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# 2011 ELECTION CODE

## PREFACE

This book contains a reprint of South Dakota Codified Laws Title 12 - Elections. Also included are the United States and South Dakota Constitutional provisions regarding the right to vote and initiative and referendum, SDCL 2-1 Initiative and Referendum, SDCL 7-18A Ordinances and Resolutions (County), SDCL 9-13 Municipal Elections, SDCL 9-20 Initiative and Referendum (Municipal) and 13-7 School District Elections.

Title 12 is a codification of the statutes dealing with primary and general elections in the state of South Dakota **in effect on July 1, 2011**. For statutes concerning elections in other subdivisions of government, please refer to the following South Dakota Codified Laws:

| | |
|---|---|
| SDCL 6-8B | Bond Elections |
| SDCL 6-16 | Special District Formation Elections |
| SDCL Title 7 | Counties |
| SDCL Title 8 | Townships |
| SDCL Title 9 | Municipal Government |
| SDCL Title 13 | School Districts |
| SDCL Title 16 | Courts and Judiciary |
| SDCL 31-12A | County Road Districts |
| SDCL 34-11A | Ambulance |
| SDCL 34-31A | Rural Fire Protection Districts |
| SDCL 34A-5 | Sanitary Districts |
| SDCL 46A-4 | Irrigation |
| SDCL 46A-9 | Water User |
| SDCL 46A-14 | Watershed |
| SDCL 46A-18 | Water Project |

The Administrative Rules of the State Board of Elections and of the Secretary of State pertaining to the Statewide Voter Registration File as **revised through July 1, 2011**, are reprinted in the second half of this book.

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# UNITED STATES CONSTITUTION

## ARTICLE 26

1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

2. The Congress shall have power to enforce this article by appropriate legislation.

# SOUTH DAKOTA CONSTITUTION

## ARTICLE III

## LEGISLATIVE DEPARTMENT

**§ 1. Legislative power - Initiative and referendum.** The legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives. However, the people expressly reserve to themselves the right to propose measures, which shall be submitted to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions. Not more than five percent of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. The veto power of the Executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of this section.

## ARTICLE VII

## ELECTIONS AND RIGHT OF SUFFRAGE

**§1. Right to vote.** Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

**§2. Voter qualification.** Every United States citizen eighteen years of age or older who has met all residency and registration requirements shall be entitled to vote in all elections and upon all questions submitted to the voters of the state unless disqualified by law for mental incompetence or the conviction of a felony. The Legislature may by law establish reasonable requirements to insure the integrity of the vote.

Each elector who qualified to vote within a precinct shall be entitled to vote in that precinct until he establishes another voting residence. An elector shall never lose his residency for voting solely by reason of his absence from the state.

**§3. Elections.** The Legislature shall by law define residence for voting purposes, insure secrecy in voting and provide for the registration of voters, absentee voting, the administration of elections, the nomination of candidates and the voting rights of those serving in the armed forces.

**§4. to §10. Superseded.**

# CHAPTER 2-1.

# INITIATIVE AND REFERENDUM

Section

2-1-1. Initiative petitions - Number of signatures required.
2-1-2. Filing of initiative petitions for submission to voters at next general election.
2-1-2.1. Filing of initiated constitutional amendment - Submission to voters.
2-1-2.2. Withdrawal of initiated constitutional amendment.
2-1-2.3. Withdrawal of initiated measure.
2-1-3. Referendum - Laws subject to petition - Form.
2-1-4. Time for filing of referendum petition.
2-1-5. Total vote used to determine number of signers required in petitions.
2-1-6. Persons qualified to sign petitions - False or unqualified signing as misdemeanor.
2-1-6.1. Repealed.
2-1-6.2. Filing petition prior to circulation - Collection and filing of signatures - Time limit - Affidavits.
2-1-6.3. Repealed.
2-1-7. Petitions to be signed in person.
2-1-8. Repealed.
2-1-9. Separate papers constituting single petition.
2-1-10. Verification of persons circulating initiative or referendum petitions – Form and content – Violation as misdemeanor.
2-1-11. Petitions liberally construed.
2-1-12. Effective date of measures approved by voters.
2-1-13. Repealed.
2-1-14. Signatures secured contrary to chapter not to be counted.
2-1-15. Examination of petition by secretary of state--Signatures not to be counted unless persons are registered voters and information is complete.
2-1-16. Signatures to be verified by random sampling--Rules.
2-1-17. Certification of results of random sampling--Notification of petition sponsors.
2-1-18. Court challenge of validity of signatures.

### 2-1-1. Initiative petitions - Number of signatures required.

All measures proposed by initiative shall be presented by petition. The petition shall be signed by not less than five percent of the qualified electors of the state.

### 2-1-2. Filing of initiative petitions for submission to voters at next general election.

The petition shall be filed in the Office of the Secretary of State by the first Tuesday in November of the year prior to a general election year for submission to the electors at the next general election.

### 2-1-2.1. Filing of initiated constitutional amendment - Submission to voters.

A petition of the voters proposing an amendment to the Constitution shall be filed in the office of the secretary of state at least one year before the next general election and, if timely filed, shall be submitted to the voters at the next general election in the same manner as other questions and measures are submitted under the provisions of chapter 12-13.

### 2-1-2.2. Withdrawal of initiated constitutional amendment.

A petition of the voters proposing an amendment to the Constitution may be withdrawn within the meaning of section 3 of article XXIII of the Constitution not later than one hundred twenty days prior to the next general election, if not less than two-thirds of the named sponsors file with the secretary of state, in writing, their request for withdrawal of the question from the ballot. The secretary of state shall attach to the petitions on file the request for withdrawal and shall take no other action thereon.

**2-1-2.3. Withdrawal of initiated measure.**

A petition of the voters proposing an initiated measure may be withdrawn not later than one hundred twenty days prior to the next general election, if not less than two-thirds of the named sponsors file with the secretary of state, in writing, their request for withdrawal of the question from the ballot. The secretary of state shall attach to the petitions on file the request for withdrawal and shall take no other action thereon.

**2-1-3. Referendum - Laws subject to petition - Form.**

Any law which the Legislature may have enacted, except one which may be necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, shall, upon the filing of a petition as hereinafter provided, be submitted to a vote of the electors of the state at the next general election. Such petition shall be signed by not less than five percent of the qualified electors of the state. The form of the petition shall be prescribed by the state board of elections.

**2-1-4. Time for filing of referendum petition.**

The petition shall be filed in the office of the secretary of state within ninety days after the adjournment of the Legislature which passed such law.

**2-1-5. Total vote used to determine number of signers required in petitions.**

The total number of votes cast for Governor at the last preceding gubernatorial election, shall for the purposes of this chapter, be the basis for determining the number of petitioners required.

**2-1-6. Persons qualified to sign petitions - False or unqualified signing as misdemeanor.**

Every person who is a qualified voter may sign a petition to initiate a constitutional amendment or other measure or to refer a law. If a person, knowing he or she is not a qualified voter of the state or knowing that he or she has already signed the same petition, signs a petition for initiation of a constitutional amendment or other measure or for referral of legislation or if any person signs a name other than his or her own, that person is guilty of a Class 1 misdemeanor.

**2-1-6.1. Filing of petition required prior to circulation.** Repealed by SL 1989, ch 23, § 3.

**2-1-6.2. Filing petition prior to circulation - Collection and filing of signatures - Time limit - Affidavits.**

The petition as it is to be circulated for any initiative or initiated constitutional amendment shall contain the full text of the measure, the date of the general election at which the initiated law or initiated constitutional amendment is to be submitted, and the title and explanation as prepared by the attorney general, accompanied by the names and addresses of the petition sponsors and shall be filed with the secretary of state

prior to circulation for signatures. The circulator shall provide to each person who signs the petition a copy of the explanation as prepared by the attorney general. The petition as it is to be circulated for a referred law shall contain the title of the referred law, the effective date of the referred law, and the date of the general election at which the referred law is to be submitted. The petition shall be accompanied by the names and addresses of the petition sponsors and shall be filed with the secretary of state prior to circulation for signatures. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. The form of the petitions shall be prescribed by the State Board of Elections. For any initiated measure or initiated constitutional amendment petition, no signatures may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. An initiative petition and an initiated constitutional amendment petition shall be filed with the secretary of state by the date set forth in § 2-1-2 or 2-1-2.1, as applicable. All sections of any petition filed under this chapter shall be filed with the secretary of state simultaneously together with a sworn affidavit on forms promulgated by the State Board of Elections, signed by two-thirds of the sponsors stating that the documents filed constitute the entire petition and to the best of their knowledge contain a sufficient number of signatures.

**2-1-6.3. Applicability of 2000 amendments to § 2-1-6.2.** Repealed by SL 2009, ch 64, § 6.

**2-1-7. Petitions to be signed in person.**

Every petition proposing a measure shall be signed in person by the petitioners.

**2-1-8. Ditto marks to show residence of signers or date of signing.** Repealed by SL 1990, ch 104, § 1.

**2-1-9. Separate papers constituting single petition.**

A single petition may be made up of one or more papers, each having the requisite heading and verification.

**2-1-10. Verification of persons circulating initiative or referendum petitions—Form and content-- Violation as misdemeanor.**

Each person, who circulates and secures signatures to a petition to initiate a constitutional amendment or other measure or to refer legislation to the electors, shall sign a verification before filing the petition with the officer in whose office it is by law required to be filed. The verification shall prescribe that the circulator made reasonable inquiry and, to the best of the circulator's knowledge, each person signing the petition is a qualified voter of the state in the county indicated on the signature line and that no state statute regarding the circulation of petitions was knowingly violated. The State Board of Elections shall prescribe the form for the verification. The verification shall be complete and the affixing of the circulator's signature shall be witnessed and notarized by a notary public commissioned in South Dakota or other officer authorized to administer oaths pursuant to § 18-3-1. Any person who falsely swears to the verification provided for in this section is guilty of a Class 1 misdemeanor.

**2-1-11. Petitions liberally construed.**

The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality.

**2-1-12. Effective date of measures approved by voters.**

The constitutional amendments and initiated and referred measures that have been approved by a majority of all votes cast become effective the day after the completion of the official canvass by the state canvassing board.

**2-1-13. Circulators of petitions - Qualifications - Compensation prohibited - Expenses.** Repealed by SL 1989, ch 23, § 5.

**2-1-14. Signatures secured contrary to chapter not to be counted.**

All signatures secured in a manner contrary to the provisions of this chapter may not be counted.

**2-1-15. Examination of petition by secretary of state--Signatures not to be counted unless persons are registered voters and information is complete.**

Upon the receiving of any initiative petition, referred law petition, or initiated constitutional amendment petition, the secretary of state shall examine the petition. No signature of a person may be counted by the secretary of state unless the person is a registered voter in the county indicated on the signature line. No signature of a person may be counted if the information required on the petition form is not complete.

**2-1-16. Signatures to be verified by random sampling--Rules.**

The secretary of state shall verify the signatures pursuant to § 2-1-15 by random sampling. The random sample of signatures to be verified shall be drawn so that every signature received by the secretary of state shall be given an equal opportunity to be included in the sample. The secretary of state shall calculate the number of valid signatures by multiplying the total number of signatures received by the percentage of successfully verified signatures from the random sample. The secretary of state shall, by rules promulgated pursuant to chapter 1-26, establish the methodology for conducting the random sample. The random sampling shall be an examination of five percent of the signatures received.

**2-1-17. Certification of results of random sampling--Notification of petition sponsors.**

If the random sample indicates that a sufficient number of qualified electors have signed the petition, the secretary of state shall certify that the petition has been signed by the required number of qualified electors and shall place the proposed measure or amendment on the next general election ballot. If the random sample indicates that an insufficient number of qualified electors have signed the petition, the secretary of state shall certify that the petition has not been signed by the required number of qualified electors and may not place the proposed measure or amendment on the next general election ballot. The secretary of state shall, within five days of certifying, notify the petition sponsors of the secretary of state's action pursuant to this section.

**2-1-18. Court challenge of validity of signatures.**

Nothing in §§ 2-1-15 to 2-1-18, inclusive, prohibits any person from challenging in circuit court the validity of signatures or other information required on a petition by statute or administrative rule.

## CHAPTER 7-18A.

## ORDINANCES AND RESOLUTIONS

## *County Ordinances and Resolutions*

Section
7-18A-8. Effective date of ordinances and resolutions - Exceptions.
7-18A-9. Initiated measures - Number of voters required.
7-18A-10. Nullification by initiated ordinance of emergency provisions prohibited - Time for initiated measure to nullify bond purposes.
7-18A-11. Initiative petition - Form and contents.
7-18A-12. Affidavit required of circulators of petition.
7-18A-13. Board action on initiative petition - Submission to voters.
7-18A-14. Majority vote required for approval of initiated measure - When measure effective.
7-18A-15. Referendum petition - Number of signatures required - Emergency measures excepted.
7-18A-15.1. Legislative decision of board subject to referendum - Administrative decision not subject to referendum.
7-18A-16. Time of filing referendum petition - Submission to voters required.
7-18A-17. Description in petition of referred matters.
7-18A-18. Signature requirements for referendum petition - Verification.
7-18A-19. Special election on referendum petition - Submission at primary or general election.
7-18A-20. Publication of referred measure - Contents.
7-18A-21. Referendum ballot printing and distribution - Form and contents.
7-18A-22. Majority vote required to approve referred measure - Effective date.
7-18A-23. Preservation of referendum petitions - Public inspection.
7-18A-24. Waiting period before second vote on initiated or referred question.

### 7-18A-8. Effective date of ordinances and resolutions - Exceptions.

Except such resolutions or ordinances as may be necessary for the immediate preservation of the public peace, health, or safety, or support of the county government and its existing public institutions; which provide for an election or hearing on an improvement or assessment; or which call for bids which take effect upon the passage and publication thereof, every resolution or ordinance passed by a board shall take effect on the twentieth day after its completed publication unless suspended by operation of a referendum.

### 7-18A-9. Initiated measures - Number of voters required.

The right to propose ordinances and resolutions for the government of a county shall rest with five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election.

### 7-18A-10. Nullification by initiated ordinance of emergency provisions prohibited - Time for initiated measure to nullify bond purposes.

An initiated ordinance may not be proposed which would nullify such ordinances or resolutions as may be necessary for the immediate preservation of the public peace, health or safety or for the support of any government or existing public institutions, or which would nullify the purpose for which bonds have been sold by a county pursuant to statutory authority, unless proposed within a period of thirty days after the first publication of the advertisement of the notice of sale of such bonds.

### 7-18A-11. Initiative petition - Form and contents.

The right to propose an ordinance or resolution shall be exercised by filing with the auditor a petition in proper form containing the proposed ordinance or resolution, signed by the required number of qualified voters of the county. The signer or circulator of the

petition shall add the signer's place of residence and the month and day of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class.

**7-18A-12. Affidavit required of circulators of petition.**

Each person who has circulated a petition shall, before filing the petition, sign an affidavit, under oath, verifying that he circulated the petition and that either he or the signer added the signer's place of residence and date of signing. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator.

**7-18A-13. Board action on initiative petition - Submission to voters.**

When a petition to initiate is filed with the auditor, he shall present it to the board of county commissioners at its next regular or special meeting. The board shall enact the proposed ordinance or resolution and shall submit it to a vote of the voters in the manner prescribed for a referendum within sixty days after the final enactment. However, if the petition is filed within three months prior to the primary or general election, the ordinance or resolution may be submitted at the primary or general election.

**7-18A-14. Majority vote required for approval of initiated measure - When measure effective.**

No initiated ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon the completion of the canvass of the election returns relating thereto.

**7-18A-15. Referendum petition - Number of signatures required - Emergency measures excepted.**

Any ordinance or resolution adopted by a board of county commissioners may be referred to a vote of the qualified voters of the county by the filing of a petition signed by five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election, except such ordinances and resolutions as may be necessary for the immediate preservation of the public peace, health or safety, or for the support of the county government and its existing public institutions.

**7-18A-15.1. Legislative decision of board subject to referendum - Administrative decision not subject to referendum.**

Any legislative decision of a board of county commissioners is subject to the referendum process. A legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision.

No administrative decision of a governing body is subject to the referendum process, unless specifically authorized by this code. An administrative decision is one that merely puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining and setting the salaries of employees are administrative decisions.

**7-18A-16. Time of filing referendum petition - Submission to voters required.**

A petition to refer an ordinance or resolution subject to referendum may be filed with the auditor within twenty days after its publication. The filing of such a petition shall

require the submission of any such ordinance or resolution to a vote of the qualified voters of the county for its rejection or approval.

**7-18A-17. Description in petition of referred matters.**

If the matter intended to be covered by a referendum petition is the whole of any ordinance or resolution, the petition shall contain the title of such ordinance or the subject of such resolution, and the date of its passage, but if only a portion of such ordinance or resolution is intended to be covered by the petition, such portion shall be set out at length.

**7-18A-18. Signature requirements for referendum petition - Verification.**

Voters signing a referendum petition shall comply with the requirements of 7-18A-11, and it shall be verified in accordance with 7-18A-12.

**7-18A-19. Special election on referendum petition - Submission at primary or general election.**

A special election shall be held within sixty days after the filing of a petition under § 7-18A-15. However, if the petition is filed within three months prior to a primary, general, or statewide special election, the ordinance or resolution may be submitted at the primary, general, or statewide special election.

**7-18A-20. Publication of referred measure - Contents.**

The auditor shall have the entire referred ordinance or resolution published once a week for two successive weeks immediately preceding the election.

Such publication shall include a notice stating the day of election on which the ordinance or resolution will be submitted to the voters. If only a portion thereof is covered by the petition, the notice will state what portion will be submitted.

**7-18A-21. Referendum ballot printing and distribution - Form and contents.**

The auditor shall have ballots printed for the vote upon the referred ordinance or resolution and have them distributed as other official ballots are distributed.

Such ballots shall conform as near as may be to the law governing the submission of questions by the Legislature, except that the statement required to be printed on the ballots shall be prepared by the state's attorney.

All questions to be voted upon at the same election may be submitted upon the same ballot.

**7-18A-22. Majority vote required to approve referred measure - Effective date.**

No referred ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If approved, it shall take effect upon completion of the canvass of the election returns relating thereto.

**7-18A-23. Preservation of referendum petitions - Public inspection.**

The auditor shall preserve all petitions invoking the referendum for at least two years. The petitions shall be open to public inspection upon reasonable request.

**7-18A-24. Waiting period before second vote on initiated or referred question.**

No question contained in a referred or initiated ordinance or resolution may be voted upon again within one year from the date of the election thereon.

# CHAPTER 9-13.

# MUNICIPAL ELECTIONS

Section

9-13-1. Date of annual municipal election - Hours of voting.
9-13-1.1. Joint municipal and school district elections authorized - Date - Sharing costs and responsibilities.
9-13-1.2. Dates associated with joint election.
9-13-2 and 9-13-3. Repealed.
9-13-4. Superseded.
9-13-4.1 Registration and residence required to vote in municipal election - Residence defined - Challenge - Contest of election.
9-13-5. Election not held in absence of contest - Certificate of election issued to unopposed candidates.
9-13-5.1. Repealed.
9-13-6. Publication of notice of vacancies - Times.
9-13-6.1 Individual contests authorized when more than one seat vacant.
9-13-7. Nominating petition - Time of filing - Data concerning candidate - Form -
9-13-7.1. Withdrawal or death of candidate - Procedure.
9-13-8. Repealed.
9-13-9. Number of signers required for nominating petitions in first, second, and third class municipalities - Time for circulating petitions.
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9-13-11. Residence mailing address and date added to signature - Form and verification of petition.
9-13-12. Repealed.
9-13-13. Notice of municipal election - Publication or posting.
9-13-14. Special elections governed by general provisions - Questions to be stated in notice.
9-13-14.1. Filling of vacancy on municipal governing body – Appointment or special election.
9-13-14.2. Special election to fill vacancy on governing body or in office of mayor--Procedures.
9-13-15. Repealed.
9-13-16. Election precincts - Division and consolidation of wards into precincts - Application to state and county elections.
9-13-16.1. Precinct election boards - Composition - Compensation.
9-13-17. Repealed.
9-13-21. Preparation and form of ballots – Absentee ballots - Arrangement of names of candidates.
9-13-22 and 9-13-23. Repealed.
9-13-24. Return and canvass of votes.
9-13-25. Person with highest number of votes for office to be declared elected.
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9-13-27.3. Requests for recounts - Recount board established.
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## *Municipal Elections*

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9-13-37. Municipal elections held in conjunction with June primary elections.
9-13-38 and 9-13-39. Transferred.
9-13-40. Municipal elections held on first Tuesday in June.

**9-13-1. Date of annual municipal election - Hours of voting.**

In each municipality an annual election for the election of officers shall be held on the second Tuesday of April of each year, at a place in each ward of the municipality as the governing body shall designate. If the governing body of the municipality chooses a different election day as provided in this chapter, the governing body shall establish such election day by January fourteenth of the election year. The polls at the election shall be kept open continuously from seven a.m. until seven p.m.

**9-13-1.1. Joint municipal and school district elections authorized - Date - Sharing costs and responsibilities.**

Any other provision of this chapter notwithstanding, the members of the governing body of a municipality may choose to hold a general municipal election in conjunction with a regular school district election. The combined election is subject to approval by the governing body of the school district. The combined election shall be held on the regular date set for either the general municipal election or the school district election and all dates associated with either election pursuant to chapters 9-13 and 13-7 shall be adjusted accordingly. Expenses of a combined election shall be shared in a manner agreed upon by the governing bodies of the municipality and the school district. All other governmental responsibilities associated with holding elections under the provisions of chapters 9-13 and 13-7 shall be shared as agreed upon by the governing bodies.

**9-13-1.2. Dates associated with joint election.**

If the joint election provided for in §§ 9-13-1.1 and 13-7-10.1 is scheduled for a date other than the second Tuesday in April, all dates associated with the election are those provided in chapter 13-7.

**9-13-2. Date of annual election where voting machines used.** Repealed by SL 1971, ch 56, § 3.

**9-13-3. Police magistrates elected in smaller cities.** Repealed by SL 1973, ch 130, § 14.

**9-13-4. Superseded.**

**9-13-4.1. Registration and residence required to vote in municipal election - Residence defined - Challenge - Contest of election.**

No person may vote at any municipal election unless the person is registered to vote pursuant to chapter 12-4 and resides in the municipality at the time of the election. For the purposes of this section, a person resides in the municipality if the person actually lives in the municipality for at least thirty days each year, is a full-time postsecondary

education student who resided in the municipality immediately prior to leaving for the postsecondary education, or is on active duty as a member of the armed forces whose home of record is within the municipality. A voter's qualification as a resident may be challenged in the manner provided in § 12-18-10. No election may be contested on the grounds that any nonresident was allowed to vote if the nonresident was not challenged in the manner provided in § 12-18-10.

**9-13-5. Election not held in absence of contest - Certificate of election issued to unopposed candidates.**

No election shall be held in any municipality, or ward thereof, wherein there is no question to be submitted to the voters or wherein there are no opposing candidates for any office; in case there are no opposing candidates the auditor or clerk shall issue certificates of election to the nominees, if any, in the same manner as to successful candidates after election.

**9-13-5.1. Death or withdrawal of candidate resulting in no contest.** Repealed by SL 2010, ch 41, § 2.

**9-13-6. Publication of notice of vacancies - Times.**

The finance officer of the municipality shall have a notice published in the official newspaper of the municipality setting forth the vacancies which will occur by termination of the terms of office of elective officers. The notice shall also state the time and place where nominating petitions may be filed for such offices. The notice shall be published once each week for two consecutive weeks between the fifteenth day of January and the thirtieth day of January .

**9-13-6.1. Individual contests authorized when more than one seat vacant.**

If more than one commissioner or alderman is to be elected for a like term, the governing body before October first in the year preceding the election may approve an ordinance designating that candidates shall run for a specific position such as "A" and "B" with each position representing one of the incumbent seats.

**9-13-7. Nominating petition - Time of filing - Data concerning candidate - Form - Acceptance - Effect.**

No candidate for elective municipal office may be nominated unless a nominating petition is filed with the finance officer no later than five p.m. on the last Friday in February preceding the day of election. The petition shall be considered filed if it is mailed by registered mail by five p.m. on the last Friday in February before the election. The petition shall contain the name, residence address, and mailing address of the candidate and the office for which the candidate is nominated and shall be on the form prescribed by the State Board of Elections. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. The finance officer may only accept nominating petitions that are on the prescribed form and were circulated and submitted pursuant to the provisions in chapters 9-13 and 12-6. If the nominating petition meets the statutory requirements, the filing of the petition constitutes nomination.

**9-13-7.1. Withdrawal or death of candidate - Procedure.**

Any person who has filed a nominating petition pursuant to § 9-13-7 may withdraw from the nomination by a written request, signed by the person and properly acknowledged and filed with the finance officer of the municipality. The name of a withdrawn or deceased candidate may not be printed on the ballot if the candidate

withdraws or dies no later than five p.m. on the deadline day for filing nominating petitions. If the withdrawal or death of a candidate occurs at any time prior to five p.m. on the deadline day for filing nominating petitions results in there being no contest on the ballot, that ballot need not be voted. In addition, if that contest constitutes the only ballot to be voted upon, then the election shall be canceled by the official in charge of the election and the unopposed candidate shall be issued a certificate of election.

**9-13-8. Certificate nominating more than one candidate.** Repealed by SL 1979, ch 50, § 1.

**9-13-9. Number of signers required for nominating petitions in first, second, and third class municipalities - Time for circulating petitions.**

In municipalities of the first and second class, if the candidate is to be voted for by the voters at large, a nominating petition shall be signed by fifteen registered voters of the municipality for each thousand or major fraction of the population, as shown by the last preceding federal census. No petition need be signed by more than fifty voters.

If the candidate is to be voted for by the voters of a ward of a municipality of the first or second class having more than one ward, a nominating petition shall be signed by at least five percent of the registered voters of the ward. The percentage shall be based on the total number of registered voters voting in the ward at the last preceding general election. No petition need be signed by more than fifty voters.

In municipalities of the third class, if the candidate is to be voted for by the voters at large, the nominating petition shall be signed by not less than ten registered voters of the municipality. If the candidate is to be voted for by the voters of a ward of a municipality having more then one ward, the nominating petition shall be signed by not less than five registered voters of the ward. A petition signer in a municipality of the third class is not restricted in the number of petitions which the person may sign.

No nominating petition may be circulated until on or after the last Friday in January prior to the election.

**9-13-10. Number of signers required for nominating petitions in towns - Time for circulating petitions.** Repealed by SL 1987, ch 76, § 2.

**9-13-11. Residence mailing address and date added to signature - Form and verification of petition.**

Each voter signing a nominating petition or the person circulating such petition shall add to the voter's signature the voter's residence mailing address and the date of signing. The petition may be composed of several sheets, which shall have identical headings and shall be verified under oath by the persons circulating it, attesting the legality of the signatures thereon.

**9-13-12. Publication of list of nominees.** Repealed by SL 1992, ch 62.

**9-13-13. Notice of municipal election - Publication or posting.**

A notice of each municipal election shall be published once each week for two successive weeks, the first publication may not be less than ten days prior to the election. A facsimile of the official ballot shall be published in the calendar week prior to each election. The notice and ballot shall be published in the official newspaper or newspapers of the municipality as designated in § 9-12-6.

If no newspaper is published in the municipality, the notice shall also be posted in three of the most public places in the municipality.

**9-13-14. Special elections governed by general provisions - Questions to be stated in notice.**

Every special election authorized by law, except as provided in §§ 6-8B-4 and 9-13-14.2, shall be held upon the same notice, at the same polling places, be conducted, returned, and canvassed, and the result declared as provided herein for the annual municipal election.

The notice of such special election shall state any question or questions to be voted upon.

**9-13-14.1. Filling of vacancy on municipal governing body – Appointment or special election.**

If a vacancy exists on a municipal governing body, the remaining members shall appoint a replacement to serve until the next annual municipal election, or the vacancy may be filled by special election for the remainder of the unexpired term as provided in § 9-13-14.2. In the aldermanic form of municipal government, the appointment shall be a person from the same ward of the municipality. If electing a person to fill the remainder of the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the publication required by § 9-13-6.

**9-13-14.2. Special election to fill vacancy on governing body or in office of mayor-- Procedures.**

The governing body of any municipality may, by ordinance enacted prior to the vacancy, require that any vacancy on the governing body or in the office of the mayor is to be filled by a special election called for that purpose to be conducted as provided in § 9-13-14 and this section. No such special election may be held less than ninety days before the annual municipal election. The finance officer of the municipality shall publish a notice in the official newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by special election, the date of the election, and the time and place where nominating petitions may be filed for the office. The notice shall be published once each week for two consecutive weeks beginning at least sixty days before the date of the special election. Nominating petitions for the vacancy shall be prepared and filed as provided in § 9-13-7, may not be circulated more than sixty days before the date of the special election, and shall be filed at least thirty days before the date of the special election. A notice of the special election shall be published as provided in §§ 9-13-13 and 9-13-14.

**9-13-15. Qualifications of voters at municipal elections.** Repealed by SL 1973, ch 69, § 4.

**9-13-16. Election precincts - Division and consolidation of wards into precincts - Application to state and county elections.**

Except as otherwise provided each ward shall constitute an election precinct. Whenever the number of legal voters in any ward shall exceed five hundred, the governing body may divide such ward into two or more precincts by ordinance. Whenever the number of legal voters in any two or more contiguous wards shall not exceed three hundred fifty as determined by the last annual election, the governing body may consolidate by ordinance such two or more wards into one precinct for voting purposes. Such ordinances shall be passed and take effect before the time of giving notice of election. Except as provided in 12-14-1 to 12-14-8, inclusive, such wards and precincts shall be election precincts for all state and county elections.

**9-13-16.1. Precinct election boards - Composition - Compensation.**

Each voting precinct shall be presided over by an election board consisting of a minimum of two precinct deputies and one precinct superintendent appointed by the

governing body. Each precinct superintendent and precinct deputy shall receive compensation which shall be fixed by the governing body.

**9-13-17. General election laws applicable - Number and appointment of judges and clerks.** Repealed by SL 1973, ch 67, § 4.

**9-13-18. Entry on poll list of data concerning persons voting.** Repealed by SL 1971, ch 56, § 3.

**9-13-19. Designation of voters not registered - Signing of registration card.** Repealed by SL 1971, ch 56, § 3.

**9-13-20. Application of registration provisions to special elections.** Repealed by SL 1971, ch 56, § 3.

**9-13-21. Preparation and form of ballots – Absentee ballots - Arrangement of names of candidates.**

The finance officer shall prepare and furnish, at the expense of the municipality, all official ballots. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. The ballots shall be white in color, of good quality of print paper, printed in black ink, and in the English language only.

