	
	OFFICIAL CANVASS	RECOUNT	OFFICIAL CANVASS	RECOUNT
_____	_____	_____	_____	_____

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
TOTALS	_____	_____	_____	_____

The following is a brief description of the proceedings of this recount board:

The following is a list of candidates or representatives present during this recount:

Signed by at least two members of the recount board:

_____
Referee or Member of Recount Board

_____
Recount Board Member

_____
Recount Board Member
Attested under SEAL by the _____ County Auditor:_____
Attest not necessary for municipal or school recounts.

This certificate has been made in duplicate and either the original or duplicate will be filed with the person in charge of the election. The other certificate shall be sent to the secretary of state by registered or certified mail or delivered by hand when the recount involves candidates or a question canvassed by the State Board of Canvassers.

Law Implemented: SDCL 12-21-32.

5:02:19:09. Certificate of disputed ballots.

The Certificate of Disputed Ballots shall be in the following form:

STATE OF SOUTH DAKOTA)
) ss. **CERTIFICATE OF DISPUTED BALLOTS**
COUNTY OF _____)
WE, THE UNDERSIGNED members of the _____ (insert jurisdiction) recount board, do hereby certify this summarization of the rulings made by this recount board and the objections to those rulings as to the ballots cast for the following specified candidates or question _____ for the election held on the ____ day of _____, ____. We completed the recount on the ____ day of _____, ____.

Exhibit Number	Ward &/or Precinct	Counted or Not Counted	Grounds for Dispute	Party Disputing

Signed by at least two members of the recount board:

_____
Referee or Member of Recount Board

_____
Recount Board Member

_____
Recount Board Member

Attested to under SEAL by the _____ County Auditor: _____
Attest not necessary for municipal or school recounts.

This certificate will be filed with the person in charge of the election along with the disputed ballots and either the original or duplicate certificate of recount.

Law Implemented: SDCL 12-21-33, 12-21-34.

5:02:19:10. Voters' petition for recount in close municipal or school ballot question election.

The voters' petition for recount in a close municipal or school ballot question election shall be filed with the person in charge of the election and shall be in the following form:

VOTERS' PETITION FOR RECOUNT IN MUNICIPAL OR SCHOOL BALLOT QUESTION ELECTION

WE, THE UNDERSIGNED qualified voters of the _____ School District or the municipality of _____, believe that a recount will change the outcome of the official returns for the following question, _____ , and we petition for a recount of all votes cast for the question at the election held on the _____ day of _____ , ___.
(Signed)_____
(Signed)_____
(Signed)_____

STATE OF SOUTH DAKOTA)
) ss. VERIFICATION
COUNTY OF _____)
We, under oath, state that we read and signed the foregoing petition and know its contents and that, to the best of our knowledge and belief, the statement is true.
(Signed) _____
(Signed) _____
(Signed) _____
Sworn to before me this _____ day of _____ , 20___.
(Seal) _____
Officer Administering Oath
My Commission Expires _____ _____
Title of Officer Administering Oath

Law Implemented: SDCL 9-13-27.4, 13-7-19.3.

5:02:19:11. Oath of recount board.

Recounts

Before performing recount duties, each recount board member shall take an oath in the following form:

I, A.B., do solemnly swear (or affirm) that I will perform the duties of recount board member according to law and the best of my ability and that I will act in an impartial manner in conducting the recount about to be held.

Law Implemented: SDCL 12-21-2.