The ballots for municipal elections shall be available for absentee voting no later than fifteen days prior to election day. If the ballots are for a secondary election, the ballots shall be available no later than seven days prior to the secondary election day.

The names of the candidates for each office to be voted for in the precinct shall be arranged without any other designation than that of the office for which they are candidates. If more than one member of the governing body is to be elected, the ballot shall contain instructions as to how many candidates for the governing body are to be voted for. The finance officer shall determine, by lot, each candidate's position on the ballot. Each candidate may be present or represented when the position on the ballot is being determined.

No candidate's name may be printed upon the official ballot unless the candidate has been nominated as provided in this chapter.

**9-13-22. Ballots for questions submitted to voters.** Repealed by SL 2006, ch 29, § 1.

**9-13-23. Form of ballot on bond questions - General laws applicable.** Repealed by SL 1984, ch 43, § 131.

**9-13-24. Return and canvass of votes.**

The election returns shall be reported as soon as possible to the finance officer, and within seven days of the election, the governing body shall canvass the election returns, declare the result, and enter the result on its journal.

**9-13-25. Person with highest number of votes for office to be declared elected.**

In any municipality, the person having the highest number of votes for any office shall be declared elected. However, the governing board of any municipality may, on or before the first of October in the year preceding, approve an ordinance requiring a secondary election to be conducted pursuant to §§ 9-13-26.1 and 9-13-27.1.

**9-13-26. Majority election in municipalities larger than twenty-five thousand - Plurality election of commissioners in municipalities with city manager.** Repealed by SL 2009, ch 33, § 2.

**9-13-26.1. Secondary election when no candidate receives a majority of votes--Conduct of election.**

If a municipality has passed an ordinance requiring a secondary election and no candidate in a race involving three or more candidates receives a majority of the votes cast in the race, a secondary election shall be held three weeks from the date of the first election. At the secondary election, the only persons voted for shall be the two candidates receiving the highest number of votes at the first election. However, if there is a tie for second place in the first election and there is no tie for first place, all tying second place candidates shall be placed along with the first place candidate on the ballot for the secondary election. The secondary election shall be held at the same polling places and shall be conducted, returned, and canvassed in the same manner as the first election. The result shall be declared and entered in the minutes of the municipality in the same manner as the first election. The person receiving the highest number of votes at the secondary election is elected.

**9-13-27. Secondary election in municipalities larger than twenty-five thousand where no candidate receives majority.** Repealed by SL 2009, ch 33, § 3.

**9-13-27.1. Publication of notice of secondary election.**

The finance officer shall have a notice of election published once during the week next preceding any secondary election. Such notice shall include a list of all persons appearing on the ballot for the election. A facsimile of the official ballot need not be published for secondary elections.

**9-13-27.2. Tie vote - Recount - Determination by lot.**

If a tie vote exists after a canvass of original official returns, the governing body making the canvass shall certify the vote to the finance officer. The finance officer shall then notify the candidates that if no request for recount is made in writing to the finance officer within five days after the certification, the winner shall be determined by drawing of lots. If no recount request is made or a tie vote between candidates is found to exist on the basis of the recount, the finance officer shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. The drawing of lots shall be in the manner directed by the finance officer and the certificate of election shall be issued to the candidate winning in the drawing.

**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.

**9-13-28. Notice to persons elected - Time allowed for qualification.**

The finance officer, within two days after the result of the election is declared, shall notify each person elected to office of the person's election. If a person does not qualify by filing an oath or affirmation of office in the usual form provided by law within ten days after the first meeting of the month next succeeding the election, the office becomes vacant.

**9-13-29. City officers subject to recall.**

In any municipality, with or without a city manager, the mayor, any commissioner, any alderman, or any member of the board of trustees may be removed from office at any time by the voters qualified to vote for a successor as provided in §§ 9-13-30 to 9-13-32, inclusive.

**9-13-30. Petition for recall--Number of signatures--Grounds--Time limits.**

A petition signed by fifteen percent of the registered voters of the municipality, based upon the total number of registered voters at the last preceding general election, demanding the election of a successor to the mayor, commissioner, alderman, or trustee sought to be removed shall be filed with the auditor and presented by the auditor to the governing body. The allowable grounds for removal are misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality. The petition shall contain a specific statement of the grounds on which removal is sought. The form for the municipal recall petition shall be prescribed by the state Board of Elections pursuant to chapter 1-26. No signature on a petition is valid if signed more than sixty days prior to the filing of the petitions.

**9-13-31. Special election on recall petition - Notice and arrangements.**

The governing body shall, upon the presentation of a petition pursuant to 9-13-30, within ten days, order and fix a date for holding a special election, to be on a Tuesday not less than thirty nor more than fifty days from the date of the order of the governing body. If a petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of 9-13-14, the question of a successor shall be submitted at that annual election.

The governing body shall have a notice of election published in the same manner as provided in 9-13-13.

**9-13-32. Incumbent as candidate in recall election - Other candidates - Secondary election on recall.**

Any mayor, commissioner, alderman, or trustee sought to be removed may be a candidate to succeed himself or herself and, unless the incumbent requests otherwise in writing, the auditor shall place the incumbent's name on the official ballot without nomination. The auditor shall also place on the official ballot the name of any other

candidate nominated as provided in this chapter. If no other candidate is nominated for the position, no recall election may be held, and the incumbent shall remain in office.

Any secondary election required shall be conducted as provided by this chapter.

**9-13-33. Continuation of incumbent in office if re-elected.**

If the incumbent shall be elected, he shall continue in office and not be obliged again to qualify.

**9-13-34. Removal of incumbent from office by election of another at recall - Qualification of successor.**

If some person other than the incumbent is elected, the incumbent shall be deemed removed from office upon or at the expiration of the time for qualification of his successor. The successor shall qualify within ten days after receiving notification of his election, and in case of his failure to qualify, the office shall be deemed vacant.

**9-13-35. Term of office of successor elected at recall election.**

The successor of any removed mayor, commissioner, alderman, or trustee shall hold office during the remainder of the predecessor's unexpired term.

**9-13-36. Election board for wards - Compensation.**

If a municipality is divided into wards and all of the wards use the same polling places, the governing body of the municipality may appoint a single election board for all of the wards. The election board appointed pursuant to this section shall consist of a minimum of one judge and two clerks. The members of the election board shall receive such compensation as shall be fixed by the governing body. If all of the wards are voting on an identical ballot, a single ballot box and one pollbook may be used for all wards.

**9-13-37. Municipal elections held in conjunction with June primary elections.**

Any other provision of this chapter notwithstanding, the members of the governing body of a municipality may choose to hold a municipal election in conjunction with the regular June primary election. The combined election is subject to approval by the county commissions of the counties in which the municipality is located. Expenses of a combined election shall be shared in a manner agreed upon by the governing body of the municipality and the county commissions involved. All other governmental responsibilities associated with holding elections under the provisions of chapters 9-13 and Title 12 shall be shared as agreed upon by the governing bodies. The finance officer shall publish the notice required in § 9-13-6 between February fifteenth and March first. No nominating petition may be circulated for signatures until March first. Nominating petitions shall be filed under the provisions of § 9-13-7 by the last Tuesday in March. The finance officer shall certify to the appropriate county auditor the candidate names and ballot language to be voted on by the first Thursday after the last Tuesday in March.

**9-13-38 and 9-13-39. Transferred.**

**9-13-40. Municipal elections held on first Tuesday after first Monday in June-- Notice-- Nominating petitions.**

Any other provision of this chapter notwithstanding, the members of the governing body of a municipality may choose to hold a municipal election on the first Tuesday after the first Monday in June. The finance officer shall publish the notice required in

§ 9-13-6 between February fifteenth and March first. No nominating petition may be circulated for signature until March first. Nominating petitions shall be filed under the provisions of § 9-13-7 by the last Tuesday in March. All other governmental responsibilities associated with holding elections under the provisions of chapter 9-13 shall be met by the municipality.

## CHAPTER 9-20.

## INITIATIVE AND REFERENDUM

Section

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9-20-17. Waiting period for new action after referendum election.
9-20-18. Legislative finding - Actions of municipal governing boards subject to referendum.
9-20-19. Legislative decision of governing body subject to referendum - Administrative decision not subject to referendum.

### 9-20-1. Percentage of voters required to propose ordinance or resolution.

The registered voters of any municipality may propose ordinances and resolutions for the government of the municipality if the petition is signed by at least five percent of the registered voters in the municipality. The percentage shall be based on the number of voters of the municipality as determined by the county auditor from the master registration file of registered voters in the municipality as of the time of the filing of the petition mentioned in § 9-20-2.

### 9-20-2. Petition proposing ordinance or resolution - Contents.

A petition to propose an ordinance or resolution shall be filed with the finance officer, containing in proper form the proposed ordinance or resolution. It shall be signed by the required number of the resident registered voters of the municipality. The signer or circulator shall add the signer's residence address, county of voter registration, and date of signing. The signer's post office box number may be given in lieu of a street

address if the signer lives within a municipality of the second or third class. No signature on a petition is valid if signed more than six months prior to the filing of the petitions.

**9-20-3. Ordinance may not be initiated to nullify bond purposes.**

The right to initiate an ordinance shall not be applicable to ordinances proposed to nullify the purpose for which bonds have been sold by a municipality pursuant to statutory authority.

**9-20-4. Presentation of initiative petition to governing body - Submission to voters.**

When a petition to initiate is filed with the finance officer, the finance officer shall present the petition to the governing body at its first ensuing regular or special meeting. The governing body shall submit the petition to a vote of the voters in the manner prescribed for a referendum.

**9-20-5. Majority vote at election required for initiated ordinance or resolution - Effective date.**

No initiated ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon the completion of the canvass of the election returns relating thereto.

**9-20-5.1. Year's waiting period required before amendment or repeal.**

No initiated ordinance or resolution may be amended or repealed by the governing body of a municipality until at least one year has passed from its effective date.

**9-20-6. Time for filing referendum petition.**

The required number of voters residing in any municipality may file within twenty days after the publication of any ordinance or resolution subject to referendum a petition with the auditor or clerk, requiring the submission of any such ordinance or resolution to a vote of the voters of the municipality for its rejection or approval. If filed on the twentieth day after publication, such petitions shall be filed no later than normal closing hours of the city hall or city auditor's office on said twentieth day.

**9-20-7. Description in referendum petition of matter covered.**

If the matter intended to be covered by the referendum petition is the whole of any ordinance or resolution, the petition shall contain the title of such ordinance or the subject of such resolution, and the date of its passage, but if only a portion of such ordinance or resolution is intended to be covered by the petition, such portion shall be set out at length.

**9-20-8. Number of signers required for referendum petition - Data concerning signers.**

The referendum petition shall be signed by at least five percent of the registered voters in the municipality. The percentage shall be based on the number of voters of the municipality as determined by the county auditor from the master registration file as of the time of the filing of the petition. The signer or circulator shall add the signer's residence address, county of voter registration, and date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class.

## *Municipal Initiative and Referendum*

**9-20-9. Requirements for persons circulating petition - Board of elections to promulgate rules - Scope of rules.**

Any person circulating an initiative or referendum petition shall verify that each person signing the petition is a resident and qualified voter of the municipality. The State Board of Elections shall promulgate rules pursuant to chapter 1-26 prescribing the format for an initiative and referendum petition and its verification.

**9-20-10. Liberal construction of referendum petition.**

Such petition may be made up and signed and shall be liberally construed as provided by the statute governing an initiated law.

**9-20-11. Date of election on referendum petition - No action taken pending election.**

The governing body shall, upon the presentation of a petition pursuant to § 9-20-6, submit the question to the electors at the next annual municipal election or the next general election, whichever is earlier. Pending the election, the governing body may take no action with respect to the subject matter of the petition that would alter or preempt the effect of the proposed petition. However, the governing body may expedite the date of the election by ordering, within ten days of receiving the petition, a special election to be held on a Tuesday not less than thirty days from the date of the order of the governing body.

**9-20-11.1. Submission of question prohibited after first Tuesday in August of general election year.** Repealed by SL 2003, ch 41, § 2.

**9-20-11.2. Date to certify ballot language to county auditor.**

If a municipality submits a question to the electors at the next general election pursuant to § 9-20-11, the municipality shall certify the ballot language to the county auditor by the second Tuesday in August of the year of the general election. However, the county auditor may extend the certification deadline for the municipality, if the county auditor determines that the extension will not prevent absentee ballots from being available by the date to begin absentee voting.

**9-20-11.3. Additional election costs paid by municipality.**

If a municipality submits a question to the electors at the next general election pursuant to SDCL 9-20-11, the municipality shall pay the additional election cost related to the municipal question. The cost shall be agreed upon by the county auditor and the municipal finance officer.

**9-20-12. Publication of referred ordinance or resolution - Notice of election.**

The auditor or clerk shall cause the entire referred ordinance or resolution to be published once a week for two successive weeks immediately preceding the election.
Such publication shall include a notice that on the day of election therein stated such ordinance or resolution will be submitted to the voters or, if only a portion thereof is covered by the petition, then notice as to what portion will be submitted.

**9-20-13. Ballots used in referendum election - Form and contents.**

The auditor or clerk shall have ballots printed for the vote upon such referred ordinance or resolution and cause the same to be distributed as other official ballots are distributed.

Such ballots shall conform as near as may be to the law governing the submission of questions by the Legislature, except that the statement required to be printed on the ballots shall be prepared by the city attorney, or if there be no city attorney, by an attorney at law employed by the governing body for that purpose.

All questions to be voted upon at the same election may be submitted upon the same ballot.

**9-20-14. General municipal election law applicable to referendum elections.**

The elections provided for in this chapter shall be governed by the provisions of chapter 9-13 except as to the form of the ballots otherwise specifically provided.

**9-20-15. Majority vote required for approval of referred measure - Effective date.**

No referred ordinance or resolution so submitted shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon completion of the canvass of the election returns relating thereto.

**9-20-16. Preservation of referendum petitions - Open to public inspection.**

The auditor or clerk shall preserve all petitions invoking the referendum filed in his office for a period of at least two years, during which time such petitions shall be open to public inspection upon reasonable request.

**9-20-17. Waiting period for new action after referendum election.**

No referred ordinance or resolution may be again voted upon by the government of any municipality within one year from the date of the election thereon.

**9-20-18. Legislative finding - Actions of municipal governing boards subject to referendum.**

The Legislature finds that in making past grants of decision-making authority to municipal governing authorities, its intent was to grant that authority to the governing bodies of municipalities and that such actions, unless otherwise excluded from the referendum and initiative process by other state law, are subject to the initiative and referendum process. Therefore, the contrary holding in Baker v. Jackson, 372 NW2d 142 (SD, July 31, 1985) is hereby abrogated.

**9-20-19. Legislative decision of governing body subject to referendum - Administrative decision not subject to referendum.**

Any legislative decision of a governing body is subject to the referendum process. A legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision.

No administrative decision of a governing body is subject to the referendum process, unless specifically authorized by this code. An administrative decision is one that merely puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining and setting the salaries of employees are administrative decisions.

## CHAPTER 12-1.

# GENERAL PROVISION AND STATE BOARD

Section

12-1-1. Elections to which title applies.
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12-1-30. Grounds to vacate resolution -- New arbitrator.
12-1-31. Invalid candidacy on nominating petition – Vacancy after primary election.

### 12-1-1. Elections to which title applies.

The provisions of this title shall apply to all elections for state, district, and county officers and other officers except in cases where from the context of any statute a different intention plainly appears.

### 12-1-1.1. Laws applicable to election of county officers.

All election laws of this state relating to nomination and election of candidates for office on political ballots shall apply to the nomination and election of a sheriff, county auditor, register of deeds, treasurer, state's attorney and coroner.

### 12-1-2. Application to local elections.

The provisions of this title apply to township, municipal, school and other subdivision elections unless otherwise provided by the statutes specifically governing their elections or this title.

**12-1-2.1. Option to adopt campaign finance law.**

The governing body of any political subdivision may, by ordinance or resolution, adopt the provisions of chapter 12-27.

**12-1-3. Definition of terms used in title.**

Terms used in this title mean:
(1) "Candidate," a person whose name is on the ballot or who is entitled to be on the ballot to be voted upon for nomination or election at any election;
(2) "Election," any election held under the laws of this state;
(3) "Election officials," state and local officials charged with the duty of conducting elections and the canvass of returns;
(4) "Elector," a person qualified to register as a voter, whether or not the person is registered;
(5) "General election," the vote required to be taken in each voting precinct of the state on the first Tuesday after the first Monday in November of each even-numbered year;
(6) "Party office," an office of a political party organization as distinct from a public office;
(7) "Person in charge of an election," or "person charged with the conduct of an election," the county auditor in all cases except local elections for a municipality, school district, township, or other political subdivision, in which case it is the officer having the position comparable to the auditor in that unit of government if not specifically designated by law;
(8) "Petition," a form prescribed by the State Board of Elections, which contains the question or candidacy being petitioned, the declaration of candidacy if required and the verification of the circulator. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator;
(9) "Petition circulator," a resident of the state of South Dakota who is at least eighteen years of age who circulates nominating petitions or other petitions for the purpose of placing candidates or issues on any election ballot;
(10) "Political party," a party whose candidate for Governor at the last preceding general election at which a Governor was elected received at least two and one-half percent of the total votes cast for Governor;
(10.1) "Polling place," a designated place voters may go to vote;
(11) "Primary" or "primary election," an election held at which candidates are nominated for public office;
(12) "Public office," an elected position in government;
(13) "Registered mail, " does not include certified mail;
(14) "Registration officials," the county auditor and deputies and other persons authorized to assist in registration pursuant to chapter 12-4;
(15) "Voter," a person duly registered to vote or one who is performing the act of voting.

**12-1-4. Criteria for determining voting residence.**

For the purposes of this title, the term, residence, means the place in which a person has fixed his or her habitation and to which the person, whenever absent, intends to return.
A person who has left home and gone into another state or territory or county of this state for a temporary purpose only has not changed his or her residence.
A person is considered to have gained a residence in any county or municipality of this state in which the person actually lives, if the person has no present intention of leaving.

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If a person moves to another state, or to any of the other territories, with the intention of making it his or her permanent home, the person thereby loses residence in this state.

**12-1-5. State board created - Members - Terms - Vacancies - Oath.**

There is created a state board of elections to be composed of seven members, one of whom shall be the secretary of state who is chairman. Two of the members shall be county auditors appointed by the speaker of the house of representatives from a list of nominees supplied by the county auditors meeting at the South Dakota association of county officials. The auditors appointed by the speaker of the house of representatives shall be of different political party registration. One auditor appointed in 1991 shall be appointed for a two-year term and one shall be appointed for a four-year term. All appointments of auditors after 1991 shall be for four years. One member of the board shall be appointed by each of the following officers: the democratic leader of the senate, the democratic leader of the house of representatives, the republican leader of the senate and the republican leader of the house of representatives. Appointments to the board shall be as follows: the appointee of the democratic leader of the house of representatives, 1980 and each fourth year thereafter; the appointee of the republican leader of the senate, 1981 and each fourth year thereafter; the appointee of the republican leader of the house of representatives, 1982 and each fourth year thereafter; the appointee of the democratic leader of the senate, 1983 and each fourth year thereafter. After the appointments made in 1979, the terms of all appointed members of the board, except auditors, shall be for four years. All appointments to the board are to be made by January thirty-first of each year. Vacancies on the board shall be filled in the same manner as the original appointments were made. All appointed members of the board shall file with the secretary of state an oath in the form prescribed by 3-1-5.

**12-1-6. Per diem and expenses.**

The per diem and expenses of the board shall be established by the executive board of the legislative research council unless otherwise provided by law.

**12-1-7. Assistance by secretary of state's office.**

The office of the secretary of state is hereby charged with the duty and responsibility to serve as the secretariat of the state election board and shall assist the board as may be directed by the said board.

**12-1-7.1. Report by county auditor to secretary of state prior to elections.**
Repealed by SL 2008, ch 34, § 7.

**12-1-8. Legal assistance to board.**

The office of the attorney general shall provide such legal assistance as the state election board may require.

**12-1-9. Rule-making power of board.**

The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, concerning:
(1) Forms for voter registration and voter file maintenance;
(2) Forms and color of ballots;
(3) Forms for notices;
(4) The uniformity of election procedures;
(5) The operation of the State Board of Elections;
(6) The procedure to accept a petition and verify petition signatures;

(7) Petition forms;
(8) Envelopes for absentee voting;
(9) Instructions to voters and absentee voters; and
(10) Recounts.

**12-1-10. Recommendations to secretary of state.**

The Board of Elections shall report to and make recommendations to the secretary of state concerning desirable or necessary changes in the election laws of this state.

**12-1-11. Costs paid by county - Exception for local elections.**

Except as may be otherwise provided by law, in any election in which all voters of a county participate, the costs relating to the election shall be paid by the county from funds appropriated therefor. In all other elections costs therefor shall be paid from funds appropriated by the governing board of municipalities, school districts and other political subdivisions requiring an election for their own purposes. Costs relating to a combined municipal and school board election may be shared under the provisions of 9-13-1.1 and 13-7-10.1.

**12-1-12. Political party office prohibited from county courthouse.**

No political party may maintain an office in a county courthouse.

**12-1-13. Challenge to petition - Specific deficiencies.**

Within five business days after a nominating, initiative, or referendum petition is filed with the person in charge of the election, any interested person who has researched the signatures contained on the petition may file an affidavit stating that the petition contains deficiencies as to the number of signatures from persons who are eligible to sign the petition. The affidavit shall include an itemized listing of the specific deficiencies in question.

**12-1-14. Verification of petition signatures challenged - Written declaration of validity.**

The person in charge of the election shall verify the information contained in the affidavit filed pursuant to § 12-1-13 and make a written declaration regarding the validity of the signatures in question. The person in charge of the election shall verify that each person was a registered voter at the time the person signed the petition by using the registration documents on file in the office of the county auditor.

**12-1-15. Notification of candidate or sponsor if petition declared invalid.**

The person in charge of the election shall immediately notify by certified mail any candidate whose nominating petition or any primary sponsor whose referendum or initiative petition is rejected and declared invalid in accordance with §§ 12-1-13 and 12-1-14.

**12-1-16. Other legal remedies to challenge petition not precluded.**

If a person fails to challenge a petition pursuant to § 12-1-13, it does not deny that person any other legal remedy to challenge the filing of a nominating, initiative, or referendum petition.

**12-1-17. Computation of time allowed for election notice or filing.**

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In computing any period of time prescribed or allowed for an election notice or filing, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until 5:00 p.m. on the next day which is not a Saturday, a Sunday, or a legal holiday. If the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**12-1-18. Time when petition may be circulated.**

Any referendum petition to refer a measure passed by a local unit of government may be circulated immediately upon final passage of the measure.

**12-1-19. Election equipment replacement fund established--Sources—Disbursements.** Repealed by SL 2008, ch 62, § 2.

**12-1-20. Rules for administration of fund and for funding projects.** Repealed by SL 2008, ch 62, § 3.

**12-1-21. Complaints filed under the Help America Vote Act.**

The State Board of Elections shall resolve any complaint filed under Section 402 of the Help America Vote Act of 2002, as of January 1, 2003, in accordance with the contested case provisions of chapter 1-26. The complaint shall be signed, notarized, and filed with the secretary of state. The board shall resolve the complaint within ninety days of its filing. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, governing the procedure for the complaint process.

**12-1-22. Arbitration of complaints under Help America Vote Act -- Appointment of arbitrator -- Time for resolution.**

If the State Board of Elections does not resolve the complaint within ninety days of filing, the complainant may ask the circuit court for alternative dispute resolution by appointing an impartial third party to serve as an arbitrator to resolve the dispute. The arbitrator shall resolve the dispute within sixty days.

**12-1-23. Time and place of hearing -- Notice to parties.**

The arbitrator shall appoint a time and place for a hearing and serve each party personally or notify each party by registered or certified mail not less than five days before the hearing.

**12-1-24. Subpoena issued by arbitrator -- Service and enforcement.**

The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may administer oaths. Any subpoena shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

**12-1-25. Depositions permitted by arbitrators -- Compelling testimony.**

On application of either party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. Any provision of law compelling a person under subpoena to testify is applicable.

**12-1-26. Evidence presented by parties -- Cross-examination.**

Unless otherwise provided by an agreement, each party is entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

**12-1-27. Adjournment or postponement of hearing -- Failure of party to appear.**

Unless otherwise provided by an agreement, the arbitrator may adjourn the hearing from time to time as necessary and at the request of a party and for good cause. The arbitrator may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

**12-1-28. Issuance of resolution -- Delivery to parties.**

The resolution pronouncement shall be in writing and signed by the arbitrator. The arbitrator shall deliver a copy to each party personally or by registered or certified mail.

**12-1-29. Payment of expenses of proceedings.**

The arbitrator's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of arbitration, shall be paid as provided in the resolution pronouncement.

**12-1-30. Grounds to vacate resolution -- New arbitrator.**

Within ten days of pronouncement, the circuit court may vacate a resolution pronouncement if:
(1) The resolution was procured by corruption, fraud, or other undue means;
(2) There was evident partiality or corruption by the arbitrator or misconduct prejudicing the rights of any party;
(3) The arbitrator exceeded his or her power; or
(4) The arbitrator refused to hear evidence material to the controversy or conducted the hearing as to prejudice substantially the rights of a party.
If the resolution pronouncement is vacated, the circuit court shall appoint a new arbitrator to resolve the dispute in the manner provided in § § 12-4-42 to 12-4-51, inclusive.

**12-1-31. Invalid candidacy on nominating petition – Vacancy after primary election.**

If any state court finds that a declaration of candidacy on a nominating petition is not valid, the candidacy shall be invalidated as of the date of filing. If the invalidation creates a vacancy which continues to exist after a primary election, the vacancy may be filled as provided in §§ 12-6-56 and 12-6-57.

## CHAPTER 12-2.

## DATES AND HOURS OF ELECTIONS

Section

12-2-1. Date of primary election.
12-2-2. Date of general election - Officers elected.
12-2-2.1. Statewide elections limited to primary, runoff and general election dates.
12-2-3. Opening and closing times for polls - Voters in line at closing time.

## *Dates and Hours of Election*

12-2-4. Emergency extension of closing times - Delayed openings.
12-2-5. Elections of governmental subdivision held in conjunction with June primary election.
12-2-6. Combined elections of governmental subdivisions.
12-2-7. Notification of secretary of state.

**12-2-1. Date of primary election.**

The primary election provided for in chapter 12-6 shall be held at the regular polling place in every voting precinct throughout the state on the first Tuesday after the first Monday in June of every even-numbered year.

**12-2-2. Date of general election - Officers elected.**

On the first Tuesday after the first Monday in November of each even-numbered year an election shall be held in the several election precincts in the state, which shall be known as the general election and the several state, district, and county officers, members of the Legislature, senators and representatives in Congress, and judges of the Supreme and circuit Courts shall be elected at the general election next preceding the expiration of the term of each of such officers, respectively, except such officers as are required by law to be elected at a special election; and in a year when a President and vice-president of the United States are to be chosen, a number of electors of President and vice-president of the United States, equal to the number of senators and representatives in Congress to which the state may be entitled or such other number as the Congress of the United States may require, shall be selected at such election.

**12-2-2.1. Statewide elections limited to primary, runoff and general election dates.**

No statewide election or referendum may be held on a date other than a date ordinarily provided by statute for a primary, runoff or general election, with the exception of a date provided by the Legislature to hold a special election.

**12-2-3. Opening and closing times for polls - Voters in line at closing time.**

At each election to be held under this title, the polls shall be opened at the hour of seven a.m. and remain continuously open until seven p.m., standard time or daylight savings time, whichever is in effect. However, no polling place may be closed at any election until all the voters who have presented themselves at the polling place inside or outside for the purpose of voting prior to the time of the closing of the polls have had time to cast their ballots.

**12-2-4. Emergency extension of closing times - Delayed openings.**

Notwithstanding § 12-2-3, the county auditor may, upon request of the superintendent of an election precinct, if an emergency exists by reason of mechanical failure of a voting machine or an unanticipated shortage of ballots or like unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved. The governing body holding a local election may delay the opening of any polling place for any election except a primary or general election for one week if weather conditions make it impossible to open at the correct time. The polling place shall then remain open for the same number of hours as it would normally have been open.

**12-2-5. Elections of governmental subdivision held in conjunction with June primary election.**

Any other provision of law notwithstanding, the members of the governing body of any governmental subdivision may choose to hold their elections in conjunction with the regular June primary election. The combined election is subject to approval by the county commissions of the counties in which the governmental subdivision is located. Expenses of a combined election shall be shared in a manner agreed upon by the governing body of the subdivision and the county commissions involved. All other governmental responsibilities associated with holding elections under the provisions for that subdivision and Title 12 shall be shared as agreed upon by the governing bodies. The governmental subdivision clerk shall publish the notice of vacancy between February fifteenth and March first. No nominating petition may be circulated for signatures until March first. Nominating petitions shall be filed under the provisions required for that subdivision by the last Tuesday in March. The clerk shall certify to the appropriate county auditor the candidate names and ballot language to be voted on by the first Thursday after the last Tuesday in March.

**12-2-6. Combined elections of governmental subdivisions.**

The members of the governing body of any governmental subdivision may choose to hold their election in conjunction with any other governmental subdivision's election if the statutory dates for the election coincide. The combined election is subject to approval by all of the governing bodies involved in the combined election. Expenses of a combined election shall be shared in a manner agreed upon by the governing bodies involved in the combined election. All other governmental statutory responsibilities associated with the election shall be shared as agreed upon by the governing bodies.

**12-2-7. Notification of secretary of state.**

If any political subdivision of the state sets a date and time for conducting a public election, within fifteen days the person in charge of an election shall notify the secretary of state in writing or by telephone or electronic mail.

## CHAPTER 12-3.

## SUFFRAGE AND RIGHT TO VOTE

Section

12-3-1. General qualifications of voters - Registration required.
12-3-1.1. Residents of federal areas.
12-3-2 to 12-3-4. Repealed.
12-3-5. Time allowed employees from work to vote - Penalty and pay deduction prohibited - Violation as misdemeanor.
12-3-6. Counties covered by Voting Rights Act Amendments - Designation by federal agencies - Notice from secretary of state.
12-3-7. Proceedings to exempt county from Voting Rights Amendments.
12-3-8. Implementation of Voting Rights Amendments in affected counties.
12-3-9. Sioux dialects defined as historically unwritten.
12-3-10. Linguistic assistance to Indians provided by counties.

12-3-11. Precinct interpreters provided - Payment.
12-3-12. Certification that precinct interpreter not needed - Proof.
12-3-13. Rules promulgated by state board.

**12-3-1. General qualifications of voters - Registration required.**

Every person resident of this state who shall be of the age of eighteen years and upwards, not otherwise disqualified, who shall have complied with the provisions of law relating to the registration of voters shall be entitled to vote at any election in this state.

**12-3-1.1. Residents of federal areas.**

No person residing on an area within the boundaries of this state which has been ceded to, or acquired by, the federal government shall be denied the right to vote in elections of this state or of the county, municipality, school district or special district wherein such area lies if such person is otherwise qualified to vote in such election or elections.

**12-3-2. Right to vote of electors in unorganized counties - Officers and questions voted upon.** Repealed by SL 1982, ch 28, § 39.

**12-3-3. Voting for legislators in unorganized county - Names included on ballots.** Repealed by SL 1973, ch 69, § 4.

**12-3-4. Voting in precinct of residence.** Repealed by SL 1973, ch 69, § 4.

**12-3-5. Time allowed employees from work to vote - Penalty and pay deduction prohibited - Violation as misdemeanor.**

Any person entitled to vote at any election held within this state, including a primary election, shall, on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed for a period of two consecutive hours between the time of opening and the time of closing the polls; provided such person does not have a period of two consecutive hours during the time the polls are open during which he is not required to be present at his work or place of employment. Such voter is not, because of so absenting himself, liable to any penalty, nor may any deduction be made on account of such absence from his usual salary or wages. The employer may specify the hours during which such employee may absent himself as aforesaid.

An employer who refuses an employee the privilege conferred by this section or who subjects an employee to a penalty or reduction of wages because of the exercise of such privilege or who directly or indirectly violates this section is guilty of a Class 2 misdemeanor.

**12-3-6. Counties covered by Voting Rights Act Amendments - Designation by federal agencies - Notice from secretary of state.**

Whenever the United States department of justice and the United States census bureau, acting pursuant to Public Law 94-73, designate any county in South Dakota to be covered under the provisions of the Voting Rights Act Amendments of 1975, the county so designated shall be governed by the provisions of 12-3-6 to 12-3-13, inclusive. The secretary of state shall notify those affected counties that they are covered by the provisions of Public Law 94-73.

**12-3-7. Proceedings to exempt county from Voting Rights Amendments.**

The state's attorney of any affected county is hereby authorized to bring appropriate proceedings, pursuant to Public Law 94-73, to exempt the entire county from the provisions of that Act.

**12-3-8. Implementation of Voting Rights Amendments in affected counties.**

Sections 12-3-6 to 12-3-13, inclusive, shall apply to all elections held within the affected counties designated pursuant to 12-3-6, and the person in charge of such elections shall be responsible for the implementation of such sections.

**12-3-9. Sioux dialects defined as historically unwritten.**

The Legislature finds that the Lakota, Nakota and Dakota dialects of the Sioux language are "historically" unwritten languages and are defined as such by the provisions of Public Law 94-73.

**12-3-10. Linguistic assistance to Indians provided by counties.**

The county auditor of the counties affected by 12-3-6 to 12-3-13, inclusive, shall provide election assistance to any Indian by providing a person proficient in both the local Sioux dialect and the English language in all precincts of the county for the purposes of registration, voting and instruction.

**12-3-11. Precinct interpreters provided - Payment.**

Interpreters shall be provided for precincts as determined by the auditor or person in charge of that election and interpreters shall be paid the same as precinct deputies. All expenses shall be paid out of the county general fund or other appropriate political subdivision fund.

**12-3-12. Certification that precinct interpreter not needed - Proof.**

If any precinct exists in any county that does not need the assistance of an interpreter, the county auditor and the county state's attorney shall certify such facts to the state board of elections. Appropriate proof shall accompany such certification.

**12-3-13. Rules promulgated by state board.**

The state board of elections shall have the authority, pursuant to chapter 1-26, to promulgate rules to implement, administer and enforce 12-3-6 to 12-3-13, inclusive, and the state board of elections shall have further authority, pursuant to chapter 1-26, to promulgate rules to implement, administer and enforce further federal administrative rulings made pursuant to Public Law 94-73.

## CHAPTER 12-4.

## REGISTRATION OF VOTERS

Section

12-4-1. Persons entitled to register.
12-4-1.1. Repealed.
12-4-2. County auditor in charge of voter registration records.
12-4-2.1 to 12-4-2.3. Repealed.
12-4-3. Mail registration cards and instructions provided by auditor – Contact information provided by private entities.

## *Registration of Voters*

12-4-3.1 Repealed.
12-4-3.2. Deadline for private entities or individuals registering voters to file registration form--Violation as misdemeanor.
12-4-4 to 12-4-4.1. Repealed.
12-4-4.2. Purpose of overseas voting rights provisions.
12-4-4.3. Overseas citizen defined.
12-4-4.4. Registration and voting by overseas citizens - Conditions.
12-4-4.5. Absentee registration and voting in last county and precinct of residence.
12-4-4.6. Absentee ballot request as registration - Notarization not required.
12-4-4.7. Expedition of registrations and ballot requests.
12-4-4.8. Promulgation of rules by State Board.
12-4-4.9. Election laws apply to overseas voting provisions.
12-4-4.10 Secretary of state to provide voter registration and absentee voting information.
12-4-4.11 Registration by adult children of overseas citizens.
12-4-5. Entry of applicants in registration file - Deadline - Rules - Lists for secondary elections.
12-4-5.1. Repealed.
12-4-5.2. Notice of registration procedures - Publication.
12-4-5.3. Review of voter registration application by auditor - Notice.
12-4-5.4. Registration -- Driver license number or social security information required.
12-4-5.5. Verification of driver license or social security information.
12-4-6. Filling out registration card and receipt - Validation - Applicant unable to write.
12-4-6.1. Effective date of voter registration.
12-4-7 to 12-4-7.1. Repealed.
12-4-7.2. Duty to ensure completion of registration cards.
12-4-7.3 and 12-4-7.4. Repealed.
12-4-8. Records prescribed by State Board - Information required.
12-4-8.1. Postcard requests for absentee ballot under federal law - Indexing and furnishing to precinct board.
12-4-8.2. True copy to replace duplicate acknowledgment notice.
12-4-9. Master registration list - Contents and arrangement - Open to public inspection - Access to certain information restricted.
12-4-9.1. Repealed.
12-4-10. Precinct registration lists - Contents - Entries by superintendent.
12-4-10.1. Registration lists furnished to federal court for jury selection - Return of lists to auditor.
12-4-11. Change of registration lists on change in precinct boundaries.
12-4-12. New registration on move between states or counties - Authorization to cancel previous registration.
12-4-13 and 12-4-14. Repealed.
12-4-15. Designation or change of party affiliation.
12-4-16 and 12-4-17. Repealed.
12-4-18. Health department's report of deaths - Court clerk's report of mental incompetence and felony convictions - Changes on master list.
12-4-19. Confirmation mailing to voters who fail to reply to a confirmation mailing - Exception.
12-4-19.1. Confirmation mailing notice to registrant of proposed registration cancellation - Postcard and return card - Contents.
12-4-19.2. Placement in inactive registration file by auditor.
12-4-19.3. Repealed.
12-4-19.4. Cancellation of voter registration.
12-4-19.5 to 12-4-22. Repealed.
12-4-23 and 12-4-23.1. Repealed.
12-4-24. Precinct lists for local election - Delivery to voting precincts.
12-4-24.1. Precinct lists for parties and candidates.

12-4-25 to 12-4-31. Repealed.
12-4-32. National Voter Registration Act of 1993.
12-4-33. Chief state election official.
12-4-34. Registered voters referred to in other statutes.
12-4-35. Rules for the National Voter Registration Act.
12-4-36. Rebuttable presumption that certain electors not qualified.
12-4-37. Statewide voter registration file - County auditors to transmit changes to secretary.
12-4-38. County auditor's file is official record in event of discrepancy.
12-4-39. Promulgation of rules - Scope.
12-4-40. Identification of duplicate voter registration - Notification.
12-4-41. Use of voter registration information for commercial purposes prohibited.
12-4-42 to 12-4-51. Transferred to §§ 12-1-21 to 12-1-30.
12-4-52. Payment for registration of voters based on number of voters registered prohibited-- Violation as misdemeanor.
12-4-53. Receipt of payment for registration of voters based on number of voters registered prohibited--Violation as misdemeanor.

**12-4-1. Persons entitled to register.**

Every person residing within the state who has the qualifications of a voter prescribed by 12-3-1 or 12-3-1.1, or who will have such qualifications at the next ensuing municipal, primary, general, or school district election, shall be entitled to be registered as a voter in the voting precinct in which he resides.

**12-4-1.1. Release documents may be requested of convicted felons.** Repealed by SL 2005, ch 89, § 1.

**12-4-2. County auditor in charge of voter registration records.**

The county auditor has complete charge of maintaining and safeguarding the voter registration records in the county. The county auditor shall retain all voter registration records in the auditor's office. All such records shall be open to public inspection at all times during office hours, except that public access to social security numbers and driver license numbers is restricted.

Voter registration shall be conducted by each county auditor and municipal finance officer. Voter registration shall be available at the secretary of state's office and at those locations which provide driver licenses; food stamps; temporary assistance for needy families; women, infants, and children nutrition program; medicaid; military recruitment; and assistance to the disabled as provided by the Department of Human Services.

**12-4-2.1. Deputy auditors in unorganized counties - Appointment and duties.** Repealed by SL 1982, ch 28, § 40.

**12-4-2.2. Deputy auditors in unorganized counties - Compensation.** Repealed by SL 1982, ch 28, § 41.

**12-4-2.3. Instructions required to be read to person who will register voters - Written authorization - Inspection - Violation as misdemeanor.** Repealed by SL 1994, ch 107, § 2.

**12-4-3. Mail registration cards and instructions provided by auditor--Contact information provided by private entities.**

The county auditor shall provide mail registration cards along with instructions on how to properly register voters to private entities and individuals. Each private entity or individual shall provide information to the voter being registered on how the voter may

contact such private entity or individual to determine the status of the voter's registration.

**12-4-3.1. Record of registration cards supplied - Violation as misdemeanor.** Repealed by SL 1994, ch 107, § 4.

**12-4-3.2. Deadline for private entities or individuals registering voters to file registration form--Violation as misdemeanor.**

Any private entity or individual registering a person to vote shall file the completed registration form with the county auditor within ten days or by the voter registration deadline, whichever occurs first. A violation of this section is a Class 2 misdemeanor.

**12-4-4. Personal application to register - Officers to whom made - Time of application.** Repealed by SL 1974, ch 118, § 200.

**12-4-4.1. Registration by absentees.** Repealed by SL 1994, ch 107, § 4.

**12-4-4.2. Purpose of overseas voting rights provisions.**

The purpose of §§ 12-4-4.2 to 12-4-4.9, inclusive, is to implement the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff-1 - 1973ff-6, (Jan. 1, 1996).

**12-4-4.3. Overseas citizen defined.**

An "overseas citizen" is any person residing outside the territory of the United States of America including its territories and possessions, and who is a citizen of the United States.

**12-4-4.4. Registration and voting by overseas citizens - Conditions.**

Any overseas citizen may register and vote in any federal, state, county, or local election held within South Dakota under the following conditions:

(1) The overseas citizen, or the spouse or parent of the overseas citizen, was last domiciled in South Dakota immediately prior to departure from the United States;

(2) The overseas citizen does not maintain a domicile, is not registered to vote, and is not voting in any other state;

(3) The overseas citizen is otherwise qualified to vote according to law.

**12-4-4.5. Absentee registration and voting in last county and precinct of residence.**

The overseas citizen may register and vote absentee in the same county and election precinct in which the overseas citizen, or spouse or parent of the overseas citizen, resided immediately prior to leaving the United States.

**12-4-4.6. Absentee ballot request as registration - Notarization not required.**

A request for an absentee ballot made by an overseas citizen that contains the information necessary to comply with §§ 12-4-4.4 and 12-4-4.5 shall be sufficient for registration purposes, and these applications need not be notarized or otherwise sworn to.

**12-4-4.7. Expedition of registrations and ballot requests.**

The person in charge of the election shall expedite the processing of registrations and absentee ballot requests of overseas citizens.

**12-4-4.8. Promulgation of rules by state board.**

The state board of elections may promulgate rules pursuant to chapter 1-26 for the implementation of 12-4-4.2 to 12-4-4.9, inclusive.

**12-4-4.9. Election laws apply to overseas voting provisions.**

All other provisions of law relating to elections shall apply to 12-4-4.2 to 12-4-4.9, inclusive.

**12-4-4.10. Secretary of state to provide voter registration and absentee voting information.**

The secretary of state shall provide any absentee uniformed services and overseas voter information on voter registration procedures and how to vote absentee.

**12-4-4.11. Registration by adult children of overseas citizens.**

If an overseas citizen who has never resided in South Dakota is eligible to register to vote pursuant to § 12-4-4.4 as the adult child of an overseas citizen and has not reached the age of twenty-two, the voter registration of the adult child shall be accompanied by a photocopy of the adult child's United States passport identification page and an overseas registrant form indicating where the adult child's parent is registered to vote in South Dakota. The State Board of Elections shall prescribe the overseas registrant form.

**12-4-5. Entry of applicants in registration file - Deadline - Rules - Lists for secondary elections.**

The county auditor shall enter in the master registration file the names of all eligible persons who have had their completed applications for registration and mail registration cards received by any county auditor or any local, state, or federal agency responsible for conducting voter registration under this chapter not later than 5:00 p.m. fifteen days preceding the election. However, any completed mail registration card mailed to the appropriate county auditor and postmarked not less than thirty days preceding an election shall be added to the registration file. Voter registrations completed at any local, state, or federal agency during any given week commencing on Tuesday through the following Monday shall be sent to the appropriate county auditors no later than the following Wednesday. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, for the alternative transmission of voter registration information by computer from the agency to the secretary of state. The name of any voter who has registered to vote by 5:00 p.m. fifteen days preceding the secondary election shall be added to the file used for the secondary election.

**12-4-5.1. Time for registration other than by county auditor or deputy.** Repealed by SL 1974, ch 118, § 200.

**12-4-5.2. Notice of registration procedures - Publication.**

The county auditor or the person responsible for the conduct of a local election shall give notice of the availability of registration officials and state when registration will be terminated and the effect of a failure to have registered. Such notice shall be published

in official newspapers at least once each week for two consecutive weeks, the last publication to be not less than ten nor more than fifteen days before the deadline for registration.

**12-4-5.3. Review of voter registration application by auditor - Notice.**

When a voter registration application is received by the county auditor, the application shall be reviewed for eligibility and completeness. If the applicant is not eligible to be registered or sufficient information to complete the card cannot be obtained from the applicant, the applicant shall be sent an acknowledgment notice indicating why the registration was not filed. Any applicant whose registration is accepted shall be sent an acknowledgment notice. The acknowledgment notice shall be prescribed by the state board of elections and sent by nonforwardable mail. The same confirmation mailing required by § 12-4-19 shall be sent immediately to any person whose registration acknowledgment notice is returned undeliverable.

**12-4-5.4. Registration -- Driver license number or social security information required.**

Any person registering to vote shall provide his or her South Dakota driver license number on the voter registration form. If a person does not have a South Dakota driver license, the person shall provide the last four digits of his or her social security number on the voter registration form. If a person does not have a South Dakota driver license or social security number, the person may only register at the county auditor's office and shall sign a statement verifying the fact that he or she has neither a South Dakota driver license nor social security number. The statement shall be prescribed by the State Board of Elections.

**12-4-5.5. Verification of driver license or social security information.**

At the time voter registration information is transmitted from a county to the statewide voter registration file, the authenticity of the driver license number shall be verified with the driver license database. If the person has provided the last four digits of his or her social security number, the social security database shall be checked to determine that the number, name, and date of birth are accurate and that this information does belong to such person. If any of this information is reported as not being accurate, the county auditor shall withdraw the voter registration and attempt to get the correct information with the process provided in § 12-4-5.3. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, determining technical parameters for the driver license and social security database verification.

**12-4-6. Filling out registration card - Registration at driver's license station - Applicant unable to write.**

An applicant for registration shall answer questions and sign the oath as required on the form prescribed by the state board of elections. An applicant for registration at a driver's license station shall also sign a signature card prescribed by the department of commerce and regulation. This signature shall be digitized and used to prepare the registration card as provided in § 12-4-5. If an applicant is unable to write his or her name, the applicant shall make a mark, the applicant's name being written near such mark, and written by a person who writes his or her own name as a witness.

**12-4-6.1. Effective date of voter registration.**

A voter registration shall be considered to be effective on the date which the card is received by the county auditor. However, if the card was completed at one of the agencies listed in § 12-4-2, is received by the auditor within five days following any

registration deadline and is dated by the deadline, the card shall be considered to be effective on the date which it was signed at the agency. If a card does not contain all of the information required by the form prescribed pursuant to § 12-4-6 or if the card contains information which is not correct, it shall be considered to be effective on the date all of the correct, required information is supplied to the county auditor.

**12-4-7. Place of filing registration cards - Cards to be made available - Signature and statement of political designation - Verification and return - Receipt given.** Repealed by SL 1981, ch 120, § 2.

**12-4-7.1. New duplicate registration obtainable by registered voter any time before election - Change of party prohibited.** Repealed by SL 1974, ch 118, § 200.

**12-4-7.2. Duty to ensure completion of registration cards.**

Any local, state, or federal agency staff person who registers a voter shall ensure that the registration card, as prescribed by the state board of elections, is filled out completely.

**12-4-7.3. List of registered voters kept - Return of list and cards to county auditor - Violation as misdemeanor.** Repealed by SL 1994, ch 107, § 10.

**12-4-7.4. Delivery of card for voter - Signing statement on receipt.** Repealed by SL 1994, ch 107, § 11.

**12-4-8. Records prescribed by state board - Information required.**

For the purpose of expediting work of the county auditor, to promote uniformity in registration, and for the preparation of abstracts and other forms to be used by election boards, registration records shall be prescribed by the state board of elections. The state board of elections may require such information, on registration records, as is necessary to effectuate the state and federal election laws.

**12-4-8.1. Postcard requests for absentee ballot under federal law - Indexing and furnishing to precinct board.**

In lieu of forms for registration prescribed under 12-4-8, requests for absentee ballots submitted in accordance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAV) (42 U.S.C. 1973ff) shall be sufficient for registration purposes. The county auditor shall make and file the index card for the master file and attach the card thereto and a photocopy shall be supplied to the election board of the precinct for the purposes of 12-19-2.

**12-4-8.2. True copy to replace duplicate acknowledgment notice.**

Any voter whose name appears in the master registration file who makes written application to the county auditor for a duplicate acknowledgment notice, who has not received one or who has lost it, may receive a true copy of the card on file.

**12-4-9. Master registration list - Contents and arrangement - Open to public inspection - Access to certain information restricted.**

The county auditor shall maintain and safeguard a file of voters in computer format that contains each person registered in each voting precinct within the county. This file shall be known as the master registration file and shall be, at all times during office hours, open to public inspection. However, public access to social security numbers and driver license numbers contained in the master registration file shall be prohibited.

Public access to each voter's day and month of birth shall be restricted. Public access to the voter's year of birth is not restricted. The master registration file shall contain all information from each voter's registration card except the description of the location of the voter's residence. The master registration file shall also include the date of the last election the voter has voted in and when the voter's information was last updated. The master registration file may also contain additional voter history information.

**12-4-9.1. Presidential voters listed separately - Preparation of poll list.** Repealed by SL 1974, ch 118, § 200.

**12-4-10. Precinct registration lists - Contents - Entries by superintendent.**

The county auditor shall provide from the master registration file a separate list of the names and addresses of all registered voters in each voting precinct as established pursuant to chapter 12-14, § 9-13-16, or 13-7-11 in the county, which shall be known as the precinct registration list. The list for any voting precinct shall be designed so that each name can be distinctly marked whenever the registrant presents himself or herself for voting and shall contain a space in which may be recorded the record of any challenge, affidavit, or other information as may be required. Each entry shall be made by the precinct superintendent or precinct deputies when the voter presents himself or herself for voting.

**12-4-10.1. Registration lists furnished to federal court for jury selection - Return of lists to auditor.**

Whenever so requested, the county auditor shall furnish to the clerk of the United States district court for the district of South Dakota, at no cost to the county, the current precinct registration lists or certified copies thereof referred to in 12-4-10 for all election precincts in the county whenever such lists are required by said clerk of the United States district court in furtherance of a plan for random jury selection in the federal courts pursuant to 28 U.S.C. 1863 and other applicable federal statutes. Within thirty days after receipt of such precinct registration lists, the clerk of the United States district court shall return the same to the county auditor.

**12-4-11. Change of registration file on change in precinct boundaries.**

If the boundaries of any election precinct are changed, the county auditor shall immediately change the registration file to correctly show the names and the other relevant voting information required upon registration of the voters who are residents of the election precinct.

**12-4-12. New registration on move between states or counties - Authorization to cancel previous registration.**

Any new registrant previously registered elsewhere shall be required to sign an authorization which shall be forwarded by the registration official to the auditor of the county of former registration, or other appropriate registration official, who shall remove the registrant's name from the registration file.

**12-4-13. Change of registration on moves within county - Change on notice to voter - Appeal from auditor's action.** Repealed by SL 1994, ch 107, § 17.

**12-4-14. Removal notices executed by mark receivable only in person.** Repealed by SL 1974, ch 118, § 200.

**12-4-15. Designation or change of party affiliation.**

Any person desiring to designate or change party affiliation, name, or address may do so by completing a new registration card.

**12-4-16. Change of party registration - Filing - Late filing.** Repealed by SL 1994, ch 107, § 19.

**12-4-17. Review of lists for registrants without duplicate cards.** Repealed by SL 1975, ch 121.

**12-4-18. Lists of persons declared mentally incompetent, deceased or having received felony convictions - Changes on master list.**

The clerk of courts shall, within fifteen days after the close of each month, prepare and deliver to the auditor an abstract from the records of the names of persons declared mentally incompetent in the preceding month. The notice shall be sent to the county auditor of the county in which the person declared incompetent resides. The county auditor shall remove from the master registration list the names of persons identified in accordance with the information provided pursuant to this section and names of those sentenced to imprisonment in the federal penitentiary system and may remove names published in an obituary.

Voter registration records maintained in or transmitted to the statewide voter registration file shall be matched with the death records maintained as vital statistics records by the Department of Health and the records of felony convictions maintained by the Unified Judicial System. Any voter identified as deceased or who receives a felony sentence to the adult state penitentiary system including a suspended execution of a sentence shall be removed from the voter registration records. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, determining how voter registration records shall be matched.

**12-4-19. Confirmation mailing to voters who fail to reply to a confirmation mailing - Exception.**

Any voter in the active registration file who has failed to vote, has not updated the voter's registration information, and has not replied to a confirmation mailing at least once during the last preceding four consecutive years shall be sent a nonforwardable return-if-undeliverable address verification request. If the request is undeliverable then a confirmation mailing prescribed by the State Board of Elections shall be sent. If a county auditor has determined through a national change of address licensee of the United States Postal Service that the address of a voter who is to be sent an address verification request has changed, that mailing may be omitted. This process shall be performed by each county auditor between January first and November fifteenth of each odd-numbered year.

**12-4-19.1. Confirmation mailing notice to registrant of proposed registration cancellation - Postcard and return card - Contents.**

The confirmation mailing notice shall be a double postcard stating that the voter's registration may be canceled if the card is not returned. In addition, the card shall state that if the information on the return card is correct, the voter must sign and return the card within thirty days or the voter's registration will become inactive. The card shall also state that if the information on the return card is not correct, the voter shall send the correct information to update the voter's registration or the voter's registration will become inactive. If the card is returned indicating a new address in another county in South Dakota or another state, the card shall serve as a cancellation authorization. The

card shall also give information on reregistering if the voter has moved to another county or state. The card shall give the information about the voter as it appears in the registration records.

**12-4-19.2. Placement in inactive registration file by auditor.**

If the card is not returned to the county auditor within the stated time limit or is undeliverable, the county auditor shall move the voter to an inactive registration file.

**12-4-19.3. State board to prescribe forms - Directives and instructions.** Repealed by SL 1994, ch 107, § 24.

**12-4-19.4. Cancellation of voter registration.**

If a voter placed in the inactive registration file does not vote by the second general election following the confirmation mailing, the registration shall be canceled. This determination shall be made between January first and November fifteenth of every odd-numbered year.

**12-4-19.5. Confirmation of cancellation.** Repealed by SL 2002, ch 40, § 13.

**12-4-20. Affidavit of service in armed forces as reregistration of voter removed for failure to vote.** Repealed by SL 1974, ch 118, § 200.

**12-4-21. Notice by mail to verify name and address of voter - Challenge of vote on failure to correct or return by post office.** Repealed by SL 1974, ch 118, § 200.

**12-4-22. Challenge entered on notices returned by post office - Compliance with challenge law required before voting.** Repealed by SL 1974, ch 118, § 200.

**12-4-23. Challenge of registration - Notice and hearing - Auditor's decision - Appeal to circuit court.** Repealed by SL 1996, ch 95, § 3.

**12-4-23.1. Precinct purged registration list.** Repealed by SL 1976, ch 105, § 84.

**12-4-24. Precinct lists for local election - Delivery to voting precincts.**

The county auditor shall complete and make available to the official charged with the conduct of a local election at least one day preceding the election a precinct registration list and the person in charge of the election shall deliver the list to each of his superintendents of election.

**12-4-24.1. Precinct lists for parties and candidates.**

Upon request the county auditor shall provide at their actual cost no more than five copies of precinct registration lists to the chairman or central committee of each organized political party, and a copy to each candidate requesting them, by the first Tuesday of the month preceding an election.

**12-4-25. Votes by unregistered persons not to be received.** Repealed by SL 1974, ch 118, § 200.

**12-4-26. Designation of party required to vote at primary.** Repealed by SL 1974, ch 118, § 200.

**12-4-27. Return of precinct and district registration lists after election.** Repealed by SL 1974, ch 118, § 200.

**12-4-28. Expense paid by county - Reimbursement for municipal and school district elections.** Repealed by SL 1974, ch 118, § 200.

**12-4-29. Intentional refusal to register applicant or deliver registration card and false registration as felony.** Repealed by SL 1994, ch 107, § 25.

**12-4-30. Severability of provisions.** Repealed by SL 1974, ch 118, § 200.

**12-4-31. Instructions for registration - Preparation - Posting.** Repealed by SL 1994, ch 107, § 26.

**12-4-32. National Voter Registration Act of 1993.**

Sections 4 to 8, inclusive, of the National Voter Registration Act of 1993 apply to all elections in South Dakota which require voter registration.

**12-4-33. Chief state election official.**

The secretary of state is the chief state election official pursuant to section 10 of the National Voter Registration Act of 1993.

**12-4-34. Registered voters referred to in other statutes.**

If a statute refers to registered voters, it does not include those in the inactive registration file unless specifically included. However, any voter in the inactive registration file may sign a petition.

**12-4-35. Rules for the National Voter Registration Act.**

The state board of elections may promulgate rules pursuant to chapter 1-26 necessary for implementation of the National Voter Registration Act.

**12-4-36. Rebuttable presumption that certain electors not qualified.**

There is a rebuttable presumption that the signer of a petition filed pursuant to chapter 2-1, 6-16, 7-18A, 9-13, 9-20, 12-6, 12-7, or 13-7 is not a qualified elector if the signer's name fails to appear on the active voter registration list of the county stated on the petition as the signer's county of registration on the date the petition was signed. This rebuttable presumption may only be overcome by clear and convincing evidence presented by the petition sponsor, circulator, or candidate.

**12-4-37. Statewide voter registration file - County auditors to transmit changes to secretary.**

The secretary of state shall establish a computerized system for maintaining and utilizing the voter registration file and transmitting voter registration information from each county auditor to the Office of the Secretary of State. Each county auditor shall transmit any changes to the master registration file or the absentee voter log to the secretary of state on a daily basis. The county auditor shall transmit updated information contained in the county voter registration system, including voter registration information and voter election history information, to the Office of the Secretary of State not later than July fifteenth after each primary election and December fifteenth after each general election.

**12-4-38. County auditor's file is official record in event of discrepancy.**

## *Registration of Voters*

The statewide voter registration file maintained by the secretary of state shall be considered a duplicate file of the official voter registration records held in each county office. If there is any discrepancy between the statewide voter registration file maintained by the secretary of state and the master registration file maintained by the county auditor, the master registration file maintained by the county auditor is the official file. However, for federal elections the statewide file shall be the official voter registration file. Upon request from the secretary of state, each county auditor shall transmit the county's entire voter file to the state voter registration file.

**12-4-39. Promulgation of rules - Scope.**

The secretary of state may promulgate rules pursuant to chapter 1-26 concerning:
(1) Procedures for the establishing the statewide voter registration file;
(2) Transmission of the voter registration information from the county to the Office of the Secretary of State;
(3) Procedures for determining duplicate voter registration;
(4) Dissemination of the information from the statewide voter registration file; and
(5) Establishment of fees for information provided from the statewide voter registration file.

**12-4-40. Identification of duplicate voter registration - Notification.**

The secretary of state may use the statewide voter registration file to identify any duplicate voter registration within the state. If the secretary of state has determined that there is a duplicate voter registration, the secretary of state shall notify the county whose official master registration file contains the oldest duplicate registration and such county shall remove the person from the voter registration file. If the secretary of state has identified a potential duplicate voter registration, the secretary of state shall notify the person registered in the county whose official master registration file contains the oldest potential duplicate registration. The secretary of state shall notify such person in a manner consistent with the provisions of § 12-4-19.1.

**12-4-41. Use of voter registration information for commercial purposes prohibited.**

No information obtained from the statewide voter registration file or any county voter registration file may be used or sold for any commercial purpose. For the purpose of this section, the term, commercial purpose, does not include campaign or political polling activities. Any violation of this section is a Class 2 misdemeanor.

**12-4-42 to 12-4-51. Transferred to §§ 12-1-21 to 12-1-30.**

**12-4-52. Payment for registration of voters based on number of voters registered prohibited-- Violation as misdemeanor.**

No person may employ, reward, or compensate any person to register voters based on the number of voters registered. Nothing in this section prohibits any person from hiring a person paid on an hourly or salaried basis to register voters. Any violation of this section is a Class 2 misdemeanor.

**12-4-53. Receipt of payment for registration of voters based on number of voters registered prohibited--Violation as misdemeanor.**

No person may receive any wages, reward, or compensation for registering voters based on the number of voters registered. Nothing in this section prohibits any person from being employed on an hourly or salaried basis to register voters. Any violation of this section is a Class 2 misdemeanor.

# CHAPTER 12-5.

# POLITICAL PARTIES AND PARTY AFFAIRS

Section

12-5-1. Organization of new party - Filing and contents of declaration - Number of signatures required.
12-5-1.1. Party constitution or bylaws required - Filing with secretary of state.
12-5-1.2. Repealed.
12-5-1.3. Notice to county auditors of party rules affecting elections.
12-5-1.4. Nominating petitions of new party primary candidates.
12-5-2. Precinct officials elected at primary.
12-5-3 to 12-5-3.5. Repealed.
12-5-3.6. Selection of method of allocating national convention vote.
12-5-3.7. Repealed.
12-5-3.8. Certification of slates for primary - Placement on ballot.
12-5-3.9. Certification of candidates or slates by state chairman - Mandamus to compel certification - Hearing.
12-5-3.10. Repealed.
12-5-3.11. Primary election of national convention delegates and alternates - Grouping of names on nominating petition - Statement of preference.
12-5-3.12. Preference of first nominating petition filed - One slate per candidate - Petitions rejected for noncompliance - Verified notice of disapproval filed by designated candidate removes slate from ballot.
12-5-3.13. Election of all delegates by slate receiving most votes.
12-5-3.14. Notice by candidates or supporters of intention to enter presidential primary.
12-5-3.15. State board to adopt rules.
12-5-3.16. Certification of names of national convention nominees for President and vice-president - Alternate certification.
12-5-3.17. Candidate for other office certified under § 12-5-3.16 to choose candidacy - Effect of failure to choose - Filling resulting vacancy.
12-5-4. Statement filed by candidates for precinct committee - Time of filing - Contents.
12-5-4.1. Unopposed candidate for precinct committee automatically elected.
12-5-5 to 12-5-7. Repealed.
12-5-8. Furnishing to precincts of ballots for precinct committee - Form prescribed by state board.
12-5-9. Votes for precinct committee restricted to nominees.
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12-5-13. Precinct committeemen elected by plurality at primary - Term of office.
12-5-14. County central committee - Composition - Organization - Certification of party officials.
12-5-15. Vacancies filled by county central committee - Exception.
12-5-16. Repealed.
12-5-17. Biennial state convention - Time and place - Notice to secretary of state.
12-5-18. Voting by delegates to state convention.
12-5-19 to 12-5-20. Repealed.
12-5-21. Nomination of state candidates not voted on at primary - Presidential electors and national committee members.
12-5-22. Majority required for nomination by convention - Certification to secretary of state.
12-5-23 to 12-5-24. Repealed.

## *Primary Elections*

**12-5-1. Organization of new party - Filing and contents of declaration - Number of signatures required.**

A new political party may be organized and participate in the primary election by filing with the secretary of state not later than the last Tuesday of March at five p.m. prior to the date of the primary election, a written declaration signed by at least two and one-half percent of the voters of the state as shown by the total vote cast for Governor at the last preceding gubernatorial election, which declaration shall contain:

(1) The name of the proposed party; and

(2) A brief statement of the principles thereof;

whereupon the party shall, under the party name chosen, have all the rights of a political party whose ticket was on the ballot at the preceding general election.

A political party loses the right to participate in the primary election for failure to meet the definition of political party as defined in § 12-1-3.

**12-5-1.1. Party constitution or bylaws required - Filing with secretary of state.**

A political party shall adopt a constitution or a set of bylaws to govern its organization and the conduct of its affairs and exercise thereunder any power not inconsistent with laws of this state. The party central committee shall certify to and file with the secretary of state a copy of the document and amendments thereof within thirty days of their approval.

**12-5-1.2. Effective date of party rule for selection of officers.** Repealed by SL 2007, ch 74, § 2.

**12-5-1.3. Notice to county auditors of party rules affecting elections.**

It shall be the duty of the secretary of state to promptly notify the county auditor of each county of the effect of any provision of a party constitution or bylaw which affects an election to be conducted.

**12-5-1.4. Nominating petitions of new party primary candidates.**

If a political party qualifies for the primary ballot under § 12-5-1, each candidate intending to participate in a primary election shall file a nominating petition pursuant to § 12-6-4. In each primary election following the qualification of a political party and prior to the next gubernatorial election, each:

(1) State and federal candidate for that party shall file a petition bearing signatures of at least two hundred fifty registered voters in that party; and

(2) Legislative and county candidate for that party shall file a petition bearing signatures of at least five registered voters in that party.

**12-5-2. Precinct officials elected at primary.**

Each political party may elect precinct committeemen and precinct committeewomen at each primary election. If a party chooses to elect precinct committeemen and committeewomen at the primary election pursuant to §§ 12-5-4 to 12-5- 13, inclusive, the party shall provide for such election in the party's constitution or bylaws.

**12-5-3. National convention delegate candidates - Requirement for names on nominating petition - Form and arrangement of primary ballot.** Repealed by SL 1977, ch 107, § 10.

**12-5-3.1. First approved delegate slate to show preferred presidential candidate - Disapproval of slate by candidate.** Repealed by SL 1977, ch 107, § 10.

**12-5-3.2. National convention delegate candidates - Pledge to support preference choice for President.** Repealed by SL 1977, ch 107, § 10.

**12-5-3.3. Selection of method of allocating national convention vote - Alternatives available.** Repealed by SL 1977, ch 107, § 10.

**12-5-3.4. Certification of national convention slates - Placement on ballot.** Repealed by SL 1977, ch 107, § 10.

**12-5-3.5. Certification of slates by state chairman - Mandamus to compel certification - Hearing.** Repealed by SL 1977, ch 107, § 10.

**12-5-3.6. Selection of method of allocating national convention vote.**

A state political party, in its Constitution or bylaws, shall determine the method of allocating delegates and alternates to its next national convention.

**12-5-3.7. Method determined by each party.** Repealed by SL 2007, ch 74, § 6.

**12-5-3.8. Certification of slates for primary - Placement on ballot.**

If a political party chooses to have a primary for selection of its delegates and alternates to the national convention, the party shall certify the candidate names or the delegate and alternate slates which are to be listed on the primary ballot to the secretary of state by the last Tuesday in March preceding the primary by five p.m. Only candidates or slates certified may be placed on the ballot by the secretary of state and the position of the candidates or slates on the primary ballot shall be chosen by lot by the secretary of state. The certification shall be deemed to be filed if mailed by registered mail by five p.m. on the last Tuesday in March.

**12-5-3.9. Certification of candidates or slates by state chairperson - Mandamus to compel certification - Hearing.**

The state chairperson of the political party shall certify the candidates or slates to the secretary of state. If the state chairperson wrongfully refuses to certify any candidate or slate, the aggrieved candidate or slate of delegates and alternates is entitled to a writ of mandamus against the state chairperson pursuant to chapter 21-29 to compel certification. A hearing upon the writ shall be held within five days of the commencement of the action.

**12-5-3.10. Alternatives available for selection of national convention delegates and alternates.** Repealed by SL 2007, ch 74, § 9.

**12-5-3.11. Primary election of national convention delegates and alternates - Grouping of names on nominating petition - Statement of preference.**

If a political party has no prescribed method of selection of slates of delegates and alternates to its national convention, the slates of delegates and alternates to the national convention shall be elected by the primary. Names of candidates for delegates and alternates to the national convention, in number equal to the entire number of the

delegates and alternates to be selected, shall be grouped in a slate under the respective designations upon a single nominating petition. The nominating petition shall contain a statement indicating the candidates for delegates collective preference choice for President of the United States, if any, or that the candidates have no preference or are uncommitted. No name of any candidate for delegate or alternate may be filed in more than one slate.

**12-5-3.12. Preference of first nominating petition filed - One slate per candidate - Petitions rejected for noncompliance - Verified notice of disapproval filed by designated candidate removes slate from ballot.**

Under a petition filed under §12-5-3.11, the first nominating petition filed indicating a preference choice for any given person for President of the United States shall give the slate listed thereon the exclusive right to have their names appear on the ballot in preference of that person. Only one slate shall appear on the ballot in preference of any one person for President of the United States. Any nominating petition which does not comply with the requirements of law for such petitions shall not be accepted. Petitions shall be checked for such compliance at the time in the order of filing and the first to be found to be in compliance with law shall be accepted for purpose of this section. No slate of delegates or alternates appearing on a nominating petition filed pursuant to this section shall be placed on the ballot if the person designated as presidential candidate in such petition shall file a verified notice of disapproval. This notice must be filed with the secretary of state by such candidate within the time period required for the filing of nominating petitions for the primary.

**12-5-3.13. Election of all delegates by slate receiving most votes.**

In any election conducted under §12-5-3.11 and §12-5-3.12, the slate that receives the most votes shall elect all of its delegates and alternates on that slate.

**12-5-3.14. Notice by candidates or supporters of intention to enter presidential primary.**

Any candidate, committee, or group supporting a candidate in any presidential primary, shall, by the last Tuesday in March prior to the presidential primary election, notify the secretary of state of an intention to have the name of the candidate placed on the presidential primary election ballot or submit a slate of candidates or both.

**12-5-3.15. State board to adopt rules.**

The state board of elections may adopt rules pursuant to chapter 1-26 to implement 12-5-3.6 to 12-5-3.14, inclusive.

**12-5-3.16. Certification of names of national convention nominees for President and vice-president - Alternate certification.**

The chairperson of the national convention of each political party recognized pursuant to § 12-1-3 or 12-5-1 shall certify the names of the convention nominees for President and vice-president of each political party to the secretary of state immediately following the convention. If the national certification is not received or is inconclusive, the names shall be certified by the state chairperson of that party at the request of the secretary of state.

**12-5-3.17. Candidate for other office certified under § 12-5-3.16 to choose candidacy - Effect of failure to choose - Filling resulting vacancy.**

Notwithstanding the deadline provided in § 12-6-55, if any person is certified as a presidential or vice-presidential candidate pursuant to § 12-5-3.16 and that person is a candidate for another office, the person shall choose one of the candidacies and withdraw from any other candidacy. If the person fails to choose one of the candidacies within seven days of certification as a presidential or vice-presidential candidate, the person is deemed to have chosen the candidacy pursuant to § 12-5-3.16 and is further deemed to have withdrawn from any other candidacy. The resulting vacancy may be filled within seven days after the withdrawal in the manner provided in §§ 12-6-56 and 12-6-57.

**12-5-4. Statement filed by candidates for precinct committee - Time of filing - Contents.**

A candidate for party precinct committeeman or committeewoman shall file a statement in writing, with the county auditor of the county in which he or she is a candidate, not later than the last Tuesday in March before the primary election. The statement shall state that the candidate:

(1) Is a resident of the precinct;
(2) Is registered as a member of the political party named in the statement;
(3) Is a candidate for precinct committeeman or committeewoman, as the case may be;
(4) Is desirous of serving in that position; and
(5) If elected, will qualify and serve in the office.

The statement, when properly filed, shall operate as a nominating petition for that office.

**12-5-4.1. Unopposed candidate for precinct committee automatically elected.**

Any candidate who has filed a statement of candidacy, as required by §12-5-4, having no opposing candidate shall automatically be elected, and after the canvass of the primary shall be so declared.

**12-5-5. Posters furnished for listing precinct committee candidates - Specifications and form.** Repealed by SL 1972, ch 79, § 6.

**12-5-6. Entry and posting of names of candidates for precinct committee.** Repealed by SL 1972, ch 79, § 6.

**12-5-7. Order of listing of candidates for precinct committee - Display of posters.** Repealed by SL 1972, ch 79, § 6.

**12-5-8. Furnishing to precincts of ballots for precinct committee - Form prescribed by state board.**

At the time of printing the official primary election ballots, the county auditor shall also have printed in like number, and for each political party, separate ballots upon which party voters may vote for precinct committeeman and for precinct committeewoman of their political party. These ballots shall be furnished to any election precinct having a contest for such position at the same time with the other election supplies. The form of these ballots shall be prescribed by the state board of elections.

**12-5-9. Votes for precinct committee restricted to nominees.**

Only candidates nominated pursuant to §12-5-4 shall be voted upon for such precinct committeeman or committeewoman.

## *Primary Elections*

**12-5-10. Statement filed by precinct committee candidate where voting machine used - Time of filing.** Repealed by SL 1972, ch 79, § 6.

**12-5-11. Precinct committee candidates included in facsimile ballot for voting machines.** Repealed by SL 1974, ch 118, § 200.

**12-5-12. Precinct committee candidates listed on voting machine ballot labels - Voting restricted to nominees.** Repealed by SL 1974, ch 118, § 200.

**12-5-13. Precinct committeemen elected by plurality at primary - Term of office.**

The person receiving the highest number of votes of his or her party, shall be declared elected precinct committeeman and committeewoman respectively, of their party, and shall hold such position for two years, or until his or her successor is elected unless otherwise provided by the party's constitution or bylaws.

**12-5-14. County central committee - Composition - Organization - Certification of party officials.**

The precinct committeemen and the precinct committeewomen of each political party; the state committeemen and committeewomen; the county chairperson, vice-chairperson, and secretary- treasurer or secretary and treasurer; and the elected public officers who reside in the county and other officers as designated by the party's constitution or bylaws, constitute the county central committee of their respective parties. They shall form their party organization by electing a county chairperson and other officers as determined by the party's constitution or bylaws. The name and mailing address of the county chairperson shall be certified to the county auditor immediately following the election of the county chairperson or change of the county chairperson. The name and mailing address of the county officer responsible for the records and reports required pursuant to chapter 12-27 shall be certified to the secretary of state immediately following the election. The name and mailing address of the state party chairperson shall be certified to the secretary of state immediately following the election or appointment of the state party chairperson.

**12-5-15. Vacancies filled by county central committee--Exception.**

The county central committee may fill vacancies in its membership, except for public officers, in accordance with the party's constitution or bylaws.

**12-5-16. Composition of state committee.** Repealed by SL 2007, ch 74, § 12.

**12-5-17. Biennial state convention - Time and place - Notice to secretary of state.**

Each political party shall hold a state convention in each even-numbered year in which they are necessary for the purposes of §12-5-21. The time and place of holding such convention shall be determined by the state central committee of each political party, the chairman of which shall notify the secretary of state at least thirty days previous to the date so chosen.

**12-5-18. Voting by delegates to state convention.**

At the state convention of a political party, each delegate shall vote the number of votes equal to his proportionate representation as to all delegates present from that county bears to the number of votes cast in his county at the last gubernatorial election for his party candidate for Governor.

**12-5-19. Adoption of platform by state convention.** Repealed by SL 2007, ch 74, § 13.

**12-5-20. Nomination by convention of senatorial, congressional and gubernatorial candidates not selected by primary.** Repealed by SL 1985, ch 110, § 2.

**12-5-21. Nomination of state candidates not voted on at primary - Presidential electors and national committee members.**

The state convention shall nominate candidates for lieutenant governor, attorney general, secretary of state, state auditor, state treasurer, commissioner of school and public lands and public utilities commissioner and in the years when a President of the United States is to be elected, presidential electors and national committeeman and national committeewoman of the party.

**12-5-22. Majority required for nomination by convention--Certification to secretary of state.**

Nominations by a state convention shall be made by a majority vote of the votes cast and shall be certified to the secretary of state by the officers of the convention, within three days of the close of the convention. No certification may be received by the secretary of state later than the second Tuesday in August.

**12-5-23. State party officers elected by convention.** Repealed by SL 2007, ch 74, §§ 15, 16.

**12-5-24. Vacancy in office of national representative or state chairman filled under party bylaws - Certification to secretary of state.** Repealed by SL 2007, ch 74, §§ 15, 16.

## CHAPTER 12-6.

## PRIMARY ELECTIONS

Section

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### 12-6-1. Offices to which chapter applies.

The provisions of this chapter shall apply to the election to party office and for the nominations of political and nonpolitical candidates for public offices except as may be otherwise provided.

### 12-6-2. Third-term gubernatorial nomination prohibited.

No person shall be nominated under the provisions of this chapter for election to the office of Governor for a third successive term.

### 12-6-3. Filing for two offices at one election prohibited - Party offices excepted.

No person may be a candidate for nomination or election to more than one public office, no matter if such person appears on the ballot in name or is represented by electors pursuant to § 12-5-3.16 or 12-7-7. However, a candidate for any such office is not prohibited from being elected to any one or more party offices as may be provided in chapter 12-5.

### 12-6-3.1. Legislative candidates required to reside in district of candidacy.

Any candidate for office in the state Legislature shall be a resident of the district for which he is a candidate at the time he signs his declaration of candidacy as required by this chapter.

### 12-6-3.2. Candidate required to register with party.

No person may sign a declaration of candidacy or be nominated as a political candidate for a party unless that person is a registered voter with that party affiliation.

**12-6-4. Petition required to place candidate's name on primary ballot - Place of filing.**

Except as provided by § 12-5-4 and as may be otherwise provided in chapter 12-9, no candidate for any office to be filled, or nomination to be made, at the primary election, other than a presidential election, may have that person's name printed upon the official primary election ballot of that person's party, unless a petition has been filed on that person's behalf not prior to January first, and not later than the last Tuesday of March at five p.m. prior to the date of the primary election. If the petition is mailed by registered mail by the last Tuesday of March at five p.m. prior to the primary election, the petition shall be considered filed. A nominating petition for national convention delegates and alternates as provided in § 12-5-3.11 shall be filed in accordance with the provisions of this section. Nominating petitions for all party and public offices except legislative and judicial offices shall be filed in the office of the county auditor of the county in which the person is a candidate. Nominating petitions for legislative and judicial office whether elected in one or more counties, and all other party and public offices to be voted on in more than one county shall be filed in the Office of the Secretary of State.

**12-6-4.1. Earliest time for circulating petitions or certificates.**

No petition or certificate of nomination covered by this chapter may be circulated prior to the first day of January of the year in which the election will be held.

**12-6-4.2. Reimbursement of counties for election costs.** Repealed by SL 1997, ch 75, § 7.

**12-6-5. Form of nominating petition prescribed by state board.**

The form of the nominating petition shall be prescribed by the state board of elections.

**12-6-6. Joint petitions for delegate and legislative candidates - Individual petitions otherwise required.**

Two or more candidates for delegates to the state convention of the party, and except as to candidates in joint legislative districts, candidates for two or more legislative offices may be included in one nominating petition. Except as provided herein and in 12-5-3, individual nominating petitions shall be filed.

**12-6-7. Petition composed of several sheets - Number of signers required.**

A nominating petition may be composed of several sheets, which shall have identical headings printed at the head thereof. The petition for party office or political public office shall be signed by not less than one percent of the voters who cast their vote for that party's gubernatorial candidate at the last gubernatorial election in the county, part of the county, district, or state electing a candidate to fill the office.

**12-6-7.1. Petition for candidate for Legislature, county political public office, or county party office.**

Notwithstanding the provisions of 12-6-7 a nominating petition for a candidate for office in the state Legislature, county political public office and county party office shall be signed by not less than fifty voters or not less than one percent of the voters who cast their vote for the party's gubernatorial candidate, whichever is less. The petition shall clearly designate the senatorial or representative district for which said individual is a candidate.

**12-6-8. Time and manner of signing petition - Declaration of candidate - Verification - Signing for independent or nonpolitical candidate.**

No person shall sign the nominating petition of a candidate before January first in the year in which the election is to be held, nor for whom he is not entitled to vote, nor for a political candidate of a party of which he is not a member, nor of more than the number of candidates required to be nominated for the same office. There shall be added by either the signer or the circulator, the signer's place of residence, and the date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. A formal declaration of the candidate shall be signed by him prior to the circulation of petitions. The signed declaration of the candidate, or a facsimile thereof, may accompany and be a part of the petition. The original signed declaration shall accompany the group of petitions upon filing. Such petition shall be verified under oath by the persons circulating the same. The provisions of this section shall not prohibit a person registered with party affiliation from signing either a petition nominating an independent or a nonpolitical candidate for office if he has not previously signed a petition for that office to be filled.

**12-6-8.1. Withdrawal from primary election - Time and place of filing.**

Any person may have his or her name withdrawn from the primary election by making a written request under oath. The request shall be filed with the officer with whom the nominating petition was filed pursuant to § 12-6-4, not later than two days after the last Tuesday in March at five p.m. If the request is mailed by registered mail not later than two days after the last Tuesday in March at five p.m., the request is properly filed. No name that is withdrawn pursuant to this section may be printed on the ballots to be used at the election.

**12-6-9. Unopposed candidate automatically nominated - Primary not held if no contest.**

A candidate for nomination to an office, or election to a party office, having no opposing candidate within his party, shall automatically become the nominee of his party or elected party official for said office, and his name shall not be printed on the primary election ballot. If there are no opposing candidates for nomination or election of either state or county candidates in any county, no primary election shall be held in that county, and the candidates shall be automatically nominated or elected.

**12-6-10. Publication of notice of primary - Form.** Repealed by SL 1973, ch 74, § 14.

**12-6-11. Certification to county auditors of nominating petitions filed with secretary of state.**

It shall be the duty of the secretary of state, as soon as the time for filing nominating petitions in his office has passed, immediately to certify to the several county auditors of the state the names of the persons in whose behalf nominating petitions have been filed in his office as candidates for each political party separately, with the name of the office for which each person is a candidate, and certify the color, style and form of the official primary election ballot of each political party.

**12-6-12. Preparation and printing of official primary ballots - Candidates included.** Repealed by SL 1973, ch 74, § 14.

**12-6-13. Arrangement of names of candidates on ballot - Sequence of offices.** Repealed by SL 1973, ch 74, § 14.

**12-6-14. Form of official primary ballot prescribed by state board.**

The form of the official primary election ballot shall be prescribed by the state board of elections.

**12-6-14.1. Placement of candidates' names on voting machines.** Repealed by SL 1996, ch 94, § 2.

**12-6-15. Colors of party ballots - Ink and paper used - Form and size of ballots.** Repealed by SL 1973, ch 74, § 14.

**12-6-16. Preparation of nonpolitical judicial and educational ballots - Laws pertaining to nonpartisan elections unaffected.** Repealed by SL 1973, ch 74, § 14.

**12-6-17. Number of ballots printed - Retention by auditor and resupply of voting precincts.** Repealed by SL 1973, ch 74, § 14.

**12-6-18. Appointment and qualifications of judges and clerks of election - Designation of superintendent.** Repealed by SL 1972, ch 85, § 4.

**12-6-19. Judges of election acting as clerks where small vote expected.** Repealed by SL 1973, ch 74, § 14.

**12-6-20. Delivery of ballots, ballot boxes and supplies to precinct superintendents.** Repealed by SL 1973, ch 74, § 14.

**12-6-21. Filling vacancies among election judges or clerks.** Repealed by SL 1973, ch 74, § 14.

**12-6-22. Preparation of voting booths - Oath of election judges and clerks.** Repealed by SL 1973, ch 74, § 14.

**12-6-23. Appointment of party challengers - Right to remain in polling place - Protection by election judges and peace officers.** Repealed by SL 1973, ch 74, § 14.

**12-6-24. Time of opening and closing polls - Announcement of opening and closing - Voters waiting at closing time - Adjournment not taken until votes counted.** Repealed by SL 1973, ch 68, 3; 1973, ch 74, § 14.

**12-6-25. Distribution of duties among judges of election.** Repealed by SL 1973, ch 74, § 14.

**12-6-26. Qualifications of voters at primary - Party registration required.**

No person may vote a party ballot at any primary election unless the person is registered as a member of that political party in the precinct in which the person seeks to vote. Any political party in its constitution or bylaws may allow for participation in the party's primary elections by any person who is registered to vote with no party affiliation. Any such change to the constitution or bylaws of a political party shall be filed pursuant to § 12-5-1.1 by January first of the year in the which the primary is conducted.

**12-6-26.1. Party affiliation determined by duplicate registration - Affiliation of voter under emergency procedure.** Repealed by SL 1973, ch 74, § 14.

**12-6-27. Challenge of voter at primary - Oath of person challenged.** Repealed by SL 1973, ch 74, § 14.

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**12-6-28. Rejection of voter on refusal to take oath - Requiring subscription of oath.** Repealed by SL 1973, ch 74, § 14.

**12-6-29. Statement of party preference by voter - Marking and folding of ballot - Offer for deposit in ballot box.** Repealed by SL 1973, ch 74, § 14.

**12-6-30. Voter alone in booth - Showing of ballot or taking from room unlawful - Misdemeanor.** Repealed by SL 1973, ch 74, § 14.

**12-6-31. Manner of marking ballot - Identifying marks disqualifying.** Repealed by SL 1973, ch 74, § 14.

**12-6-32. Surrender and replacement of spoiled ballot - Disposition.** Repealed by SL 1973, ch 74, § 14.

**12-6-33. Announcement of voter's name and deposit of ballot in box - Entry on pollbooks.** Repealed by SL 1973, ch 74, § 14.

**12-6-34. Multiple voting as misdemeanor - Penalty.** Repealed by SL 1973, ch 74, § 14.

**12-6-35. Assisting or advising vote by disqualified person as misdemeanor - Penalty.** Repealed by SL 1973, ch 74, § 14.

**12-6-36. Importation of unqualified voters as misdemeanor - Penalty.** Repealed by SL 1973, ch 74, § 14.

**12-6-37. Bribery of voter as felony - Penalty.** Repealed by SL 1973, ch 74, § 14.

**12-6-38. Intimidation or interference with voting as misdemeanor.** Repealed by SL 1973, ch 74, § 14.

**12-6-39. Canvass of votes commenced on closing of polls - General election rules applicable.** Repealed by SL 1973, ch 74, § 14.

**12-6-40. Counting of voters and ballots for each party - Destruction of excess ballots.** Repealed by SL 1973, ch 74, § 14.

**12-6-41. Counting and tally of votes for candidates - Rejection of ballots not legally marked.** Repealed by SL 1973, ch 74, § 14.

**12-6-42. Footing and certification of tally sheets - Preparation and signature of return of votes.** Repealed by SL 1973, ch 74, § 14.

**12-6-43. Binding, sealing and endorsement of ballots.** Repealed by SL 1973, ch 74, § 14.

**12-6-44. Delivery of ballots, returns and records to county auditor.** Repealed by SL 1973, ch 74, § 14.

**12-6-45. Return of unused, spoiled and rejected ballots to county auditor - Retention in auditor's office.** Repealed by SL 1973, ch 74, § 14.

**12-6-46. County canvass and tabulation of election returns.** Repealed by SL 1973, ch 74, § 14.

**12-6-47. Abstract of votes for state and district offices certified to secretary of state.** Repealed by SL 1973, ch 74, § 14.

**12-6-48. State canvass and tabulation of returns from counties - Certification and filing of total vote.** Repealed by SL 1973, ch 74, § 14.

**12-6-49. Falsification or withholding of returns as misdemeanor - Penalty.** Repealed by SL 1973, ch 74, § 14.

**12-6-50. Nomination by plurality at primary.**

Any candidate for a party nomination to public office, who receives the highest number of votes cast by the voters of his party for the office for which he is a candidate, shall be declared the nominee of his party.

**12-6-51. Percentage of votes required to nominate for Congress, senate or Governor - Selection by state convention.** Repealed by SL 1985, ch 110, § 3.

**12-6-51.1. Percentage of votes required to nominate for Senate, House of Representatives, or Governor - Secondary election.**

If no candidate for United States Senate, United States House of Representatives, or Governor in a race involving three or more candidates receives thirty-five percent of the votes of the candidate's party, a secondary election shall be held three weeks from the date of the first primary election. At the secondary election the only persons voted for shall be the two candidates receiving the highest number of votes at the first election. However, if there is a tie for second place in the first primary election and there is no tie for first place, all tying second place candidates shall be placed along with the first place candidate on the ballot for the secondary election. The secondary election shall be held at the same polling places, be conducted, returned, and canvassed and the results declared in the same manner as the first election. However, if the secondary election does not have a federal race, the electronic ballot marking system is not required and hand-counted ballots may be used. The person receiving the highest number of votes at the secondary election is nominated as the candidate for the party.

**12-6-51.2. Canvass of votes for primary or secondary election - Submission to secretary of state.** Repealed by SL 1999, ch 72, § 1.

**12-6-51.3. Certification of runoff candidates.**

Within twenty-four hours after the completion of the canvass, the secretary of state shall certify runoff candidates, listed in the order determined by a drawing of names, to all county auditors.

**12-6-51.4. Combined election - Date held - Expenses and responsibilities shared as agreed.** Repealed by SL 2008, ch 34, § 10.

**12-6-52. Party officials elected by plurality at primary.**

Any candidate for party precinct committeeman, or committeewoman, or delegate to the state convention, who received the highest number of votes, shall be declared elected to the office for which he is a candidate.

**12-6-53. Determination of tie vote.** Repealed by SL 1973, ch 74, § 14.

**12-6-54. Preservation of nominating petitions and certificates of nomination - Open to public inspection.** Repealed by SL 1973, ch 74, § 14.

## *Primary Elections*

**12-6-55. Withdrawal by nominee - Time and place of filing.**

Any person nominated to any elective office may cause his name to be withdrawn from nomination by request in writing, subscribed and sworn to by him before any officer qualified to administer oaths and take acknowledgments. The request shall be filed with the officer with whom the nominating petition was filed pursuant to 12-6-4, not later than the first Tuesday in August at 5:00 p.m. before the ensuing election. No name so withdrawn shall be printed upon the ballots to be used at such election.

**12-6-56. Vacancies in party ticket to be filled by party committee.**

If a vacancy occurs by reason of death or withdrawal after a primary election, a party candidate for public office may be replaced by a new nominee if a meeting of the appropriate party central committee is held and the results are certified to the appropriate official within the times prescribed by § 12-8-6. If the vacancy is a party candidate for presidential elector or statewide office, the vacancy shall be filled by the State Party Central Committee. If the vacancy is a party candidate for public office other than presidential elector or statewide office, the vacancy shall be filled by a vote of county party central committee members in attendance who reside in the affected district.

**12-6-57. Meeting of party committee to fill vacancies - Manner of voting.**

The party state central committee chairman shall, upon learning of a vacancy for presidential elector or statewide office nominee, forthwith issue a call by mail for such central committee meeting to fill such vacancy, and designate the hour, date and place where such meeting shall be held. The call for a meeting of county party central committees interested, in multi-county legislative districts, to fill vacancies, shall be issued by the state party chairmen, who shall notify all interested central committee members of the hour, date and place where such meeting shall be held. A call for a meeting of a single-county district party central committee, to fill vacancies, shall be issued by such county central committee chairman upon learning of such vacancy. Vacancies filled by state central committee shall be by unit representation, each county casting the number of votes cast in that county at the last general election for that party's candidate for Governor; all other vacancies shall be filled by a majority vote of the party central committee or committees members present.

**12-6-58. Application of vacancy provisions to special congressional elections.**

Sections 12-6-56 and 12-6-57 shall also apply to the selection of candidates to be voted on at any special election to fill congressional vacancies pursuant to chapter 12-11.

**12-6-59. Meetings held and acts performed on day after legal holiday.** Repealed by SL 1973, ch 74, § 14.

**12-6-60. Application of primary election laws to unorganized counties.** Repealed by SL 1973, ch 74, § 14.

**12-6-61. Falsification, defacement or suppression of nominating petition or certificate as felony - Penalty.** Repealed by SL 1973, ch 74, § 14.

**12-6-62. General election laws applicable.** Repealed by SL 1973, ch 74, § 14.

**12-6-63. Violation of chapter as misdemeanor - Penalty.** Repealed by SL 1973, ch 74, § 14.

**12-6-64. Liberal construction of primary election laws.**

The laws of this state pertaining to primary elections shall be liberally construed so that the real will of the voters may not be defeated by a mere technicality.

## CHAPTER 12-6A.

## PRESIDENTIAL PREFERENCE PRIMARIES

## [Repealed by SL 1980, ch 113, 1 to 10]

## CHAPTER 12-7.

## NOMINATION OF INDEPENDENT CANDIDATES

Section

12-7-1. Certificate required for nomination - Number of signers - Certification of candidate for lieutenant governor or vice president.
12-7-1.1. Earliest time for circulation of petitions or nominating certificates.
12-7-2 to 12-7-4. Repealed.
12-7-5. Primary election candidate prohibited from filing as independent for same office in same year.
12-7-6. Candidates for Legislature required to reside in district of candidacy.
12-7-7. Certificate of nomination for President or Vice President of the United States - Filing deadlines - Number of signatures.
12-7-8. Candidate for other office nominated under § 12-7-7 to choose candidacy - Effect of failure to choose.

**12-7-1. Certificate required for nomination - Number of signers - Certification of candidate for lieutenant governor or vice president.**

Any candidate for nonjudicial public office, except as provided in § 12-7-7, who is not nominated by a primary election may be nominated by filing with the secretary of state or county auditor as prescribed by § 12-6-4, not prior to January first at 8:00 a.m. and not later than the first Tuesday after the first Monday in June at 5:00 p.m. prior to the election, a certificate of nomination which shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed by registered mail by the first Tuesday after the first Monday in June at 5:00 p.m. prior to the election, it is timely submitted. The certificate of nomination shall be signed by registered voters within the district or political subdivision in and for which the officers are to be elected. The number of signatures required may not be less than one percent of the total combined vote cast for Governor at the last certified gubernatorial election within the district or political subdivision. An independent candidate for Governor shall certify the candidate's selection for lieutenant governor to the secretary of state prior to circulation of the candidate's nominating petition. The candidate and the candidate's selection for lieutenant governor or vice president shall sign the certification before it is filed. The State Board of Elections shall promulgate rules pursuant to chapter 1-26 prescribing the forms for the certificate of nomination and the certification for lieutenant governor.

**12-7-1.1. Earliest time for circulation of petitions or nominating certificates.**

## *Nomination of Independent Candidates*

No petition or certificate of nomination covered by this chapter may be circulated prior to the first day of January of the year in which the election will be held.

**12-7-2. Joinder of candidates in certificate prohibited - Nomination for more than one office prohibited.** Repealed by SL 1973, ch 74, § 14; 1973, ch 75, § 2.

**12-7-3. Signers to add address and date of signing.** Repealed by SL 1973, ch 75, § 2.

**12-7-4. Verification of certificate by circulator.** Repealed by SL 1973, ch 75, § 2.

**12-7-5. Primary election candidate prohibited from filing as independent for same office in same year.**

No person shall file a certificate of nomination pursuant to 12-7-1 for an office for which he has been a candidate in the primary election of the same year.

**12-7-6. Candidates for Legislature required to reside in district of candidacy.**

Any candidate for office in the state Legislature shall be a resident of the district for which he is a candidate at the time he signs his declaration of candidacy on the certificate of nomination as required by this chapter.

**12-7-7. Certificate of nomination for President or Vice President of the United States - Filing deadlines - Number of signatures.**

Any candidate for President or Vice President of the United States who is not nominated by a primary election may be nominated by filing with the secretary of state, not prior to January first at 8:00 a.m. and not later than the first Tuesday in August at 5:00 p.m. prior to the election, a certificate of nomination which shall be executed as provided in chapter 12-6. If the certificate of nomination is mailed by registered mail by the first Tuesday in August at 5:00 p.m. prior to the election, it is timely submitted. The number of signatures required may not be less than one percent of the total combined vote cast for Governor at the last certified gubernatorial election within the state. An independent candidate for President shall file a declaration of candidacy and a certification of the candidate's selection for Vice President with the secretary of state prior to circulation of the candidate's nominating petitions. The candidate and the candidate's selection for Vice President shall sign the certification before it is filed. The State Board of Elections shall promulgate rules pursuant to chapter 1-26 prescribing the forms for the certificate of nomination and the certification for Vice President.

**12-7-8. Candidate for other office nominated under § 12-7-7 to choose candidacy - Effect of failure to choose.**

Notwithstanding the deadline provided in § 12-6-55, if any person is nominated as a presidential or vice-presidential candidate pursuant to § 12-7-7 and that person is a candidate for another office, the person shall choose one of the candidacies and withdraw from any other candidacy. If the person fails to choose one of the candidacies within seven days of certification as a presidential or vice-presidential candidate, the person is deemed to have chosen the candidacy pursuant to § 12-7-7 and is further deemed to have withdrawn from any other candidacy.

# CHAPTER 12-8.

# CERTIFICATION OF NOMINATIONS

Section

12-8-1. Certification by county board of nominees at primary - Certificate of election of party officials.
12-8-2. Certification by state board of nominees at primary - Certificate of election of party officials.
12-8-3 to 12-8-5. Repealed.
12-8-6. Time of filing certificates of nomination.
12-8-7. Repealed.
12-8-8. Certification to county auditors of persons nominated for office - Delayed certification of presidential and vice-presidential candidates.

**12-8-1. Certification by county board of nominees at primary - Certificate of election of party officials.**

The county canvassing board, as soon as the returns of any primary election are canvassed, as provided in chapter 12-20, shall issue and mail to each person whom the returns show nominated for any county office, a certificate of nomination. The county canvassing board shall certify the names of such nominees to be printed on the official ballot at the succeeding November election. The board shall issue and mail a certificate of election to each person whom the returns show elected as party precinct committeeman or committeewoman, delegate or alternate to the state convention. The certificate shall be duly executed by said county canvassing board under the seal of the county. The county canvassing board shall similarly certify the election of the delegates and alternates to the state convention to the state political parties.

**12-8-2. Certification by state board of nominees at primary - Certificate of election of party officials.**

The state canvassing board, as soon as the returns of any primary election are canvassed as provided in 12-20-38, shall issue and mail to each person whom the returns show nominated for any congressional, state, judicial, or legislative office, or nominated pursuant to 12-6-9 or chapter 12-9, a formal certificate of nomination and shall certify the names of such nominees to be printed upon the official ballot at the succeeding November election under their respective political party designations; and to each person whom the returns show elected to a party position, a formal certificate of election; said certificates to be duly executed by said canvassing board under the great seal of the state.

**12-8-3. Filing of party committee nominations to fill vacancies.** Repealed by SL 1973, ch 76, § 6.

**12-8-4. Filing of certificates for independent candidates for local office.** Repealed by SL
1973, ch 76, § 6.

**12-8-5. Filing of certificates for independent candidates for state or district office.** Repealed by SL 1973, ch 76, § 6.

**12-8-6. Time of filing certificates of nomination.**

Nominations by party committee to fill vacancies occurring in nominations made in primary elections and certificates of nomination to be filed with the secretary of state and those to be filed with the county auditor shall be filed not later than the second Tuesday in August at five p.m. or mailed by registered mail by that date and time prior to the election.

## *Certification of Nominations*

**12-8-7. Filing requirements not applicable to special elections.** Repealed by SL 1974, ch 118, § 200.

**12-8-8. Certification to county auditors of persons nominated for office - Delayed certification of presidential and vice-presidential candidates.**

The secretary of state, not later than the third Tuesday in August at five p.m. before the general election, shall certify to the county auditor of each county within which any voters of this state vote for the officer or officers nominated at the preceding primary, whose certificates of nomination have been filed in the Office of the Secretary of State, or who have been regularly named or petitioned for filling of a vacancy, the name and description of each person so nominated. In years when a President and vice president are nominated and the national party conventions are held at such a late date as to make the foregoing provisions impossible, then, the secretary of state shall make the certification not later than seven days after nominations of such President and vice president.

# CHAPTER 12-9.

# JUDICIAL NOMINATIONS AND ELECTIONS

Section

12-9-1. Judicial officers nominated and elected in nonpolitical elections.
12-9-2. Party endorsement or nomination of judicial candidates as misdemeanor.
12-9-3. Repealed.
12-9-3.1. Individual judicial positions designated by secretary of state.
12-9-4. Filing of nominating petitions - Number of signatures - Form and contents.
12-9-5. Repealed.
12-9-6. Party references prohibited in petitions filed.
12-9-7. Repealed.
12-9-8. Primary not required if no more than two candidates for each position.
12-9-9. Repealed.
12-9-10. Order of listing candidates on ballot - Arrangement by lot - Right to be present.
12-9-11. Repealed.
12-9-12. Preparation of judicial primary ballots - Order of listing candidates.
12-9-13. Form of judicial ballot prescribed by board.
12-9-14. Nomination by highest vote - Number of nominees.
12-9-15. Petitions to fill vacancies after primary.
12-9-16 to 12-9-20. Repealed.

**12-9-1. Judicial officers nominated and elected in nonpolitical elections.**

All candidates for the office of judge of the circuit court, and such other judicial officers as may be required by law to be elected, shall be nominated and voted for at the primary and general elections in the manner provided by this chapter and not otherwise.

**12-9-2. Party endorsement or nomination of judicial candidates as misdemeanor.**

It is a Class 2 misdemeanor for any political party to endorse or nominate by any convention, or other method, any candidate for judicial office.

**12-9-3. Individual nomination petitions required for nomination of judicial officers.** Repealed by SL 1973, ch 74, § 14.

**12-9-3.1. Individual judicial positions designated by secretary of state.**

The secretary of state shall designate each individual judicial position to be filled by election. The position that is assigned to an individual judge is assigned also to the judge's successor in office. A candidate for circuit court shall indicate the specific position for which the candidate is running.

**12-9-4. Filing of nominating petitions - Number of signatures - Form and contents.**

Nominating petitions for judicial office filed pursuant to this chapter shall state the judicial position sought, using the designations established pursuant to 12-9-3.1, which shall be filed in the office of the secretary of state within the time prescribed by 12-6-4 and shall be signed by not less than fifty registered voters of the district or circuit or other division of court boundaries. To the extent it is consistent with this chapter, 12-6-8 shall govern such petitions.

**12-9-5. Form of nominating petitions for judicial office.** Repealed by SL 1974, ch 118, § 200.

**12-9-6. Party references prohibited in petitions filed.**

In any petition filed by or on behalf of any candidate for nomination to judicial office at any primary election or any attachment thereto no reference shall be made to any party ballot or to the party affiliation of such candidate.

**12-9-7. Verification of petition by circulator.** Repealed by SL 1974, ch 118, § 200.

**12-9-8. Primary not required if no more than two candidates for each position.**

When nominating petitions are filed on behalf of candidates not to exceed twice the number of persons for the number of judicial positions to be filled, the names of such persons need not be placed upon the primary ballot but such persons shall be the nominees for such positions.

**12-9-9. Certification to county auditors of candidates for Supreme, circuit and district county courts - District comprised of several counties - Names printed in order certified.** Repealed by SL 1974, ch 118, § 200.

**12-9-10. Order of listing candidates on ballot - Arrangement by lot - Right to be present.**

The order of names of judicial candidates certified by the secretary of state to each of the county auditors shall be arranged by lot. Any candidate shall have the right to be present or represented when the arrangement is being determined.

**12-9-11. Order of name of candidates for district county judge.** Repealed by SL 1974, ch 118, § 200.

**12-9-12. Preparation of judicial primary ballots - Order of listing candidates.**

At all primary elections at which candidates for judicial office are to be nominated and a primary is required there shall be prepared and furnished by the several county auditors, separate ballots upon which shall be placed the names of the candidates for

such offices, which ballots shall be entitled "nonpolitical judiciary ballot" and shall contain no other designation. The names of all candidates shall be placed thereon without any party designation in the order designated by the secretary of state.

**12-9-13. Form of judicial ballot prescribed by board.**

The form of the nonpolitical judiciary ballot shall be prescribed by the state board of elections.

**12-9-14. Nomination by highest vote - Number of nominees.**

The nominees shall be those persons constituting twice the number of persons to be elected receiving the highest number of votes in the primary election.

**12-9-15. Petitions to fill vacancies after primary.**

Whenever after nominations have been made under the provisions of this chapter and the number of nominees for a judicial office shall be reduced through death, withdrawal, or disqualification of a nominee or nominees for such office, the registered voters of the district or circuit as the case may be, may, if there is sufficient time for filing a nominating petition pursuant to 12-8-6, nominate one or more candidates for such judicial office by a petition otherwise complying with 12-9-4.

**12-9-16. Form of petition to fill vacancy controlled by chapter - Number of signers required.** Repealed by SL 1974, ch 118, § 200.

**12-9-17. Restrictions on filling of vacancies in two-judge circuits with limitations on residence of judges.** Repealed by SL 1974, ch 118, § 200.

**12-9-18. Restrictions on filling of vacancies in three-judge circuits with limitations on residence of judges.** Repealed by SL 1974, ch 118, § 200.

**12-9-19. Recall provisions not applicable to judicial office.** Repealed by SL 1974, ch 118, § 200.

**12-9-20. Application of general election laws to judicial nominations and elections.** Repealed by SL 1974, ch 118, § 200.

## CHAPTER 12-10.

## NOMINATION AND ELECTION OF EDUCATIONAL OFFICERS

## [Repealed by SL 1971, ch 89, § 4; 1973, ch 74, § 14; 1974, ch 119, § 2]

## CHAPTER 12-11.

## SPECIAL CONGRESSIONAL ELECTIONS

Section

12-11-1. Special election to fill congressional vacancy - Time of election of representative.

12-11-1.1. Special election to fill congressional vacancy due to extraordinary circumstances.
12-11-2. Filing of election proclamation - Notice to county auditors and political parties - Nominations.
12-11-2.1. Absentee ballots cast by uniformed services or overseas voters in special election to fill congressional vacancy.
12-11-3. Filing of nominations - Certification - Conduct of elections.
12-11-4. Temporary appointment by Governor to fill vacancy in United States senate.
12-11-5. Special election to fill senate vacancy.
12-11-6. No special election if appointed senator's term expires at normal time.
12-11-7. Vacancy within ninety days of general election - Concurrent elections.
12-11-8. Nominations for specially elected senator - Vacancy near primary election.

**12-11-1. Special election to fill congressional vacancy - Time of election of representative.**

If a vacancy occurs in the office of a senator or representative in the United States Congress it shall be the duty of the Governor within ten days of the occurrence, to issue a proclamation setting the date of and calling for a special election for the purpose of filling such vacancy. If either a primary or general election is to be held within six months, an election to fill a vacancy in the office of representative in the United States Congress shall be held in conjunction with that election, otherwise the election shall be held not less than eighty nor more than ninety days after the vacancy occurs.

**12-11-1.1. Special election to fill congressional vacancy due to extraordinary circumstances.**

If a vacancy occurs in the office of representative in the United States Congress due to extraordinary circumstances as defined in 2 USC Chapter 1 § 8 as of January 1, 2008, the Governor shall immediately issue a proclamation calling and setting the date for a special election to fill the vacancy. The proclamation shall contain the deadline for nomination.

**12-11-2. Filing of election proclamation - Notice to county auditors and political parties - Nominations.**

The proclamation issued pursuant to § 12-11-1 or 12-11-1.1 of this Act shall be filed with the secretary of state who shall, if a special election is called for, notify each county auditor and the chair of each political party recognized pursuant to chapter 12-5 of the date and purpose of the special election. The State Central Committee of each recognized political party may nominate a person to fill the vacancy and any independent candidate filing nominating petitions meeting the requirements of § 12-7-1 may also have his or her name placed on the ballot.

**12-11-2.1. Absentee ballots cast by uniformed services or overseas voters in special election to fill congressional vacancy.**

If the date of the special election conducted pursuant to § 12-11-1.1 of this Act requires that absentee ballots cast by absent uniformed services voters or overseas voters arriving after election day be counted as required by 2 USC Chapter 1 § 8 as of January 1, 2008, these absentee ballots shall be processed and counted by the provisional ballot counting board. The provisional ballot counting board shall meet on the deadline established in 2 USC Chapter 1 § 8 as of January 1, 2008, for the return of these absentee ballots. The official county canvass shall be conducted within twenty-four hours after the conclusion of the absentee and provisional ballot count. The official state canvass shall be held within three days after the conclusion of the county canvass.

**12-11-3. Filing of nominations - Certification - Conduct of elections.**

Each party nomination and independent petition shall be filed with the secretary of state not less than forty-five days preceding any election which is not combined with a primary or general election. If the election is conducted with a primary election, each party nomination and independent petition shall be filed by the last Tuesday in March. Each nomination shall be certified in a like manner as any other nomination for the purpose of a general election. The election shall be conducted, canvassed, and the results certified as in a general election. If the election is conducted with a general election, each party nomination and independent petition shall be filed by the second Tuesday in August.

**12-11-4. Temporary appointment by Governor to fill vacancy in United States senate.**

Pursuant to the Seventeenth Amendment to the Constitution of the United States of America, the Governor may fill by temporary appointment, until a special election is held pursuant to this chapter, vacancies in the office of senator in the senate of the United States.

**12-11-5. Special election to fill senate vacancy.**

The special election to fill the vacancy of a senator shall be held at the same time as the next general election. The general election laws shall apply unless inconsistent with this chapter.

**12-11-6. No special election if appointed senator's term expires at normal time.**

No special election, to fill a vacancy, may be held if the term of office of the appointed senator expires in the month of January immediately following the next general election that would occur after the vacancy.

**12-11-7. Vacancy within ninety days of general election - Concurrent elections.**

If a vacancy occurs within ninety days of the next general election, the special election to fill the vacancy shall be held concurrently with the general election to be held two years later.

**12-11-8. Nominations for specially elected senator - Vacancy near primary election.**

Nominations of candidates for the special election for senator shall be conducted pursuant to chapter 12-6. If a vacancy occurs within ninety days of the date of the primary election, or between the primary election and at least ninety days prior to the general election, the provisions of 12-11-2 and 12-11-3 shall apply.

## CHAPTER 12-12.

## NOTICE OF ELECTIONS

Section

12-12-1. Notice of offices to be filled - Publication.
12-12-2 to 12-12-4. Repealed.
12-12-5. Notice of vacancy for an unexpired term--Publication.

**12-12-1. Notice of offices to be filled - Publication.**

The county auditor or other local election official charged with the conduct of local elections shall give notice of the offices that are to be filled by nomination or by declaration and the deadlines for filing in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than ten nor more than fifteen days before the deadline for filing. That same official shall give a further notice of each election stating the date and time of the election and designating polling places in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten days before the election. However, for any secondary election as provided for in § 12-6-51.1, one notice shall be published along with a copy of the ballot in each of the newspapers in the state which publish on Saturday and Sunday. The secretary of state shall direct the newspapers to publish the ballot and notice on the eleventh or twelfth day after the primary election. The secretary of state shall pay all costs of publication.

**12-12-2. Publication by county auditor of nominations certified for general or special election - Time of publication.** Repealed by SL 1973, ch 77, § 2.

**12-12-2.1. Uncontested candidacy included in notice.** Repealed by SL 1973, ch 77, § 2.

**12-12-3. Posting by sheriff in lieu of publication by county auditor.** Repealed by SL 1973, ch 77, § 2.

**12-12-4. Publication of facsimile ballot for voting machines - Expense of publication - Instructions for operation of machines.** Repealed by SL 1973, ch 77, § 2.

**12-12-5. Notice of vacancy for an unexpired term--Publication.**

If a vacancy for an unexpired term is to be filled by an election pursuant to § 3-4-6 and the vacancy occurs after the first notice of filing deadline is published pursuant to § 12-12-1, the county auditor shall give notice of the vacancy to be filled in each official newspaper at least once each week for two consecutive weeks. The first notice of vacancy shall be published in the week following the occurrence of the vacancy. The notice of vacancy shall include the deadline for filing partisan nominating petitions, if not yet passed, and the deadline for filing independent nominating petitions.

## CHAPTER 12-13.

## CONSTITUTIONAL AMENDMENTS AND SUBMITTED QUESTIONS

Section

12-13-1. Delivery of copies of submitted questions to county auditors - Attorney general's explanation.
12-13-2. Mailing to county newspapers of copies of submitted questions.
12-13-3. Newspaper publication of submitted questions - Compensation - Suspension of status on failure to publish - Election valid despite refusal to publish.
12-13-4. Lettering and numbering of submitted questions.
12-13-5. Statement to precede proposed constitutional amendments - Form prescribed by board.
12-13-6. Statement to precede initiated measures - Form prescribed by board.
12-13-7. Statement to precede referred laws.

12-13-8. Titles of proposed constitutional amendments.
12-13-8.1. Titles of initiated measures.
12-13-8.2. Titles of referred laws.
12-13-9. Attorney general's statement regarding constitutional amendment proposed by legislature and referred measure.
12-13-9.1. Availability of attorney general's explanation of proposed questions.
12-13-9.2. Action to challenge adequacy of attorney general's statement--Appeal--Time limits.
12-13-10. Repealed.
12-13-11. Materials printed on ballot in lieu of full text - Separate ballot.
12-13-12 to 12-13-15. Repealed.
12-13-16. Publication of false or erroneous information on constitutional amendment or submitted question as misdemeanor.
12-13-17 to 12-13-22. Repealed.
12-13-23. Distribution of public information – Statements of proponents and opponents
12-13-24. Style, form and wording of initiative or initiated amendment.
12-13-25. Review and comments by director of legislative research council.
12-13-25.1. Submission of initiative or initiated amendment to attorney general--Statement of attorney general--Title--Explanation--Filing with secretary of state--Recitation.
12-13-26. Unreviewed initiatives or initiated amendments unacceptable.
12-13-27. Special elections for constitutional amendments - Procedural changes - Reimbursement of costs.
12-13-28. Employment and compensation of petition circulators.

**12-13-1. Delivery of copies of submitted questions to county auditors - Attorney general's explanation.**

The secretary of state, at least twelve weeks prior to the general election, shall deliver to each county auditor a certified copy of each initiated measure, referred law, or proposed amendment to the Constitution to be voted on at the election, together with a statement, title, explanation, and recitation of the effect of a "Yes" or "No" vote to be published preceding the text of the initiative, referendum, or proposed amendment. The attorney general shall prepare each statement, title, explanation, and recitation.

**12-13-2. Mailing to county newspapers of copies of submitted questions.**

The county auditor shall, on or before the first day of October of each year when there is a general election, mail to each official newspaper of the county a copy of all measures and questions as certified to him pursuant to 12-13-1.

**12-13-3. Newspaper publication of submitted questions - Compensation - Suspension of status on failure to publish - Election valid despite refusal to publish.**

It shall be the duty of each official newspaper of the county to publish once not less than two nor more than four weeks prior to each general election full copies of that material supplied pursuant to § 12-13-2, and for such publication such newspaper shall receive compensation at the legal rate prescribed by law to be paid out of the general fund.

In case any official newspaper shall fail or refuse to make such publication as hereinbefore provided, such newspaper shall thereupon cease to be an official newspaper for the remainder of that year and for the following calendar year, and the board of county commissioners of such county shall appoint some other newspaper of such county as an official newspaper. The refusal of an official newspaper or newspapers to publish shall not invalidate the results of an election on such question.

**12-13-4. Lettering and numbering of submitted questions.**

Beginning with the 2004 general election and each election thereafter, each constitutional amendment shall be consecutively designated by a letter until each letter of the alphabet has been used for purpose of preparing the official ballots and notices. If all the letters have been used, the next constitutional amendment shall be designated at the beginning of the alphabet. Beginning with the 2004 general election and each election thereafter, each initiated measure or referred law shall be consecutively designated by a number for the purpose of preparing the official ballots and notices.

**12-13-5. Statement to precede proposed constitutional amendments - Form prescribed by board.** Repealed by SL 1994, ch 108, § 2.

**12-13-6. Statement to precede initiated measures - Form prescribed by board.** Repealed by SL 1994, ch 108, § 3.

**12-13-7. Statement to precede referred laws.** Repealed by SL 1994, ch 108, § 4.

**12-13-8. Titles of proposed constitutional amendments.** Repealed by SL 1994, ch 108, § 5.

**12-13-8.1. Titles of initiated measures.** Repealed by SL 1994, ch 108, § 6.

**12-13-8.2. Titles of referred laws.** Repealed by SL 1994, ch 108, § 7.

**12-13-9. Attorney general's statement regarding constitutional amendment proposed by legislature and referred measure.**

Before the third Tuesday in May, the attorney general shall deliver to the secretary of state an attorney general's statement for each amendment to the Constitution proposed by the Legislature, and any referred measure from an odd year. The attorney general's statement for each referred measure from an even year shall be delivered to the secretary of state before the second Tuesday in July. The attorney general's statement shall be written by the attorney general and shall consist of a title, an explanation, and a clear and simple recitation of the effect of a "Yes" or "No" vote. The title shall be a concise statement of the subject of the proposed amendment or referred measure authored by the attorney general. The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed amendment to the Constitution or the referred law. The attorney general shall include a description of the legal consequences of the proposed amendment or the referred law, including the likely exposure of the state to liability if the proposed amendment or the referred law is adopted. The explanation may not exceed two hundred words in length. On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed by the recitation.

**12-13-9.1. Availability of attorney general’s explanation of proposed questions.**

The secretary of state shall, immediately upon delivery from the attorney general, make the attorney general's statement for each proposed amendment to the Constitution, each initiated measure, and each referred law available to any person upon request.

**12-13-9.2. Action to challenge adequacy of attorney general's explanation--Appeal--Time limits.**

If the proponents or opponents of a proposed amendment to the Constitution, initiated measure, or referred measure believe that the attorney general's statement does not satisfy the requirements of § 12-13-9 or § 12-13-25.1, they shall, within seven days of delivery of the statement to the secretary of state, file an action in circuit court challenging the adequacy of the statement. The action takes precedence over other cases in circuit court and a final order shall be filed within fifteen days of the commencement of the action. Any party appealing the circuit court order to the Supreme Court shall file a notice of appeal within five days of the date of the circuit court order.

**12-13-10. Statement of effect of yes and no votes.** Repealed by SL 1974, ch 118, § 200.

**12-13-11. Materials printed on ballot in lieu of full text - Separate ballot.**

The title, explanation, recitation, place for voting, and statement as required by this chapter shall be printed on the ballot in lieu of the law, measure, constitutional amendment, or other question to be submitted to a vote of the people. All proposed constitutional amendments to be submitted at an election shall be placed on one ballot and all initiated measures or referred laws upon a separate ballot.

**12-13-12. Attorney general's abbreviated statement for use on voting machines.** Repealed by SL 1974, ch 118, § 200.

**12-13-13. Preparation and mailing to electors of sample ballots for submitted questions - Posting.** Repealed by SL 1974, ch 118, § 200.

**12-13-14. Publication of facsimile ballots in lieu of mailing samples - Compensation of newspaper.** Repealed by SL 1974, ch 118, § 200.

**12-13-15. Publication of constitutional amendments and submitted questions restricted to that provided.** Repealed by SL 1974, ch 118, § 200.

**12-13-16. Publication of false or erroneous information on constitutional amendment or submitted question as misdemeanor.**

Any person knowingly printing, publishing, or delivering to any voter of this state a document containing any purported constitutional amendment, question, law, or measure to be submitted to the voters at any election, in which such constitutional amendment, question, law or measure is misstated, erroneously printed, or by which false or misleading information is given to the voters, is guilty of a Class 2 misdemeanor.

**12-13-17. Separate ballot and separate ballot box for constitutional amendments and submitted questions.** Repealed by SL 1974, ch 118, § 200.

**12-13-18. Printing specifications for ballots on constitutional amendments and submitted questions - Size of ballots.** Repealed by SL 1974, ch 118, § 200.

**12-13-19. Marking of ballots on constitutional amendments and submitted questions.** Repealed by SL 1974, ch 118, § 200.

**12-13-20. Canvass and return of votes on constitutional amendments and submitted questions.** Repealed by SL 1974, ch 118, § 200.

**12-13-21. Unorganized county - Duties of auditor of county to which attached.** Repealed by SL 1974, ch 118, § 200.

**12-13-22. Failure to perform official duty as misdemeanor.** Repealed by SL 1974, ch 118, § 200.

**12-13-23. Distribution of public information – Statements of proponents and opponents.**

The secretary of state shall distribute public information on any constitutional amendment, initiated, or referred measure submitted to the electors for approval. The secretary of state shall compile the public information by printing a statement in support of the constitutional amendment, initiated, or referred measure written by its proponents, if any can be identified, and a statement against the constitutional amendment, initiated, or referred measure written by its opponents, if any can be identified. The secretary of state is not responsible for the contents, objectivity, or accuracy of the statements written by the proponents and opponents.

**12-13-24. Style, form and wording of initiative or initiated amendment.**

Each initiative or initiated amendment to the Constitution shall be written in a clear and coherent manner in the style and form of other legislation. Each initiative or initiated amendment to the Constitution shall be worded so that the effect of the measure is not misleading or likely to cause confusion among voters.

**12-13-25. Review and comments by director of Legislative Research Council.**

The sponsors of each initiative or initiated amendment to the Constitution shall submit a copy of the initiative or initiated amendment to the Constitution to the director of the Legislative Research Council for review and comment before it may be circulated for signatures. The director shall review each submitted initiative or initiated amendment to the Constitution to determine if the requirements of § 12-13-24 are satisfied. Within fifteen days of receipt of an initiative or initiated amendment to the Constitution, the director shall provide written comments on the initiative or initiated amendment to the Constitution to the sponsors of the initiative or initiated amendment and the secretary of state for the purpose of assisting the sponsors in complying with § 12-13-24. The sponsors may, but are not required to, amend the initiative or initiated amendment to the Constitution to comply with the director's comments.

**12-13-25.1. Submission of initiative or initiated amendment to attorney general--Statement of attorney general--Title--Explanation--Filing with secretary of state--Recitation.**

Following receipt of the written comments of the director of the Legislative Research Council, the sponsors shall submit a copy of the initiative or initiated amendment to the Constitution in final form, to the attorney general. The attorney general shall prepare an attorney general's statement which consists of a title and explanation. The title shall be a concise statement of the subject of the proposed initiative or initiated amendment to the Constitution. The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed initiated measure or initiated amendment to the Constitution. The attorney general shall include a description of the legal consequences of the proposed amendment or initiated measure, including the likely exposure of the state to liability if the proposed amendment or initiated measure is adopted. The explanation may not exceed two hundred words in length. The attorney general shall file the title and explanation with the secretary of state and shall provide a copy to the sponsors within sixty days of receipt of the initiative or initiated amendment to the Constitution.

If the petition is filed as set forth in § 2-1-2, the attorney general shall deliver to the secretary of state before the third Tuesday in May a simple recitation of a "Yes" or "No"

vote. On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed by the recitation.

**12-13-26. Unreviewed initiatives or initiated amendments unacceptable.**

The secretary of state may not accept any initiative or initiated amendment to the Constitution unless such initiative or initiated amendment to the Constitution has been submitted to the director of the Legislative Research Council and the director has reviewed and commented on such initiative or initiated amendment to the Constitution, and unless the attorney general has filed the title and explanation of the initiative or initiated amendment to the Constitution with the secretary of state.

**12-13-27. Special elections for constitutional amendments - Procedural changes - Reimbursement of costs.**

Notwithstanding any other provision of law, the Legislature may set a date for a special election for a statewide vote on any constitutional amendment proposed by the Legislature, pursuant to Article XXIII, Sections 1 and 3 of the South Dakota Constitution, and may provide in its resolution proposing such constitutional amendment an accompanying procedure, that may alter the time requirements but not the substantive provisions, of this chapter. The State shall reimburse each county for any costs incurred as a result of this section.

**12-13-28. Employment and compensation of petition circulators.**

No person may employ, reward, or compensate any person to circulate a petition for an initiated measure, referred law, or proposed amendment to the South Dakota Constitution based on the number of registered voters who signed the petition. Nothing in this section prohibits any person from employing a petition circulator based on one of the following practices:

(1) Paying an hourly wage or salary;
(2) Establishing either express or implied minimum signature requirements for the petition circulator;
(3) Terminating the petition circulator's employment, if the petition circulator fails to meet certain productivity requirements; and
(4) Paying discretionary bonuses based on reliability, longevity, and productivity.

Any violation of this section is a Class 2 misdemeanor.

## CHAPTER 12-14.

## PRECINCTS AND POLLING PLACES

Section
12-14-1. Designation of precincts and polling places by county commissioners - Changes - Separate voter lists of special voting districts.
12-14-1.1. Notice to county auditor of boundary change for local election.
12-14-2. Boundaries to be clearly defined in resolution.
12-14-3. Repealed.
12-14-4. Adjustment in size of precincts - Unreasonable waiting time.
12-14-5 to 12-14-8. Repealed.
12-14-9. Location of polling places.
12-14-10 to 12-14-12. Repealed.

12-14-13. Display of flag at polling places at election.
12-14-14. Sign to identify polling place on election day.
12-14-15. Change in precinct boundary or polling place.
12-14-16. Campaign signs at nonpublicly-owned polling place.

**12-14-1. Designation of precincts and polling places by county commissioners - Changes - Separate voter lists of special voting districts.**

The board of county commissioners shall by resolution provide for election precincts throughout its county and shall designate polling places within such precincts. The board shall establish new election precincts if required by the provisions of this chapter and may by resolution change the boundaries of election precincts already established. The county auditor shall be able to provide separate lists of voters living within the boundaries of each municipality, ward, school district, and any other special voting district.

**12-14-1.1. Notice to county auditor of boundary change for local election.**

The official in charge of a local election shall notify the county auditor at least forty-five days preceding a local election, of the precinct, ward, representation area, or external boundary changes if any have been made.

**12-14-2. Boundaries to be clearly defined in resolution.**

The resolution of the board of county commissioners establishing new precincts or making any change in precincts already established shall clearly set forth and define the boundaries of the election precincts established or altered.

**12-14-3. Civil township as election precinct.** Repealed by SL 1974, ch 118, § 200.

**12-14-4. Adjustment in size of precincts - Unreasonable waiting time.**

In all precincts the board of county commissioners shall adjust the size of any precinct at which there was unreasonable waiting time imposed upon the voters at the last preceding general election. Under ordinary circumstances, more than thirty minutes waiting time is deemed unreasonable waiting time except at the time when the polls close.

**12-14-5. Division of organized township into two precincts on petition by voters - Names of precincts - Polling places.** Repealed by SL 1974, ch 118, § 200.

**12-14-6. Combination of townships in single precinct.** Repealed by SL 1974, ch 118, § 200.

**12-14-7. Municipal ward as precinct - Consolidation of wards into single precinct.** Repealed by SL 1974, ch 118, § 200.

**12-14-8. Town and contiguous territory as separate precinct on petition by electors.** Repealed by SL 1974, ch 118, § 200.

**12-14-9. Location of polling places.**

Polling places shall be selected with reference to the convenience of the voters in the various election precincts, and should be as near the center of the election precincts as practicable but if in their judgment the convenience of the voters will be served thereby or if communication can be thereby made available, the polling place may be located outside the boundaries of the precinct.

## *Precincts and Polling Places*

**12-14-10. Selection of polling places by township or municipality - Designation by county commissioners.** Repealed by SL 1974, ch 118, § 200.

**12-14-11. Consolidation of precincts where voting machines used - Number of voters in precinct.** Repealed by SL 1996, ch 94, § 4.

**12-14-12. Number of precincts reported by county auditors to secretary of state.** Repealed by SL 2008, ch 34, § 11.

**12-14-13. Display of flag at polling places at election.**

The American flag shall be displayed inside or outside of all polling places within this state at each election.

**12-14-14. Sign to identify polling place on election day.**

On election day a sign, with a minimum size of eleven inches by seventeen inches, shall be conspicuously displayed outside of the entrance to any building in which a polling place is located to clearly identify the building as a polling place.

**12-14-15. Change in precinct boundary or polling place.**

No precinct boundary or polling place may be changed after the publication of the first notice of election is published as provided in § 12-12-1. If a designated polling place is destroyed or becomes otherwise physically unusable as a polling place after the first notice of election is published, the county auditor shall recommend a new polling place to be approved by the board of county commissioners. The approval of the new polling place may be made by the board of county commissioners during a conference call meeting.

Notice of the new polling place shall be conspicuously posted at the old polling place location. The county auditor shall also provide notice through the local print and broadcast media. The notice shall be sufficient to reasonably inform the affected voters of the change in polling place location or the county auditor shall mail a notice, if possible, no later than three days prior to the election, to each registered voter assigned to the affected polling place.

**12-14-16. Campaign signs at nonpublicly-owned polling place.**

If any nonpublicly-owned building is used as a polling place, the building owner may designate whether campaign signs will be allowed on the building's premises outside the area defined in § 12-18-3 on election day. If campaign signs are allowed, the building owner may not prohibit signs from any particular campaign.

# CHAPTER 12-15.

# PRECINCT ELECTION OFFICIALS

Section

12-15-1. Appointment by county auditor of precinct election officials - Names submitted by parties.
12-15-1.1, 12-15-1.2. Repealed.
12-15-1.3. Precinct assistant – Appointment – Duties.

12-15-2. Precinct superintendent and precinct deputy to be registered voters and residents of precinct.
12-15-2.1. Precinct superintendent and precinct deputy prohibited to serve as poll watchers.
12-15-3. Distribution of precinct officials among parties - Superintendent from majority party - Eligible appointees when list not provided.
12-15-4 to 12-15-6. Repealed.
12-15-7. Meetings of precinct officials for instruction on laws and duties - Compensation for attendance.
12-15-8. Repealed.
12-15-9. Oath of precinct officials - Entry in pollbook - Violation of oath as misdemeanor.
12-15-10. Replacement of precinct superintendent or precinct deputy failing to take oath or to serve.
12-15-11. Fee paid precinct superintendent and precinct deputy - Mileage for returning pollbooks and ballot boxes.
12-15-12. Repealed.
12-15-13. Certification of fee of precinct superintendent and precinct deputy - Order for payment from treasury.
12-15-14. Counting boards in large paper ballot precincts - Duties.
12-15-14.1. Counting boards in smaller precincts to avoid unreasonable delay.
12-15-14.2. Repealed.
12-15-14.3. Certain relatives of candidates prohibited from serving on election and counting boards.
12-15-15, 12-15-16. Repealed.

**12-15-1. Appointment by county auditor of precinct election officials - Names submitted by parties.**

The county auditor shall, not less than twenty days before any election, appoint a precinct superintendent and two precinct deputies who shall constitute the precinct election board and a precinct superintendent and two precinct deputies of the counting board if the board is appointed pursuant to § 12-15-14 or 12-15-14.1 for each of the voting precincts of the county. Two or four additional precinct deputies may be appointed. The county auditor shall make the appointments from lists of names submitted by the county central committee of each party. If the county auditor fails to receive the list at least forty-five days prior to an election, the county auditor shall make the appointments.

**12-15-1.1. Appointment of local election officials by county auditor upon resolution of local governing board - Continuing effect of resolution.** Repealed by SL 1985, ch 111, § 3.

**12-15-1.2. Local superintendents chosen - No extra pay.** Repealed by SL 1985, ch 111, § 4.

**12-15-1.3. Precinct assistant – Appointment - Duties**

In addition to the precinct election board, the person in charge of the election may appoint a person to be designated as the precinct assistant. The precinct superintendent shall prescribe the duties and conduct of the precinct assistant. The precinct assistant may not perform any of the duties of the precinct superintendent or precinct deputies unless specified by statute. The precinct assistant may assist with setting up the polling place, directing voters to the proper election board, and providing instruction on the use of the electronic ballot marking system.

## *Precinct Election Officials*

**12-15-2. Precinct superintendent and precinct deputy to be registered voters and residents of precinct.**

Any precinct superintendent or precinct deputy appointed under the provisions of § 12-15-1 shall be a registered voter and a resident of the precinct for which the person is appointed. If, by the time prescribed in § 12-15-1, a sufficient number of members of the precinct election board are unable to be appointed, a vacancy may be filled by appointing any registered voter of the county in which the precinct is located provided the voter meets the party distribution required by § 12-15-3.

**12-15-2.1. Precinct superintendent and precinct deputy prohibited to serve as poll watchers.**

No person appointed as a precinct superintendent or precinct deputy may serve as a poll watcher at that election.

**12-15-3. Distribution of precinct officials among parties - Superintendent from majority party - Eligible appointees when list not provided.**

In the appointment of the members of the precinct election board and of the counting board pursuant to this chapter, if three or more parties have candidates on the official ballot, one precinct deputy shall be appointed from each party whose candidate for Governor in the last gubernatorial election had at least fifteen percent of the votes as shown by the precinct returns. If two parties have candidates on such ballots, the members of the precinct election board shall be selected from each party and the party receiving a majority of the votes cast for Governor in the election precinct at the last preceding gubernatorial election shall have a majority of the members of the precinct election board. The precinct superintendent shall belong to the party whose candidate received the most votes for Governor in the last gubernatorial election in that precinct. If a precinct has been created since the last election, the precinct superintendent shall belong to the party which received the most votes for Governor in the county in the last gubernatorial election. If no list is provided by a party's county central committee pursuant to § 12-15-1, any registered voter who is not affiliated with a party as provided in this section may be chosen as a precinct election board member for the party which did not submit the list within time frame specified in § 12-15-1.

**12-15-4. Clerks of election chosen by superintendent - Party representation.** Repealed by SL 1975, ch 119, § 22.

**12-15-5. Judges acting as clerks in small precincts.** Repealed by SL 1993, ch 112, § 3.

**12-15-6. Election officials where voting machines used.** Repealed by SL 1974, ch 118, § 200.

**12-15-7. Meetings of precinct officials for instruction on laws and duties - Compensation for attendance.**

Prior to each general or primary election, each county auditor, assisted by the state's attorney, shall call together the superintendents from each of the precincts in the county, and any precinct deputy as the county auditor may deem appropriate, at some convenient time and place and instruct them on the election laws and the duties of the precinct superintendent and precinct deputies. Any person who is called to the meeting and who attends the meeting shall be paid a fee fixed by the board of county commissioners of not less than five dollars for attending the meeting.

**12-15-8. Preparation of instruction material by attorney general - Distribution of copies of law and sample ballots.** Repealed by SL 1974, ch 118, § 200.

**12-15-9. Oath of precinct officials - Entry in pollbook - Violation of oath as misdemeanor.**

Before performing election day duties, each precinct superintendent, precinct deputy, and precinct assistant of the election and counting boards shall severally take an oath in the following form:

I, A.B., do solemnly swear (or affirm) that I will perform the duties of precinct superintendent (or precinct deputy or precinct assistant) according to law and the best of my ability and that I will studiously endeavor to prevent fraud, deceit, and abuse and that I will act in an impartial manner in conducting the election about to be held.

The members of the precinct election board may administer the oath to each other. The person administering the oaths shall cause an entry thereof to be made and signed by the person and prefixed to the pollbook. A violation of this oath is a Class 1 misdemeanor.

**12-15-10. Replacement of precinct superintendent or precinct deputy failing to take oath or to serve.**

If any person appointed as precinct superintendent or precinct deputy neglects or refuses to be sworn or to act as such, the position of the person shall be filled by the voters of the precinct present at the polling place when it opens, from the different political parties, as provided in this chapter. The person so elected to fill the vacancy is vested with the same power for that election, as if regularly appointed.

**12-15-11. Fee paid precinct superintendent and precinct deputy - Mileage for returning pollbooks and ballot boxes.**

Each precinct superintendent and precinct deputy shall receive a fee to be established annually by resolution of the board of county commissioners at its first regular meeting each year. The person delivering the pollbooks and ballot boxes to the proper authority at the county seat shall receive the county rate for mileage as established pursuant to § 7-7-24, for miles necessarily traveled in going to and returning from making the delivery.

**12-15-12. Compensation of judges and clerks where voting machines used - Mileage for returning pollbook and keys to county seat.** Repealed by SL 1974, ch 118, § 200.

**12-15-13. Certification of fee of precinct superintendent and precinct deputy - Order for payment from treasury.**

The county auditor shall, on the receipt of the returns of any primary, general, or special election make out a certificate stating the fee that each precinct superintendent and precinct deputy is entitled. The county auditor shall submit the certificate to the board of county commissioners at its next session. The board shall order the fee to be paid out of the county treasury.

**12-15-14. Counting boards in large paper ballot precincts - Duties.**

In each election precinct in which the number of ballots to be voted on paper ballots, including absentee ballots, has in prior general elections exceeded three hundred voters, the auditor shall appoint a precinct counting board to be composed of five precinct deputies, one of whom shall be superintendent, who shall count the ballots

cast in the general election under the direction of the superintendent of the counting board.

**12-15-14.1. Counting boards in smaller precincts to avoid unreasonable delay.**

Notwithstanding 12-15-14, the county auditor may appoint counting boards in those precincts where the number of ballots to be voted on paper ballots, including absentee ballots, has in prior elections unreasonably delayed the completion of the ballot count even though the total number of ballots cast in prior elections did not exceed three hundred voters.

**12-15-14.2. Counting boards in voting machine precincts with large number of absentee ballots - Applicability.** Repealed by SL 1996, ch 94, § 5.

**12-15-14.3. Certain relatives of candidates prohibited from serving on election and counting boards.**

No person may serve on an election or counting board who is a candidate or related by blood or marriage within the second degree to a candidate who is on the ballot in that precinct.

**12-15-15. Composition and appointment of separate canvassing board - Qualifications.** Repealed by SL 1974, ch 118, § 200.

**12-15-16. Compensation of separate canvassing board - Mileage for delivery of pollbooks and ballot boxes to county seat.** Repealed by SL 1974, ch 118, § 200.

## CHAPTER 12-16.

## BALLOTS AND ELECTION SUPPLIES

Section

12-16-1. Printed ballots to be provided - Candidates listed - Sample ballots - Submitted questions.
12-16-1.1. Automatic election of unopposed candidate - Certificate of election.
12-16-1.2. Repealed.
12-16-2. Paper and printing specifications--Columns for parties and independent candidates-- Automatic tabulating systems.
12-16-2.1. Colors for ballots.
12-16-3. Repealed.
12-16-3.1. Order of party columns.
12-16-4. Repealed.
12-16-5. Order of offices placed on ballot.
12-16-6. Presidential and vice-presidential candidates listed - Single square to vote for electors.
12-16-7. Number stated where more than one to be chosen - More than one independent candidate.
12-16-8. Order of listing candidates for same office in same column.
12-16-9. Form for official ballot at general election.
12-16-10. Election of two or more candidates to same office - Official ballot.
12-16-11. Separate nonpolitical judiciary ballot.
12-16-12 and 12-16-13. Repealed.
12-16-14. Affidavit for correction of errors in ballot - Circuit court order - Patent errors corrected without order.
12-16-15. Posting of sample ballots.

12-16-16. Publication of facsimile ballots – Time for publication.
12-16-16.1. Publication of facsimile ballots by counties using same legal newspaper.
12-16-16.2. Publication of facsimile ballots – Compensation of newspapers.
12-16-17. Number of official and sample ballots provided to precincts - Reserve supply retained and delivered on request - Samples or photocopies used in emergency.
12-16-18. Delivery of ballots to precinct superintendents - Packaging and marking - Receipts.
12-16-19. Delivery of ballots and supplies at instruction meeting - Sheriff to receive in absence of precinct superintendent or precinct deputy.
12-16-20. Delivery of unbroken package to election board - Receipts.
12-16-21. Replacement of ballots lost, stolen or not delivered - Additional ballots.
12-16-22. Repealed.
12-16-23. Instruction cards for voters.
12-16-24. Repealed.
12-16-25. Posting of instruction cards and posters in polling place.
12-16-26. Construction of ballot boxes - Openings.
12-16-27. Repealed.
12-16-28. Pollbooks provided - Form.
12-16-29. Repealed.
12-16-30. Official stamp for ballots - Delivery of stamp and supplies.
12-16-31. Repealed.
12-16-32. Separate tally sheets provided.
12-16-33. Repealed.
12-16-34. Rules and columns on tally sheets.
12-16-35. Listing of candidates and submitted questions on tally sheets.
12-16-36. Space for tally marks and vote totals on tally sheets.
12-16-37. Space for tallying votes on submitted questions.
12-16-38. Tallying and marking of votes - Entry of total votes.
12-16-39. Tally sheets for candidates and submitted questions.
12-16-40. Repealed.
12-16-41. Tally lists govern over certificate.

**12-16-1. Printed ballots to be provided - Candidates listed - Sample ballots - Submitted questions.**

The county auditor shall provide printed ballots for each election in which the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a primary election shall contain the name of each candidate who has filed for nomination and is approved. The printed ballots for the election of officers shall contain the name of each candidate whose nomination has been certified or filed with the county auditor in the manner provided by law unless the candidate is deemed elected by having no opposition. The names of the candidates shall appear on the ballot exactly as listed in the declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed on paper of a different color from the official ballot but in the same form. The sample ballots and official ballots shall be printed and in the possession of the county auditor not later than forty-eight days prior to a primary or general election. Absentee voting shall begin no earlier and no later than forty- six days prior to the election. The county auditor shall also prepare the necessary ballots if any question is required to be submitted to the voters of the county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to 12-16-11, inclusive.

**12-16-1.1. Automatic election of unopposed candidate - Certificate of election.**

Any candidate who has been duly nominated to an elective office except state Legislature, political or nonpolitical, having no opposing candidate at the general election shall automatically be elected and the county auditor or secretary of state, as

the case may be, shall, following the official canvass, issue a certificate of election to such candidate and his name shall not be printed on the general election ballot.

**12-16-1.2. Ballot to reflect congressional term limits amendment.** Repealed by SL 1997, ch 80, § 1.

**12-16-2. Paper and printing specifications--Columns for parties and independent candidates-- Automatic tabulating systems.**

All official ballots shall be printed on good quality bond paper, in black ink, and in the English language. The names of candidates for each office shall be printed in large type under the designation of the party for which the nomination is made, so that all the names of candidates for each party are in separate columns, the names of candidates for each office are directly opposite each other, and the names of all independent candidates occupy a separate column under the heading, independent candidates. In precincts using automatic tabulating systems, the ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order or arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. No individual race or ballot question may be divided between pages. One ballot card may be used for recording a voter's vote on all races and measures.

**12-16-2.1. Colors for ballots.**

The state board of elections shall, by rule adopted pursuant to chapter 1-26, establish the color for sample and official ballots and of ballots to be voted in all elections so as to differentiate between the political, nonpolitical, party, and ballot question ballots. In primary elections, a separate ballot label booklet, marking device, and voting booth shall be used for each political party holding a primary.

**12-16-3. Order of party columns - Party headings.** Repealed by SL 1984, ch 107, § 1B.

**12-16-3.1. Order of party columns.**

If more than one political party qualifies for the general election, the position of each party's candidates on the ballot shall be determined by drawing of lots by the secretary of state at the same time and in the same manner as prescribed for candidates in § 12-16-8. Representatives of the parties may be present when the arrangement is determined. On paper ballots, the first party name drawn shall be placed in the left-hand column, the second party name drawn shall be placed in the next column, and each succeeding party name drawn shall be placed on the ballot in the order drawn. On direct recording electronic screens, on electronic ballot marking system screens, and on optical scan ballots, the candidate names shall appear in the order in which their party name was drawn.

**12-16-4. Party and individual candidate squares or circles - Addresses of candidates shown.** Repealed by SL 1976, ch 105, § 84.

**12-16-5. Order of offices placed on ballot.**

The names of the candidates shall be placed upon the ballot in the following order: presidential electors, if any, United States senator, if any, representatives in Congress, state officials, legislative, and county candidates.

**12-16-6. Presidential and vice-presidential candidates listed - Single square to vote for electors.**

The group of presidential electors in each column shall be preceded by the surnames of the respective candidates for President and vice-president for whom they are pledged; as for instance, "[ ] Coolidge and Dawes electors," "[ ] Davis and Bryan electors," etc., which shall be printed conspicuously and be preceded by a square as above indicated.

**12-16-7. Number stated where more than one to be chosen - More than one independent candidate.**

If more than one candidate is to be nominated or elected to the same office the ballot shall so state, as for instance, "For state senator, any two to be elected." In the independent column if there is more than one candidate for a single office the ballot shall so state, as for instance, "For United States senator, one to be elected."

**12-16-8. Order of listing candidates for same office in same column.**

If there is more than one candidate seeking nomination or election for the same office in any column, the names of candidates for that office shall be arranged by lot, under the supervision of the election official in whose office the candidates' nominations were filed. Each candidate has the right to be present or represented when the arrangement is being determined.

**12-16-9. Form for official ballot at general election.**

The form of the official general election ballot shall be prescribed by the state board of elections in accordance with other provisions of the law.

**12-16-10. Election of two or more candidates to same office - Official ballot.**

If two or more members of the state house of representatives or the county commission are to be elected at large from a county, that portion of the official ballot shall also be prescribed, in accordance with 12-16-8, by the state board of elections.

**12-16-11. Separate nonpolitical judiciary ballot.**

At each general election when judicial officers are elected, there shall be a separate ballot entitled "nonpolitical judiciary ballot" which shall be prescribed by the state board of elections.

**12-16-12. Nonpolitical educational ballot provided - Candidates listed.** Repealed by SL 1974, ch 118, § 200.

**12-16-13. Combined nonpolitical judicial and educational ballot - Order of offices listed - Highway board in unorganized county.** Repealed by SL 1974, ch 118, § 200.

**12-16-14. Affidavit for correction of errors in ballot - Circuit court order - Patent errors corrected without order.**

Whenever it shall appear by affidavit that an error has occurred in the publication of the names or descriptions of the candidates nominated for office or in the printing of any sample or official ballots, the judge of the circuit court, upon application of any voter, shall by an order require the county auditor or other officer charged with the duty of preparing ballots to correct such error or to show cause at such time and place as under the circumstances he may deem necessary why such error should not be corrected. The county auditor or such other officer shall, upon his own motion, correct

without delay any patent error in ballots which he may discover or which shall be brought to his attention.

**12-16-15. Posting of sample ballots.**

The county auditor shall post sample ballots in a manner that can be plainly seen and read by the public.

**12-16-16. Publication of facsimile ballots – Time for publication.**

The county auditor shall publish, in each official newspaper of the county, facsimiles of the official ballots of each election in which the voters of the entire county participate. The facsimile shall be published once in each legal newspaper in the calendar week prior to each election.

**12-16-16.1. Publication of facsimile ballots by counties using same legal newspaper.**

If two or more counties use the same legal newspaper and use the same type of ballot, that portion of the ballot which each county votes on in common may have its facsimile published once. If a portion of the ballot is not voted on in common, a facsimile of that portion of the ballot may be published simultaneously but separate from the common portion of the ballot and shall contain a description of who will vote on that portion of the ballot.

**12-16-16.2. Publication of facsimile ballots – Compensation of newspapers.**

This section applies when a facsimile ballot is published. The newspaper shall be compensated for publication of the facsimile ballot at the same rate as the general display rate or the qualifying contract rate, whichever is less, for the newspaper. The published facsimile may be reduced in size proportionately up to fifty percent but in no case may the ballot wording be in a type less than eight point. If a portion of a candidate ballot is not voted on in the entire county, a facsimile of that portion of the ballot may be published simultaneously but separate from the candidate ballot and shall contain a description of who will vote on that portion of the ballot. If at least fifty percent of a ballot is blank, the blank portion does not need to be printed.

**12-16-17. Number of official and sample ballots provided to precincts - Reserve supply retained and delivered on request - Samples or photocopies used in emergency.**

The county auditor shall provide official and sample ballots to each precinct in the county. The quantity provided for a primary election shall be at least ten percent more than the number of votes cast for the gubernatorial candidate of the respective parties in the preceding gubernatorial primary election. The quantity provided for a general election shall be at least ten percent more than the number of votes cast for all candidates for Governor as shown by the returns of the last preceding gubernatorial election. The county auditor shall also provide and retain in that office an ample supply of all official ballots, and if at any time before or during an election, an additional supply for any precinct shall be requested by the precinct superintendent, the county auditor shall immediately cause to be delivered, to the precinct superintendent, a supply of extra official ballots. If the supply of official ballots has been completely exhausted, the county auditor may make emergency substitution by delivering or authorizing the use of sample ballots or photocopies of the official ballot. The election board shall account for any sample ballots or photocopies authorized to be used.

**12-16-18. Delivery of ballots to precinct superintendents - Packaging and marking - Receipts.**

The county auditor shall, not later than the opening of the polls on the day of the election, cause to be delivered to the superintendent of election of each precinct the proper number of ballots provided for the use of the voters of such precinct at such election. The same shall be delivered in sealed packages, with marks on the outside of each package clearly stating the polling place for which it is intended, together with the number of ballots enclosed. Receipts for ballots, showing the number delivered, shall be given by the superintendent of election, which receipts shall at once be forwarded to the county auditor.

**12-16-19. Delivery of ballots and supplies at instruction meeting - Sheriff to receive in absence of precinct superintendent or precinct deputy.**

The ballots, together with all other election supplies may be delivered to the precinct superintendent or precinct deputy for each precinct at the time the precinct superintendent and precinct deputies are called together to receive instructions pursuant to § 12-15-7. If any precinct superintendent or precinct deputy from that precinct is not present to receive instructions, the ballots, election supplies, and the ballot boxes for the precinct shall be delivered to the sheriff for delivery to the precinct superintendent.

**12-16-20. Delivery of unbroken package to election board - Receipts.**

The precinct superintendent or precinct deputy receiving the package of ballots shall at the opening of the polls on election day cause the same to be delivered with the seal unbroken to the election board of the election precinct. The precinct superintendent or precinct deputy shall receive a receipt from a member of the precinct board and shall return the receipt to the county auditor with the election returns.

**12-16-21. Replacement of ballots lost, stolen or not delivered - Additional ballots.**

In case the ballots to be furnished to any precinct are, for any reason, not duly delivered or received, or if the delivery has been exhausted, destroyed, or stolen, the precinct superintendent shall immediately procure from the county auditor replacement ballots.

**12-16-22. Expense of printing and distributing ballots and instruction cards.** Repealed by SL 1974, ch 118, § 200.

**12-16-23. Instruction cards for voters.**

The county auditor shall cause to be printed, in large type on cards in the English language, voting rights notices and instructions for the guidance of voters in preparing their ballots in the form as prescribed by the State Board of Elections and deliver the cards with the ballots in sufficient numbers to meet the requirements of § 12-16-25.

**12-16-24. Contents of instruction cards.** Repealed by SL 1974, ch 118, § 200.

**12-16-25. Posting of instruction cards and posters in polling place.**

A member of the precinct election board may post no less than one of the instruction cards in each booth or compartment provided for the voting of ballots and not less than two of the instruction posters elsewhere in and about the polling place upon the day of

election.

**12-16-26. Construction of ballot boxes - Openings.**

Ballot boxes shall be so constructed to preclude the removal of any material therefrom except by means of an opening which may be secured in the closed position by means of a metal seal which will preclude opening of the box without the destruction of the seal; materials used in the construction of ballot boxes shall be such that they will prevent tampering with or mutilation of ballots within them. There shall be a second opening in each such ballot box, at the top when the box is upright, not larger than is sufficient to admit a single closed ballot to be inserted therein at one time.

**12-16-27. Metal seals used in lieu of padlocks on ballot boxes.** Repealed by SL 1974, ch 118, § 200.

**12-16-28. Pollbooks provided - Form.**

The person in charge of an election shall provide paper ballot precincts with a pollbook in the form prescribed by the state board of elections for each election precinct for the purposes of 12-18-5.

**12-16-29. Combination registration and pollbook furnished where voting machines used - Headings on pollbooks.** Repealed by SL 1974, ch 118, § 200.

**12-16-30. Official stamp for ballots - Delivery of stamp and supplies.**

Before opening the polls the county auditor or officer charged with the conduct of a local election shall deliver to the precinct superintendent of each precinct within the county, for use at the polling place of the precinct, a rubber stamp. The stamp shall contain the words, official ballot, the name or number of the election precinct, the name of the jurisdiction holding the election, and the date of the election. The date may be omitted if it is pre-printed on all ballots for the election. The stamp and other supplies for the election shall be delivered and receipted for by a member of the precinct election board in the manner and at the time as provided in this chapter for the delivery and receipt of packages of ballots.

**12-16-31. Tally sheets delivered to polling place before opening of polls.** Repealed by SL 1974, ch 118, § 200.

**12-16-32. Separate tally sheets provided.**

A separate tally sheet shall be provided for computing the votes for candidates of each political party, for independent candidates, and for judicial offices, and for all constitutional amendments, referred laws and initiated measures submitted to the voters at such elections as they appear on separate ballots.

**12-16-33. Combined tally sheets for nonpolitical candidates and submitted questions.** Repealed by SL 1974, ch 118, § 200.

**12-16-34. Rules and columns on tally sheets.**

The tally sheets in the area for tallying votes cast shall be ruled by horizontal and perpendicular lines so as to form squares of suitable size to contain five tally marks each, four of which may be upright and the fifth crossing the same at an oblique angle, every fifth perpendicular line in the ruling to be red, so that five squares for tally marks are contained between each two red lines. In a perpendicular column at the left margin of each tally sheet, there shall be left sufficient space so that there may be printed or

written in ink in plain and legible manner the names of all candidates and all questions submitted to the voters at the election, in the same order that they are arranged upon the official ballots used in such election. At the extreme right margin of the tally sheet there shall be a perpendicular column labeled as follows: "Total Votes."

**12-16-35. Listing of candidates and submitted questions on tally sheets.**

The names of candidates and all questions submitted to the voters shall be listed in the perpendicular column at the left of the tally sheet as required by 12-16-34.

**12-16-36. Space for tally marks and vote totals on tally sheets.**

There shall be at the right of each name or question in one or two horizontal lines a sufficient number of squares for the tally marks as provided in § 12-16-34, on the tally sheets for each precinct, to contain the tally marks for one-third more votes than were cast in the precinct at the last preceding general election, not exceeding six hundred in any case. There shall be sufficient spaces at the right of the squares on the tally sheet so that a member of the precinct election board may write out the total number of votes tallied for the candidate or question.

**12-16-37. Space for tallying votes on submitted questions.**

There shall be sufficient spaces at the right of the squares on each tally sheet used for questions submitted to the voters to tally in full the total number of votes tallied for each question voted upon.

**12-16-38. Tallying and marking of votes - Entry of total votes.**

After the tallying and marking in the tally sheet of the votes for each candidate, the number of votes so tallied for each candidate shall be counted, and the numerical result shall be placed in the column opposite the candidate's name.

**12-16-39. Tally sheets for candidates and submitted questions.**

The tally sheets for candidates for public office and submitted questions shall be prescribed by the state board of elections.

**12-16-40. Form for tally sheets for submitted questions.** Repealed by SL 1976, ch 105, § 84.

**12-16-41. Tally lists govern over certificate.**

In any case in which the certificate of the members of the precinct election board as to the number of votes cast for any candidate or in favor of or against any question submitted to the voters may not agree with the votes as shown by the tally list, the canvassing board to which the returns are made shall take as correct the number of votes shown by the tally list rather than the certificate.

## CHAPTER 12-17.

## VOTING MACHINES

**[Repealed by SL 1974, ch 118, § 200; Repealed by SL 1996, ch 94, §§ 6 to 24]**

# CHAPTER 12-17A.

# ELECTRONIC VOTING SYSTEMS

**[Repealed by SL 1994, ch 110, § 22]**

# CHAPTER 12-17B.

# AUTOMATIC TABULATING SYSTEMS

Section

12-17B-1. Definition of terms.
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12-17B-12. Test of system repeated prior to counting ballots.
12-17B-13. Procedure for tabulating votes - Results as unofficial returns - Certification by board.
12-17B-13.1. Operation of automatic tabulating equipment - Return of ballots - Out-stacking of ballots.
12-17B-14. Duplicate ballots substituted for rejected ballots.
12-17B-15. Sealing and storing tabulated ballots and program board.
12-17B-16. Recount procedures.
12-17B-17. Promulgation of rules.

## 12-17B-1. Definition of terms.

Terms used in this chapter mean:

(1) "Automatic tabulating equipment," the apparatus necessary to automatically examine and count votes as designated on ballots, or entered directly into a computer by means of a touch screen or other data entry device and data processing machines which can be used for counting these votes and tabulating results;

(2) "Ballot," paper ballots containing the names of candidates and statements of measures to be voted on;

(3) "Counting location," any location selected by the person in charge of the election for the counting of votes cast in an election. A counting location shall be within the territorial jurisdiction of such person unless there is no suitable tabulating equipment available within the jurisdiction. However, in any event, all counting locations shall be within this state;

(4) "Direct recording electronic," a voting system which records votes by means of a ballot display provided by electro-optical devices that can be actuated by the voter, that process the data by means of a computer program, and that records voting data in internal memory devices;

(5) "Electronic ballot marking system," any electronic device which marks votes on a ballot;

(6) "Optical scan," a procedure in which votes are tabulated by means of examining marks made in voting response locations on the ballots with an optical mark reader (OMR);

(7) "Resolution board," a board at an automatic tabulating location comprised of a representative from each political party having a candidate on the ballot and whose candidate on the county-wide ballot at the last general election received at least fifteen percent of the votes. The county auditor may request additional board members balanced evenly by party. If the resolution board consists of more than one member from each party, the party shall designate which member of the party shall serve as co-leader of the resolution board. The co-leaders shall ensure that each board member is conducting resolution board duties uniformly and in accordance with applicable statutes and administrative rules. The board shall determine the disposition of those ballots which cannot be properly counted by the tabulating equipment and observe the activities at the counting location on behalf of the board member's respective party affiliation. In strictly nonpartisan elections, the resolution board shall be comprised of two persons who are not employees of the jurisdiction conducting the election and shall be appointed by the person in charge of the election.

**12-17B-2. Capabilities required of automatic tabulating, direct recording electronic, or electronic ballot marking systems - Approval of changes or modifications.**

Any automatic tabulating, direct recording electronic, or electronic ballot marking system used in an election shall enable the voter to cast a vote for all offices and on all measures on which the voter is entitled to vote. Each system shall fulfill the requirements for election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state. No system may be approved unless the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.

**12-17B-2.1. Direct recording electronic voting system - Requirements.**

No direct recording electronic voting system may be certified or used unless it is capable of producing in random order a paper copy of each ballot cast on the system. No direct recording electronic voting system may be certified which transmits uncounted votes or ballots through the internet.

**12-17B-3. Authority of governing body to adopt, experiment with or abandon system.**

Any governing body having supervision of elections within any political subdivision may adopt, experiment with, or abandon any automatic tabulating, direct recording electronic, or electronic ballot marking system approved for use by the State Board of Elections. Any governing body may use the system in all or some of the precincts within its jurisdiction or in combination with any other type of voting system approved for use by the State Board of Elections.

## *Automatic Tabulating Systems*

**12-17B-4. Contract by political subdivision with county for use of system.**

The governing body of a political subdivision may contract with any county for the use of an automatic tabulating, direct recording electronic, or electronic ballot marking system for elections within the political subdivision.

**12-17B-5. Testing system before election - Public notice.**

Not more than ten days prior to an election, the person in charge of the election shall conduct a test of the automatic tabulating equipment to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the test shall be given at least forty-eight hours prior to the test by publication once in the official newspaper of the election jurisdiction. The test shall be open to the public. If any error is detected, the cause of the error shall be determined and corrected and an errorless count shall be made before the automatic tabulating equipment is approved.

**12-17B-6. Sufficient amount of equipment and supplies required.**

The person in charge of the election shall provide a sufficient number of voting equipment and supplies to accommodate the voters and avoid unreasonable waiting times for casting ballots.

**12-17B-6.1. Electronic ballot marking system required where candidate for federal office on ballot.**

If a candidate for federal office appears on the ballot at a polling place, such polling place is required to have an electronic ballot marking system present.

**12-17B-7. Voting instructions - Manner of giving instructions.**

Before entering the voting booth, any voter may request instruction in the proper procedure for marking the ballot to ensure that the tabulating equipment is able to read the vote cast. No instructions may be given to the voter while in the voting booth. However, any voter using an electronic ballot marking system may request instruction in the proper operation of the system at any time. No precinct official or person assisting a voter may in any manner request, suggest, or seek to persuade or induce any voter to cast a vote for any particular ticket, candidate, or measure to be voted on. All instructions shall be given in such a manner that it may be observed by other persons in the polling place.

**12-17B-8. Absentee ballots - Type to be used.** Repealed by SL 2005, ch 92, § 7.

**12-17B-9. Transporting sealed ballot box.**

Upon completion of the voting and after sealing the ballot box, two of the members of the precinct election board, of different major political parties, shall, by the most direct route, transport the box to the central counting location designated by the person in charge of the election or the ballots may be transported to the counting location by a sheriff's deputy and two deputy county auditors, one of each major political party, or by two deputy county auditors, one of each major political party.

**12-17B-10. Direction of proceedings at counting location - Open to public.**

All proceedings at the counting location shall be under the direction of the person in charge of the election and shall conform to the requirements of the voting system. The proceedings shall be open to the public. No person, who is not employed or authorized

for the purpose, may touch any ballot, ballot box, or equipment used in the return of the ballots to the counting location or the tabulation process.

**12-17B-11. Equal party representation amongst persons employed to receive, process or tabulate ballots - Submission of employee list - Oath required.**

Except for any specially trained technicians representing the equipment vendor and required for the operation of the automatic tabulating equipment, there shall be equal representation from each political party having a candidate on the ballot and whose candidate on the county-wide ballot at the last general election received at least fifteen percent of the votes amongst those employed or authorized to receive, process, or tabulate the ballots. The proposed list of employees shall be submitted to each county party chairperson at least thirty days prior to the election. Each person shall, prior to discharging any duties, take and subscribe to an oath as prescribed by the State Board of Elections.

**12-17B-12. Test of system repeated prior to counting ballots.**

The test required by 12-17B-5 shall be repeated immediately before the start of the official count of the ballots.

**12-17B-13. Procedure for tabulating votes - Results as unofficial returns - Certification by board.**

The procedure for tabulating the votes by the automatic tabulating equipment shall be under the direction of the person in charge of the election, and shall conform to the specifications and requirements of the automatic tabulating equipment. The results printed by the automatic tabulating equipment shall constitute the immediate unofficial returns. These returns shall be open to the public. The final returns printed by the automatic tabulating equipment shall be presented to the canvassing board for review and certification as the official returns.

**12-17B-13.1. Operation of automatic tabulating equipment - Return of ballots – Out-stacking of ballots.**

If automatic tabulating equipment is located at a polling place for processing ballots while the polls are open, the equipment may not be operated in a manner which returns an over-voted or partially under-voted ballot to the voter. The equipment shall be operated in a manner which returns any ballot that appears to the tabulating equipment to be blank or has any possible mark which the tabulating equipment cannot determine. If the ballot is returned to the voter, the voter may choose to remark the ballot, obtain a new ballot, or resubmit the ballot.

Any central count automatic tabulating equipment shall contain the capability to out-stack ballots and shall be operated in a manner to out-stack any ballot which appears to the tabulating equipment to be blank or has any possible mark which the tabulating equipment cannot determine. If the ballot contains any such mark, the resolution board shall examine the mark and make a determination of any individual vote according to the rules promulgated pursuant to chapter 1-26 by the state board of elections. The resolution board shall make a duplicate ballot as prescribed in § 12-17B-14 which shall be counted by the automatic tabulating equipment.

**12-17B-14. Duplicate ballots substituted for rejected ballots.**

The resolution board shall determine the disposition of those ballots which cannot be properly counted by the tabulating equipment. A true duplicate copy shall be made of any ballot in question and substituted for the rejected ballot. All duplicate ballots shall be clearly labeled "duplicate," shall bear a serial number which shall be registered on

the rejected ballot, and shall be counted in lieu of the rejected ballot. The resolution board may observe the activities at the counting location on behalf of their respective political party.

**12-17B-15. Sealing and storing tabulated ballots and program board.**

After the tabulating procedure is completed, the ballots shall be placed in boxes and resealed. Any program board which may be used in the automatic tabulating equipment shall be removed and stored similarly to the ballots.

**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.

**12-17B-17. Promulgation of rules.**

The state board of elections may promulgate rules pursuant to chapter 1-26 concerning:

(1) The criteria and procedure for approving voting systems pursuant to this chapter;

(2) Notices and forms;

(3) Test procedures; and

(4) The arrangement and conduct of voting, absentee voting, tabulating, preparing returns, and recounts.

## CHAPTER 12-18.

## ARRANGEMENTS AND CONDUCT OF VOTING

Section

12-18-1. Preparation for voting – Booths, electronic ballot marking system, and supplies to be provided – Private voting required.
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12-18-1.2. Specific duties of precinct superintendent.
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12-18-3. Electioneering, offices, distracting communications devices, and signature gathering prohibited near polling place--Violation as misdemeanor.
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12-18-4. Examination and sealing of ballot box before opening of polls - Closed until counting of vote.
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12-18-5. Poll lists maintained by member of precinct election board.
12-18-5.1 to 12-18-6. Repealed.
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12-18-6.3. Verification of identity -- Provisional ballot if identity not verified.
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12-18-7.1. Registered persons entitled to vote - Voting on duplicate registration card - Verification with auditor - Emergency voting card.
12-18-7.2. Voting without duplicate registration card on verification by auditor - Emergency voting card.
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12-18-12. Stamping of ballot before delivery to voter.
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12-18-26. Repealed.
12-18-27. Marked ballot not to be shown - Folding for deposit in ballot box.
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12-18-29 to 12-18-31. Repealed.
12-18-32. Packaging and return of unused ballots - Record accounting for ballots.
12-18-33. Comparison of ballot accounting with record of number sent to precinct - Notice and correction of discrepancies.
12-18-34 to 12-18-38. Repealed.
12-18-39. Provisional ballot -- Eligibility.
12-18-40. Use of provisional ballot.
12-18-41. Procedure for secretary of state to conduct election in emergency— Reimbursement of expenses.

**12-18-1. Preparation of voting booths and supplies for paper ballot elections - Private voting required.**

The superintendent of the election precinct is responsible for having the polling place ready to accommodate the voters in the precinct by the time the polls open. The booths, electronic ballot marking system, and supplies which enable the voter to complete the voter's ballot shall be provided by the person in charge of the election. If a voter chooses to use a sip and puff device or an A/B switch device with the electronic ballot marking system, the voter shall provide such device. All voting at the polling place shall be in private voting booths or compartments and, except as provided in § 12-18-25, shall be screened from observation.

**12-18-1.1. Verification of blank ballots received.**

## *Arrangements and Conduct of Voting*

Before the opening of the polls the members of the precinct election board shall count and verify against the receipt given the ballots delivered to the precinct for the purposes of the election.

**12-18-1.2. Specific duties of precinct superintendent.**

The precinct superintendent shall have charge of the conduct at the polling place and supervise the precinct deputies. The precinct superintendent shall issue instructions and assign the duties to each person for maintaining the registration lists and the pollbook and issuing and receiving the official ballots. The duties for each person may be interchanged or rotated during the course of the day.

**12-18-1.3. Verification of ballot labels and punch card ballots - Certificate.** Repealed by SL 2005, ch 92, § 8.

**12-18-1.4. Attendance by election officials during voting and counting.**

At all times after the polls are opened the precinct election officials shall remain at the polling place with the ballot boxes until the polls are closed and they have completed their duties.

**12-18-1.5. Attendance until polls closed by precinct superintendent and precinct deputies in precincts with counting boards - Attendance by board members during counting.**

In those precincts where counting boards have been appointed, the precinct superintendent and precinct deputies shall remain at the place of election at all times after the polls are opened until the polls are closed, the election supplies are turned over to the counting board and the certificate and receipt required by § 12-20-1 have been signed. At this time, the counting board shall assume its duties and the election board is excused. The members of the counting board shall remain at the place of vote counting at all times from the time the counting board assumes the duties until the completion of the vote count and execution of the returns on the election.

**12-18-2. Removal, destruction or defacement of supplies, candidate lists or instruction cards as misdemeanor - Penalty.** Repealed by SL 1974, ch 118, § 200.

**12-18-3. Electioneering, offices, distracting communications devices, and signature gathering prohibited near polling place--Violation as misdemeanor.**

Except for sample ballots and materials and supplies necessary for the conduct of the election, no person may, in any polling place or within or on any building in which a polling place is located or within one hundred feet from any entrance leading into a polling place, maintain an office or public address system, or use any communication or photographic device in a manner which repeatedly distracts, interrupts, or intimidates any voter or election worker, or display campaign posters, signs, or other campaign materials or by any like means solicit any votes for or against any person or political party or position on a question submitted or which may be submitted. No person may engage in any practice which interferes with the voter's free access to the polls or disrupts the administration of the polling place, or conduct any petition signature gathering, on the day of an election within one hundred feet of a polling place. A violation of this section is a Class 2 misdemeanor.

**12-18-3.1. Simulated elections - Access to polling place - Impartiality required - Notice to county auditor.**

Minors voting in a simulated election and persons supervising or working in a simulated election in which minors vote shall be allowed in a polling place. All activities associated with a simulated election are subject to the provisions of § 12-18-3, and all such activities shall be conducted in an objective, impartial, and nonpartisan manner that does not promote one candidate, party, or position over another. Any such activity shall afford any legally qualified candidate for any public office the opportunity to participate in the activity equal to the opportunity afforded to any other candidate for that office. A ballot used in a simulated election held pursuant to this section shall be labeled in such a manner as to easily distinguish such ballot. No results from a simulated election for minors may be released prior to the close of the polls. The superintendent of the election board shall exercise authority over all election and simulated election related activities at the polling place. Anyone conducting a simulated election for minors at a polling place shall notify the county auditor in that county at least thirty days prior to the election. If approved by the county commissioners, a county may participate in a simulated election pursuant to this section.

**12-18-4. Examination and sealing of ballot box before opening of polls - Closed until counting of vote.**

Before opening the polls each ballot box shall be carefully examined by the members of the precinct election board and everything in each ballot box shall be removed. Each ballot box shall then be sealed and may not be opened during the election except for vote counting as provided for in chapter 12-20.

**12-18-4.1. Preparation for voting – Test ballots – Custody of key activating system.**

Before any poll is opened, each electronic ballot marking system shall be prepared for voting. The precinct superintendent shall test the system by using the system to mark at least two ballots. The test ballots shall be provided by the person in charge of the election and clearly marked with words, Test Ballot. If the system does not properly mark the test ballots, the precinct superintendent shall work on the system until a successful test is conducted. The precinct superintendent shall maintain custody of the key to activate the system at all times.

**12-18-5. Poll lists maintained by member of precinct election board.**

A member of the precinct election board belonging to a political party which is not the same as the political party of the member of the precinct election board who has the registration list shall keep a poll list in paper or electronic format which contains in numerical order the names of all persons voting at the election and the type of ballot voted.

**12-18-5.1. Consecutive number slip issued in voting machine precinct - Surrender at machine.** Repealed by SL 1996, ch 94, § 29.

**12-18-5.2. Use of computerized registration list in certain precincts.** Repealed by SL 1993, ch 113, § 11.

**12-18-6. Proof of eligibility by voter not on registration list - Completion of registration card and affidavit.** Repealed by SL 1969, ch 83, § 5.

**12-18-6.1. Voters required to provide identification before voting.**

When the voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either:

(1) A South Dakota driver's license or nondriver identification card;

(2) A passport or an identification card, including a picture, issued by an agency of the United States government;

(3) A tribal identification card, including a picture; or

(4) A current student identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or technical school, located within the State of South Dakota.

**12-18-6.2. Affidavit in lieu of personal identification.**

If a voter is not able to present a form of personal identification as required by § 12-18-6.1, the voter may complete an affidavit in lieu of the personal identification. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the form of the affidavit. The affidavit shall require the voter to provide his or her name and address. The voter shall sign the affidavit under penalty of perjury.

**12-18-6.3. Verification of identity -- Provisional ballot if identity not verified.**

The person making an application for ballots shall announce his or her name and present his or her personal identification. A member of the precinct election board shall then verify that the picture on the personal identification presented under § 12-18-6.1 matches such person and that the name on the personal identification appears on the voter registration list pursuant to § 12-18-7.1. If the member cannot determine from the personal identification presented that the person making an application for ballots is the person listed on the voter registration list, the member may consider other forms of identification, personal knowledge and an explanation from the person making an application for ballots to match that person's name to a name on the registration list. If identity cannot be proven to the satisfaction of the member of the precinct election board or if the person making an application for ballots is challenged on the basis of identity by a member or a poll watcher, the person may vote a provisional ballot.

**12-18-7. Administration of oath to person registering at election - Superintendent of election as deputy for registration.** Repealed by SL 1969, ch 83, § 5.

**12-18-7.1. Registered persons entitled to vote - Voting on acknowledgment notice - Verification with auditor - Emergency voting card.**

Any person whose name appears on the precinct registration list may vote at that election. However, if a person's name does not appear on the registration list, but the person does present an acknowledgment notice, the person shall be permitted to vote if one of the members of the precinct election board communicates with the office of the county auditor and confirms that the person's name was erroneously omitted from the list. If it is not possible to communicate with the office of county auditor, the person may vote after executing an emergency voting card pursuant to § 12-18-7.2.

**12-18-7.2. Voting without acknowledgment notice on verification by auditor - Emergency voting card.**

If any person attempting to vote in any election claims to be registered or any person attempting to vote in any election claims to be in the inactive registration file but does not possess an acknowledgment notice and the person's name does not appear in the registration list of the precinct, the person may vote if one of the members of the precinct election board first confirms by telephone or other means with the county auditor or a deputy auditor that the name was erroneously omitted from the list, and an emergency voting card, in duplicate, in the form prescribed by the State Board of Elections is signed by the applicant and each member of the precinct election board.

The original emergency voting card shall be retained by the precinct superintendent as part of the precinct superintendent's permanent records, and the duplicate shall be given to the voter. In a primary election, the party affiliation of any voter using the emergency voting procedure of this section shall be designated on the emergency voting card.

**12-18-7.3. List of voters removed from lists furnished to judges - Alternative means of verification - Voter with duplicate card permitted to vote if in doubt.** Repealed by SL 1976, ch 105, § 84.

**12-18-7.4. Affirmation of voter's address.**

Any person whose name appears on the inactive registration list in the possession of the precinct superintendent may vote in any election following completion of an affirmation of the person's address in this state. If the voter has moved to a new address within the state, this affirmation shall serve as a new registration. The affirmation shall be prescribed by the state board of elections.

**12-18-8. Duty of election judge to challenge unqualified elector.** Repealed by SL 1974, ch 118, § 200.

**12-18-8.1. Number of poll watchers set by state board - Rules.**

The State Board of Elections shall promulgate rules pursuant to chapter 1-26 setting the number of poll watchers which are allowed in each polling place.

**12-18-9. Observation of voting and counting - Poll watchers' positions and accommodations.**

Any person, except a candidate who is on the ballot being voted on at that polling place, may be present at any polling place for the purpose of observing the voting process. Any person may be present to observe the counting process. A candidate who is on the ballot being voted on at a polling place may only be present to cast the candidate's vote during voting hours. A number of poll watchers shall be permitted for each candidate at a primary election or political party and independent candidate at a general election pursuant to § 12-18-8.1. Each polling place shall be arranged in a manner that permits each poll watcher to be positioned in a location where the poll watcher can plainly see and hear what is done within the polling place.

**12-18-9.1. Poll watchers and waiting voters not to see into booths - Interference with official actions - Violation as misdemeanor.**

The superintendent of elections may order poll watchers and voters waiting to vote to position themselves where the poll watchers and voters cannot see into voting booths, read identifying numbers on photo identification cards, or interfere with voters in the act of voting or with the official actions of the election board. A violation of such an order is a Class 2 misdemeanor.

**12-18-9.2. Removal of unauthorized material and disobedient persons - Arrest authorized.**

Each election officer and all law enforcement officers shall remove materials in violation of 12-18-3 and disobedient persons in violation of 12-18-9.1 and arrest any person so interfering with the conduct of the election.

**12-18-10. Grounds for challenge of applicant to vote - Determination by judges - Notation on registration list.**

If a person makes an application for ballots, or if an absentee ballot has been cast, the person's right to vote at that poll and election may be challenged only as to the person's identity as the person registered whom the person claims to be or on grounds that within fifteen days preceding the election the person has been convicted of a felony or declared by proper authority to be mentally incompetent. The proceedings shall be conducted before the precinct superintendent and precinct deputies who shall determine from the evidence presented whether or not the person is permitted to vote and the members of the precinct election board shall indicate beside the name on the registration list the ground stated and the result of the precinct election board's decision.

**12-18-11. Oath administered to challenged voter - Rejection of vote on refusal to take oath - False statement under oath as perjury.** Repealed by SL 1974, ch 118, § 200.

**12-18-12. Stamping of ballot before delivery to voter.**

Before delivering a ballot to any voter the member of the precinct election board in charge of the ballots shall stamp on the ballot the official stamp provided for that purpose as follows:
(1) On a hand-counted ballot, on the back and near the top of the ballot; and
(2) On an optical scan ballot, the location indicated by the person in charge of the election.

**12-18-13. Use of unauthorized ballot prohibited.**

No voter may receive or vote a ballot from any other person than the precinct superintendent or precinct deputy in charge of the ballots, nor may any person other than the precinct superintendent or precinct deputy deliver a ballot to the voter.

**12-18-14. Entry of voting booth or machine by voter.**

On receipt of his ballot or delivery to him of his voter's consecutive number, the voter shall forthwith and without leaving the polling place retire alone to one of the booths or voting machines provided to cast his vote.

**12-18-15. Voting without delay - Maximum time in booth or machine - Reentry prohibited.**

The person voting shall cast his vote without delay. No voter may occupy a voting booth or voting machine already occupied by another, nor occupy a voting booth or machine for more than ten minutes. No voter, other than an election officer, may reenter the enclosed space during any election.

**12-18-16. Marking of paper ballot - Form of mark.**

If a paper ballot is used, the voter may use a pencil or pen to mark the voter's ballot and the voter may mark the ballot with either a cross (x) or check mark (✓).

**12-18-16.1. Marking of optical scan ballot.**

If an optical scan ballot is used, the voter may use a pencil or other marking instrument provided to mark the voter's choice on the ballot.

**12-18-16.2. Chad removal on punch card ballot.** Repealed by SL 2005, ch 92, § 9.

**12-18-17. Manner of voting for presidential electors.** Repealed by SL 1976, ch 105, § 84.

**12-18-18. Manner of voting party ticket - Scratching after voting party ticket.** Repealed by SL 1997, ch 81, § 6.

**12-18-19. Pen or pencil and cross or check mark as uniform means of marking ballots - Conflicting statutes amended.** Repealed by SL 1974, ch 118, § 200.

**12-18-20. Additional marks required after scratching where two or more to be elected.** Repealed by SL 1997, ch 81, § 7.

**12-18-21. Voting for individual candidates without marking party ticket.** Repealed by SL 1997, ch 81, § 8.

**12-18-21.1. Write-in votes not to be counted - Other votes on ballot.** Repealed by SL 2002, ch 76, § 4.

**12-18-22. Identifying marks prohibited on ballot.** Repealed by SL 2000, ch 73, § 1.

**12-18-23. Return to member of precinct election board of unmarked ballot.**

Each voter who does not vote a ballot delivered to the voter by a member of the precinct election board in charge of the ballots shall, before leaving the polling place, return the ballot to the member of the precinct election board in charge of the ballot box.

**12-18-24. Replacement of spoiled ballots - Marking and preservation.**

If any voter spoils a ballot, the voter may obtain another ballot, and so on, successively, not to exceed three ballots in all, upon returning to a member of the precinct election board the spoiled ballot. In obtaining a ballot to replace a spoiled one, the name of the voter shall be given and the number of the spoiled ballot. The number shall be noted opposite of the voter's name as spoiled. The ballots that are returned shall be canceled by writing the words, spoiled and replaced, across the face of the ballot and each spoiled ballot shall be placed in a separate envelope identifying the spoiled ballots as such and stating the number of spoiled ballots for accounting purposes.

**12-18-25. Assistance of disabled or illiterate voter by person of his choice.**

Any voter who by reason of physical disability or illiteracy is unable to read or mark a ballot may receive the assistance of any person whom such voter may select.

**12-18-26. False affidavit requesting assistance as misdemeanor - Penalty.** Repealed by SL 1979, ch § 104.

**12-18-27. Marked ballot not to be shown - Folding for deposit in ballot box.**

No person may show a ballot after it is marked to any person in such a way as to reveal the contents of the ballot, or the name of any candidate for whom the person has marked a vote. Nor may any person solicit the voter to show the voter's ballot. Immediately after marking the ballot the voter shall fold and refold the ballot, if necessary, leaving the official stamp exposed.

**12-18-28. Deposit of folded ballot in ballot box.**

## *Arrangements and Conduct of Voting*

When a ballot is ready for deposit in the ballot box, the member of the precinct election board in charge of the ballot box, without opening the ballot or permitting it to be opened or examined except to ascertain that the ballot is a single ballot, shall deposit the ballot in the ballot box. The voter may place the voter's voted ballot in the ballot box in insure the privacy of the voter's vote after showing the official stamp on the ballot to the member of the precinct election board in charge of the ballot box.

**12-18-29. Receipt of vote from unqualified persons prohibited.** Repealed by SL 1974, ch 118, § 200.

**12-18-30. Deposit of ballot without official stamp prohibited - Misdemeanor.** Repealed by SL 1974, ch 118, § 200.

**12-18-31. Removal of ballot from polling place prohibited.** Repealed by SL 1974, ch 118, § 200.

**12-18-32. Packaging and return of unused ballots - Record accounting for ballots.**

All ballots which have not been distributed to voters, excluding those marked "spoiled and replaced" separately enclosed, together with a record of ballots stating the number of ballots voted, the number of ballots spoiled and replaced, and the number of ballots not delivered to voters, shall be placed in a parcel separate from the ballot box and returned to the auditor along with the ballot boxes.

**12-18-33. Comparison of ballot accounting with record of number sent to precinct - Notice and correction of discrepancies.**

The county auditor, on receipt of the unused, defective, or spoiled ballots, and the statement mentioned in § 12-18-32, shall carefully compare the same with the record in his office of the number of ballots sent to such election precinct. If the same are not accounted for in the statement before mentioned, he shall at once notify the person sending the same, who shall, with such county auditor, recount the unused, defective, and spoiled ballots and correct, if possible, such errors, if any there be, in such count or statement.

**12-18-34. Delivery to county auditor of registration cards, removal notices and cancellations of previous registration.** Repealed by SL 1969, ch 83, § 5.

**12-18-35. Examination of voting machine counters and ballot labels before opening of polls - Notice and correction of discrepancies - Printed or photographic record.** Repealed by SL 1974, ch 118, § 200.

**12-18-36. Voter's number entered on registration list where voting machines used - Voter's slip issued and turned in at machine.** Repealed by SL 1974, ch 118, § 200.

**12-18-37. Assistance in operation of voting machine.** Repealed by SL 1974, ch 118, § 200.

**12-18-38. Custody and detention of persons interrupting or disturbing election proceedings - Offender permitted to vote - Detention not a defense in prosecutions for offenses.** Repealed by SL 1974, ch 118, § 200.

**12-18-39. Provisional ballot -- Eligibility.**

If any person is not authorized to vote pursuant to § 12-18-7.2, is successfully challenged under § 12-18-10, or is otherwise denied the ability to vote and the person maintains that he or she is currently registered to vote in that precinct, the person may cast a ballot which shall be called a provisional ballot. A member of the precinct election board shall notify any person who is denied the ability to vote that the person may cast a provisional ballot.

**12-18-40. Use of provisional ballot.**

Before giving a person a provisional ballot, the person shall complete an affirmation. The person's name shall be written in the pollbook along with a designation that the person has cast a provisional ballot. The person shall be given the ballot appropriate to the precinct in which the person is claiming to be registered, along with a provisional ballot envelope. After the person votes, the person shall seal the ballot in the provisional ballot envelope and complete the statement on the envelope. The envelope shall then be placed in the ballot box. The provisional ballot and provisional ballot envelope shall be prescribed by the State Board of Elections.

**12-18-41. Procedure for secretary of state to conduct election in emergency--Reimbursement of expenses.**

If the person charged with the conduct of an election and the governing board determine that an election cannot be conducted, the person charged with the conduct of an election shall sign a declaration of emergency and deliver it to the secretary of state prior to the election. The secretary of state may conduct the election for that county or political subdivision until the election has been certified. Any reasonable and necessary expenses incurred by the secretary of state to conduct the election shall be reimbursed by the county or political subdivision within ninety days after the election has been certified.

## CHAPTER 12-19.

## ABSENTEE VOTING

Section

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### 12-19-1. Absentee ballot - Persons entitled to vote.

A registered voter who is not otherwise disqualified by law from voting in the election may vote by absentee ballot.

### 12-19-1.1. Affirmation of address by voter in inactive registration file.

A voter in the inactive registration file meeting the criteria in § 12-19-1 may vote absentee by completing the affirmation required in § 12-18-7.4.

**12-19-2. Application for absentee ballot - Contents - Address to which ballot sent - Stamping date of receipt - Delivery.**

An absentee voter desiring to vote by mail may apply to the person in charge of the election for an absentee ballot. The application or request shall be made in writing and be signed by the applicant and shall state the applicant's voter registration address. The application or request shall contain an oath verifying the validity of the information contained in the application or request. The oath shall be administered by a notary public or other officer authorized by statute to administer an oath. If the application or request does not contain an oath, the application or request shall be accompanied by a copy of the voter's identification card as required by § 12-18-6.1. The copy of the voter's identification card shall be maintained by the person in charge of the election. However, the voter's identification card is not available for public inspection. The application or request may be used to obtain an absentee ballot for all elections in that calendar year conducted by the jurisdiction receiving the application or request if so indicated. The ballot shall be sent to the voter's residence, as shown in the voter registration file or any temporary residence address designated in writing by the voter, at the time of applying for the absentee ballot. If the application or request is for a primary, general, or other statewide election from a voter identified as being covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2010, the voter may designate on the application for the ballot to be sent electronically. The person in charge of the election shall stamp the application with the date it was received. The person in charge of the election shall preserve a record of the name, mailing address, and voting precinct of each applicant and, except as provided by § 12-19-45, deliver a copy of the record to the superintendent of the election board of the home precinct of the applicant.

**12-19-2.1. Application in person or by authorized messenger - Delivery of ballot to messenger or by mail.**

At anytime prior to an election, a voter may apply in person to the person in charge of the election for an absentee ballot during regular office hours up to 3:00 p.m. on the day of the election. If the voter applies in person, the voter shall complete a combined absentee ballot application/return envelope and show the person in charge of the election the voter's identification card as required in § 12-18-6.1 or complete the affidavit as provided in § 12-18-6.2.

In the event of confinement because of sickness or disability, a qualified voter may apply pursuant to the provisions of § 12-19-2 in writing and obtain an absentee ballot by authorized messenger so designated over the signature of the voter. The person in charge of the election may deliver to the authorized messenger a ballot to be delivered to the qualified voter. Any application for a ballot by authorized messenger must be received by the person in charge of the election before 3:00 p.m. the day of the election. If the application designating an authorized messenger also indicates a request for an absentee ballot for any future election, such absentee ballot shall be mailed to the address provided on the application. If no address is provided, the ballot shall be mailed to the person's voter registration address.

**12-19-2.2. Authorized messenger for more than one voter.**

If a person is an authorized messenger for more than one voter, he must notify the person in charge of the election of all voters for whom he is a messenger.

**12-19-2.3. Uniformed and Overseas Citizens Absentee Voting Act--Application or request for ballot by facsimile or email.**

Any voter identified as being covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2011, may submit an

application or request for an absentee ballot by facsimile or emailed image to the person in charge of the election. The secretary of state may authorize a person in charge of an election to accept an application or request for absentee ballot pursuant to this section through the system provided by the Office of the Secretary of State.

**12-19-2.4. Multiple applications or requests for ballots and multiple ballots--Application.**

If any voter who had previously filed an application or request for an absentee ballot submits another application or request for the same election with an updated address, the county auditor shall send an absentee ballot to the new address. If any voter who had previously filed an application or request for absentee ballot appears at the county auditor's office, the voter may complete another application and be allowed to vote an absentee ballot. If any voter who filed an application or request for absentee ballot notifies the county auditor that the voter never received that ballot, the voter may request that another ballot be sent to the same address. The provisions of this section only apply to a person who has not voted or returned an absentee ballot.

**12-19-2.5. Form of application for absentee ballot and combined application/return envelope.**

The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, to prescribe the absentee application form and a combined absentee ballot application/return envelope for absentee voting in the office of the person in charge of the election. The application may be made by letter or upon any form containing the required information or upon any form prescribed by the State Board of Elections or the postcard form referred to in § 12-4-8.1, executed by any person authorized in accordance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. § 1973ff) as of January 1, 2006.

**12-19-2.6. Preference and selection of ballot style for independent in primary election.**

If an absentee voter in a primary election is registered as an independent and is eligible to vote more than one ballot style pursuant to § 12-6-26, the voter may specify the voter's ballot style preference on the absentee ballot application. If no ballot style is designated, the absentee voter shall be provided a nonpolitical ballot.

If an absentee voter in a primary election is registered as an independent and is only eligible to vote one ballot style, the absentee voter shall be provided that ballot style. If more than one party allows independent voters to be eligible to vote in a primary election and no nonpolitical ballot is available and the absentee voter does not designate the ballot style to be received, no ballot may be provided to the absentee voter.

**12-19-3. Forwarding of ballot to voter - Instructions and return envelope.**

Upon receiving an application for absentee ballots, the person in charge of an election shall, within forty-eight hours, or if ballots are not then on hand, then within forty-eight hours after receipt of the ballots, after confirming from the master registration file that the applicant is registered as a voter pursuant to chapter 12-4, enclose one of each of the official ballots, a set of instructions on absentee balloting, and an unsealed return envelope. All of the enclosures shall be sealed in an envelope addressed to the applicant at the place stated in the application. If a registration form is received simultaneous with an absentee ballot request and prior to the registration deadline, the absentee ballot provided shall be based on the submitted registration form.

**12-19-4. Voter's statement on return envelope - Federal service voting forms.**

The return envelope for the absent voter's ballot shall have printed on the reverse thereof a statement to be signed by the voter. The state board of elections shall prescribe the forms for the return envelope, ballots, instructions to the voter, and such certification to accommodate the federal service voter under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. § 1973cc-1).

**12-19-5. Mailing of ballot and enclosures to voter - Free air mail for federal service voters.**

The envelope containing the enclosures, if not delivered to the voter personally by the person in charge of the election or the authorized messenger filing the voter's request for an absentee ballot, shall, except for federal service voters, be mailed by first class mail to the address of the applicant stated in his application, with postage prepaid thereon. Both the return envelope and the envelope for transmitting the enclosures to federal service voters shall meet the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. § 1973) and shall be transmitted by air mail, free of United States postage, including air mail.

**12-19-6. Separate affidavit form enclosed with ballots.** Repealed by SL 1970, ch 91, § 4.

**12-19-7. Marking and folding ballot - Officer before whom marked - Mailing or delivering ballot.**

A voter voting an absentee ballot shall mark it and fold it without revealing the marks to any other person. The voter shall place the voted ballots in the return envelope provided and seal the envelope. The voter shall sign the statement on the return envelope. The voter shall either mail the ballot, deliver it in person or have it delivered to the person in charge of the election.

**12-19-7.1. Candidates and election officials not to serve as authorized messenger.**

No person who is a candidate for any elective office, except for political party offices described in § 12-5-2 or county auditor or such deputy, at the election for which the ballot or ballots are to be voted, may serve as an authorized messenger.

**12-19-7.2. Display of campaign material by messenger as misdemeanor.**

No authorized messenger may, in the presence of the voter at or before the time of voting, display campaign posters, signs or other campaign materials or by any like means solicit any votes for or against any person, political party or position on a question submitted. A violation of this section is a Class 2 misdemeanor.

**12-19-8. Certificate of officer witnessing marking of ballot.** Repealed by SL 1971, ch 93, § 2.

**12-19-9. Delivery of absentee ballot - Personal delivery when transmission time insufficient - Receipt.**

An authorized messenger shall deliver the absentee ballot to the person in charge of the election unless there is not sufficient time for the person in charge of the election to transmit the absentee ballot to the voter's home precinct. In that instance, the authorized messenger shall personally deliver the absentee ballot to the precinct superintendent of the voter's home precinct. If the authorized messenger requests a

receipt when returning the absentee ballot, the person in charge of the election shall provide the authorized messenger a receipt.

**12-19-9.1. Nursing facility, assisted living center, or hospital having multiple absentee ballot requests.**

If there is any nursing facility, assisted living center, or hospital, as defined in § 34-12-1.1, within any county from which there might reasonably be expected to be five or more absentee applications, the county auditor shall notify the person in charge of that facility and the chair of the county central committee of each party and any other person who has filed a request to be notified of the date and time at which representatives of the auditor's office will be present to assist the residents of that facility to vote, utilizing the absentee procedure. Any political party, independent candidate, and nonpolitical candidate may assign a person to accompany the auditor's representatives. At the date and time announced, the auditor's representative and the representatives of the parties, independent candidates, and nonpolitical candidates shall deliver ballots to and assist all persons at that facility who desire such assistance and who have applied for absentee ballots. This section applies only to a general election.

If a person in charge of an election conducts absentee voting at a nursing facility, assisted living center, or hospital as defined in § 34-12-1.1, the voter shall complete a combined absentee ballot application/return envelope and the identification and affidavit requirements provided in § 12-19-2.1 are waived.

**12-19-9.2. Marking and return of ballot on death of voter before opening of polls.**

Whenever, prior to the casting of absentee ballots, it is made to appear by due proof to the county auditor or election board that any voter who has marked and forwarded an absentee ballot has died prior to the opening of the polls on the date of the election, the ballot of the voter shall be returned in the unsealed return envelope with the evidence of death attached and the envelope marked "Unopened by reason of death of voter" to the officer in charge of the conduct of the election. The casting of any such ballot shall not invalidate the election.

**12-19-10. Preservation and delivery of ballot to precinct superintendent – Comparison of statement and application - Deposit in ballot box – Unopened ballots - Unauthorized examination as misdemeanor.**

Upon receipt of the sealed return envelope containing the voted ballots, the person in charge of the election shall keep it in a safe place without opening the envelope or breaking the seal thereof and shall, except as provided by § 12-19-42, deliver it to the precinct superintendent of election of the voter's home precinct. The person in charge of the election shall have the absentee ballots delivered with the election supplies, or if received later, then prior to the close of the polls. If the election board is not otherwise engaged in official duties, or if there are absentee ballots not processed when the polls close, immediately thereafter, the board shall carefully compare the statement on the reverse side of the official return envelope with the written application received from the officer in charge of the election without opening or breaking the seal of the return envelope. If the ballot is contained in a combined absentee ballot application/return envelope, the comparison of the statement and the application shall be omitted. The board shall enter the voter's name on the election pollbook and mark the registration list if:

(1) The ballots received were voted by the voter whose name appears on the statement;

(2) The voter is registered in such precinct and has not previously voted in that precinct at the election; and

(3) The written application and statement were both signed by the voter.

The board shall then open the envelope without opening, unfolding or examining the ballots the envelope may contain, stamp the ballots with the official stamp, and deposit the ballots with the other ballots cast at the election. If the board determines that an absentee ballot envelope cannot be opened because the envelope does not meet the requirements for opening, the reason shall be written on the envelope, signed by a member of the board, and the envelope placed in a larger envelope for unopened absentee ballots. No person may, prior to the counting of the votes, open, unfold or examine any ballot, or make any communication to any person concerning the markings or contents of the ballot. A violation of the preceding sentence is a Class 2 misdemeanor.

**12-19-11. Preservation and return of application and return envelope.**

The written application and official return envelope shall be preserved by the election officers and returned by them to the proper office together with the other election returns.

**12-19-12. Delivery of absentee ballot to polling place after close of polls.**

If an absentee ballot is delivered to a polling place after the polls are closed, the absentee ballot may not be counted or opened.

**12-19-13. Counting absentee ballots where voting machines used.** Repealed by SL 1996, ch 94, § 31.

**12-19-14. Unlawful disposition of ballot or ballot link as misdemeanor.**

Any voter who, having procured an official ballot or ballots or Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) ballot link as provided in §§ 12-19-1 to 12-19-12, inclusive, intentionally disposes of a ballot in any manner other than as provided in such sections or provides the UOCAVA ballot link to any other person is guilty of a Class 2 misdemeanor. The UOCAVA ballot link is the internet URL for accessing an electronically provided absentee ballot.

**12-19-15. Absentee voting while in federal service - Definition of terms.** Repealed by SL 1974, ch 118, § 200.

**12-19-16. Persons entitled to benefit of federal service absentee voting provisions.** Repealed by SL 1974, ch 118, § 200.

**12-19-17. Registered voters absent in federal service entitled to vote as if present.** Repealed by SL 1974, ch 118, § 200.

**12-19-18. Application for registration of absentee in federal service - Time of application and registration.** Repealed by SL 1974, ch 118, § 200.

**12-19-19. Contents of application for registration - Statement and proof of party preference.** Repealed by SL 1974, ch 118, § 200.

**12-19-20. Post card form used as application for registration.** Repealed by SL 1974, ch 118, § 200.

**12-19-21. Determination of eligibility and addition to master list of applicant for registration.** Repealed by SL 1974, ch 118, § 200.

**12-19-22. Application for registration deemed application for ballot.** Repealed by SL 1974, ch 118, § 200.

## *Absentee Voting*

**12-19-23. Time for performance of acts necessary before printing of ballots.** Repealed by SL 1971, ch 87, § 6.

**12-19-24. Application for ballots for voter absent in federal service - Contents and verification of application.** Repealed by SL 1974, ch 118, § 200.

**12-19-25. Post card form used as application for ballots.** Repealed by SL 1974, ch 118, § 200.

**12-19-26. Time of availability of printed ballots for distribution - Immediate mailing to voters absent in federal service.** Repealed by SL 1974, ch 118, § 200.

**12-19-27. Return envelopes and instructions enclosed with ballots mailed - Specifications for envelopes.** Repealed by SL 1974, ch 118, § 200.

**12-19-28. Marking, folding and sealing of absentee ballot - Certification and deposit in mail.** Repealed by SL 1974, ch 118, § 200.

**12-19-29. Persons authorized to witness and certify ballots of voters in federal service.** Repealed by SL 1974, ch 118, § 200.

**12-19-30. Time of casting absentee ballot - Receipt by precinct superintendent required before closing of polls.** Repealed by SL 1974, ch 118, § 200.

**12-19-31. Preservation and delivery to election board of ballots received - Handling as other absentee ballots.** Repealed by SL 1974, ch 118, § 200.

**12-19-32. Ballot not invalidated by federal censorship.**

The exercise of the right of censorship by the federal authorities upon the marked ballot while same is in transit in the mail, shall not invalidate the ballot or be cause for its rejection.

**12-19-33. Failure to deliver or tampering with ballot as felony.**

Any person who, having procured an official ballot or ballots for another, intentionally fails to deliver the ballots to the voter or who intentionally fails to deliver the return envelope with ballots contained therein to the proper officer, or who tampers with the envelope or ballots is guilty of a Class 6 felony.

**12-19-34. Informalities do not invalidate election - Liberal construction.**

No mere informality in the matter of carrying out or executing the provisions of this chapter shall invalidate the election or authorize the rejection of the returns thereof, and the provisions of this chapter shall be liberally construed for the purposes herein expressed or intended.

**12-19-35. Federal-service absentee voting law supplementary - Conflict with other laws - General absentee voting laws alternative.** Repealed by SL 1974, ch 118, § 200.

**12-19-36. Separability of provisions for voting by absentees in federal service.** Repealed by SL 1974, ch 118, § 200.

**12-19-37. Absentee ballot precincts - Creation - Absentee ballot counting board.**

Any county may create a special precinct to be known as an absentee ballot precinct. If the county creates an absentee ballot precinct, all absentee ballots cast at any election shall be counted in such precinct. However, if a paper ballot precinct has ten or fewer absentee ballots cast at the time the polls open on election day, the absentee ballots in that precinct shall be counted at the polling place. The election board of the absentee ballot precinct is the absentee ballot counting board. There may be only one absentee ballot counting board at any time in a county.

**12-19-38. Appointment of absentee ballot counting board - Number of members.**

The county auditor shall appoint the absentee ballot counting board in the manner prescribed in chapter 12-15, except that the number of election officials on the absentee ballot counting board shall be sufficient to complete the counting of ballots within a reasonable time.

**12-19-39. Oath of board members - Compensation.**

Each election official of the absentee ballot counting board shall take the oath required by § 12-15-9 and shall be paid as provided by § 12-15-11.

**12-19-40. Exemption of small precincts - Procedure.** Repealed by SL 1982, ch § 130.

**12-19-41. Powers and duties of absentee ballot counting board.**

Except as otherwise provided in §§ 12-19-37 to 12-19-52, inclusive, the absentee ballot counting board's powers and duties shall be the same as provided in chapters 12-19 and 12-20 for precinct election officials in regular precinct polling places, except that the board shall receive and count all absentee ballots for all precincts in the county upon receipt thereof from the person in charge of the election.

**12-19-42. Envelope containing voted ballots kept closed - Delivery to county board.**

Upon receipt of the sealed return envelope containing the voted ballots, the person in charge of the election shall keep it in a safe place without opening the envelope or breaking the seal thereof. The person in charge of the election shall cause to be delivered to the absentee ballot counting board, the absentee ballot or ballots with the election supplies, or if later received, then prior to the close of the polls.

**12-19-43. Review of absentee voters' affidavits prior to closing of polls – Counting or processing of ballots.**

The county auditor may direct the board to meet on election day prior to the closing of the polls for the sole purpose of reviewing the absentee voters' affidavits appearing on the sealed ballot envelopes, if in the auditor's judgment this procedure shall be necessary due to the number of absentee ballots received. The absentee ballots may be opened, stamped, and placed in the ballot box or processed by an automatic tabulating machine, but under no circumstances shall the ballots be manually counted nor any vote totals printed or displayed by any tabulating machine prior to the closing of the polls. If ballots are processed by an automatic tabulating machine prior to the closing of the polls, the resolution board shall be present and notification of such processing shall be provided to each county party chairperson at least ten days before the election.

**12-19-44. Counting process open.**

The room occupied by the absentee ballot counting board shall be open to any person for the purpose of observing the counting process.

**12-19-45. Record of applicants' names, addresses, and voting precincts - Delivery to counting board - Record of authorized messengers.**

The person in charge of the election shall preserve a record of the name, post-office address and voting precinct of each applicant for absentee ballots and shall personally deliver the same to the absentee ballot counting board. The person in charge of the election shall keep a record of the name of the authorized messenger requesting an absentee ballot to be delivered to another voter.

**12-19-46. Commencement of count when polls close - Place.**

The absentee ballot counting board shall commence counting the absentee voters' ballots immediately upon close of the polls at a central place designated by the county auditor.

**12-19-47. Processing of absentee ballots.**

The absentee ballot counting board, during the time prescribed in § 12-19-46, shall process each absentee ballot as required by § 12-19-10.

**12-19-48. Delivery of absentee ballot after polls are closed.**

If an absentee ballot is delivered to an absentee ballot counting board after the polls are closed the absentee ballot may not be counted or opened.

**12-19-49. Death of absentee voter prior to opening of polls - Ballot returned to person in charge - Election not invalidated by casting of ballot.**

If, prior to the casting of absentee ballots, the person in charge of the election or absentee ballot counting board shall have sufficient cause to believe that any voter who has marked and forwarded an absentee ballot has died prior to the opening of the polls on the date of the election, the ballot of the voter shall be returned in the sealed return envelope with the evidence of death attached and the envelope marked "Unopened by reason of death of voter" to the person in charge of the election. The casting of any such ballot, however, shall not invalidate the election.

**12-19-50. Forms for recording tally - Special pollbook - Tally added to home precinct totals.**

The tally shall be recorded on forms prescribed by the state board of elections. A special pollbook shall also be prescribed by the state board of elections. Except as provided by § 12-19-52, the tally shall be recorded according to the precincts in which the voters are registered and then added to those individual precinct totals.

**12-19-51. Voting machines - Entry of absentee votes - Witness of recording and counting process.** Repealed by SL 1996, ch 94, § 32.

**12-19-52. Electronic voting systems.**

In those counties which have adopted an electronic voting system, counting shall be as prescribed in chapter 12-17A.

**12-19-53. Contracting for services of county auditor from another county.**

If a county contracts for the services of a county auditor from another county, that county auditor shall make absentee ballots available in the contracting county if the contracting county requests that absentee ballots be provided. The contracting county shall reimburse the county auditor for the costs incurred pursuant to this section.

**12-19-54. Payment for assisting voters based on number of voters assisted prohibited-- Violation as misdemeanor.**

No person may employ, reward, or compensate any person to assist voters based on the number of voters assisted. Nothing in this section prohibits any person from hiring a person paid on an hourly or salaried basis to assist voters. Any violation of this section is a Class 2 misdemeanor.

**12-19-55. Receipt of payment for assisting voters based on number of voters assisted prohibited--Violation as misdemeanor.**

No person may receive any wages, reward, or compensation for assisting voters based on the number of voters assisted. Nothing in this section prohibits any person from being employed on an hourly or salaried basis to assist voters. Any violation of this section is a Class 2 misdemeanor.

## CHAPTER 12-19A.

## SPECIAL VOTING RIGHTS

**[Repealed by SL 1972, ch 76, 24; 1974, ch 118, 200; 1975, ch 119, 22]**

## CHAPTER 12-20.

## RETURN AND CANVASS OF VOTES

Section

12-20-1. Delivery of supplies to counting board - Certificate of transmittal and receipt - Commencement of count - Continuation without adjournment - Comparison and correction of poll lists.
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12-20-4. Repealed.
12-20-5. Count of votes for candidates - Scrutiny of ballots by precinct deputies - Decisions on disputed ballots.
12-20-5.1. Determination of validity of provisional ballots.
12-20-6. Unstamped ballots not counted.
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12-20-8. Precinct superintendent and precinct deputies to record intention of voter.
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## *Return and Canvass of Votes*

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12-20-20. Sealing of ballot boxes after deposit of counted ballots - Violation as misdemeanor.
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12-20-28. Repealed.
12-20-29, 12-20-30. Repealed.
12-20-31. Destruction of ballots and pollbooks - Period for which held - Pending recount or contest.
12-20-32. Preservation of ballot boxes and pollbooks - Delivery of pollbooks to county canvassing board - Violation as felony.
12-20-33, 12-20-34. Repealed.
12-20-35. Returns not refused for irregularity - Certificate issued to candidate with most votes.
12-20-36. Time for canvass of vote - Governing board as canvassing board - Representatives for absent board members.
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12-20-38. Abstracts of precinct returns prepared by board of canvassers - Certification - Deposit.
12-20-38.1. Certified copy of official county canvass furnished to secretary of state - Permanent record.
12-20-39. Election by plurality.
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12-20-46. Composition of state canvassing board - Candidate disqualified from participation.
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12-20-48. Abstract by state canvassers of county returns - Signature and seal - Recording and filing of abstracts.
12-20-48.1. Certification to state party chairman of votes for national convention slates.
12-20-49. Certificate of election issued for federal, state or legislative office.
12-20-50. Repealed.
12-20-51. Disputes decided by majority of state canvassers - Irregularities disregarded.
12-20-52. Rules and regulations for counting and canvass of vote.

**12-20-1. Delivery of supplies to counting board - Certificate of transmittal and receipt - Commencement of count - Continuation without adjournment - Comparison and correction of poll lists.**

As soon as the polls are closed, the precinct superintendent and precinct deputies shall audit the ballot count as prescribed in §§ 12-20-2 and 12-20-3. The precinct superintendent and precinct deputies shall then immediately deliver the ballot boxes, registration book, pollbook, and other election supplies, including voided and unused ballots, to the counting board, if appointed, and sign a certificate of transmittal and receipt as prescribed by the State Board of Elections. The members of the precinct election board or the counting board, if appointed, shall then immediately proceed to count publicly, in the presence of all persons desiring to attend the count, the votes received at the polls, and continue without adjournment until the count is completed. In counting the votes, the members of the precinct election board or counting board shall use the tally sheets provided.

**12-20-2. Opening of ballot box - Sorting and counting of unopened ballots - Ballots folded together.**

The box shall be opened and the ballots taken out, sorted so that all ballots on certain candidacies and issues are separately identified, and counted by the members of the precinct election board unopened, except to ascertain if each ballot is single. If two or more ballots are found folded together and present the appearance of a single ballot, the ballots shall be laid aside until the count of ballots is completed. Upon the comparison of the count with the pollbook and registration list, or in machine precincts, with the number of return envelopes from absentee voters, and the appearance of the ballots, if a majority of the members of the precinct election board are of the opinion that the ballots folded together were voted by one voter, the ballot shall be endorsed, duplicate ballot of one voter not counted. If the ballot count does not agree with the number of votes in the pollbook, a comparison of the voters in the pollbook and the registration list shall be made and the correction of any mistakes shall be made.

**12-20-2.1. Return of provisional ballot envelopes and unopened absentee ballots.**

If the ballot box is opened for ballot counting at the precinct, each provisional ballot envelope and each unopened absentee ballot shall be removed, placed, and sealed in the provisional or unopened absentee ballot return envelope and returned to the person in charge of the election with the other election supplies.

**12-20-3. Drawing of excess ballots.**

Following the comparison of the pollbook and registration list in § 12-20-2, if the ballots in the box exceed the number of names in the pollbook, the ballots shall be replaced in the box, after any of the ballots folded together are canceled, and one of the precinct deputies shall publicly draw therefrom as many ballots, unopened, as equal to the excess.

**12-20-4. Marking and accounting for canceled and defective ballots.** Repealed by SL 1974, ch 118, § 200.

**12-20-5. Count of votes for candidates - Scrutiny of ballots by precinct deputies - Decisions on disputed ballots.**

The votes for the several candidates shall be counted in the order in which the candidates occur upon the ballots. At least two precinct deputies, of opposite political parties, shall scrutinize each ballot with the precinct superintendent acting to break any tie vote of the two precinct deputies ruling on a ballot. As the vote is announced two precinct deputies shall make the mark required on the tally sheets.

**12-20-5.1. Determination of validity of provisional ballots.**

## *Return and Canvass of Votes*

Prior to the official canvass, the person in charge of the election shall determine if the person voting by provisional ballot was legally qualified to vote in the precinct in which the provisional ballot was cast. In making this determination, the person in charge of the election shall consider the information provided on the affirmation and diligently investigate the voter registration status of the person. If there is no evidence that a voter registration form had been completed by the person showing a residence address in that precinct and returned to an official voter registration site prior to the deadline to register to vote for the election, the provisional ballot is invalid.

**12-20-6. Unstamped ballots not counted.**

In the counting of the votes any ballot which is not endorsed as provided in § 12-18-12 by the official stamp shall be void and may not be counted.

**12-20-7. Ballot not counted when voter's choice indeterminable – Promulgation of rules defining standards.**

Any ballot or part of a ballot from which it is impossible to determine the voter's choice by using standards defined by the State Board of Elections shall be void and may not be counted. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, defining standards for determining voter intent.

**12-20-8. Precinct superintendent and precinct deputies to record intention of voter.**

The precinct superintendent and precinct deputies, in counting the votes, shall endeavor to record the intention of the voter. The precinct superintendent and precinct deputies shall then hold the intention of the voter to be to vote for the candidate or candidates before whose name the voter has placed a mark.

**12-20-9. Recording of one vote for unopposed candidate - Further count not required.** Repealed by SL 1976, ch 105, § 84.

**12-20-10. Blank list for unofficial return of precinct vote for candidates and submitted questions - Return envelope.**

There shall be furnished by the officer in charge of the election to each voting precinct, for each election, a blank list which shall have space after each candidate's name and after each measure, law, or amendment to be voted upon at such election, in which to enter the number of votes cast in the precinct for each candidate, measure, law, or amendment, together with an envelope addressed to the officer in charge of the election and labeled in plain letters, "Immediate - Unofficial Return - Do not put this in ballot box."

**12-20-11. Entry of precinct vote on unofficial return list - Return with election returns.**

When the vote count is complete, the members of the precinct election board shall enter upon the blank list the true number of votes cast in the precinct for each person, measure, law, or amendment which appears upon the official ballot, and shall enclose the completed list in the envelope described in § 12-20-10. The precinct superintendent or precinct deputy chosen to deliver the election returns to the officer in charge of the election shall return the completed list separate from any other envelopes or wrappers returned at the time the election returns are delivered.

**12-20-12. Judge not compensated if unofficial returns not furnished.** Repealed by SL 1974, ch 118, § 200.

**12-20-13. Tabulation and public release of unofficial returns - Entry into central election reporting system.**

Except as provided in § 12-20-17, the county auditor shall tabulate election returns as rapidly as received and make the result available for the information of the public, but such returns are not the official returns. The county auditor shall enter the information into the central election reporting system by using any computer located in a county office which is properly configured and linked to the central state computer immediately following the tabulation of each precinct.

**12-20-13.1. Means of counting provisional ballots -- Appointment of officials.**

The person in charge of the election shall decide if the provisional ballots are to be counted by hand or by automated tabulating equipment. If a decision is made to count the ballots by hand, a provisional ballot counting board shall be appointed as provided in § 12-15-1. If the provisional ballots are to be counted by automated tabulating equipment, a resolution board and tabulation machine operators shall be appointed as provided in chapter 12-17B.

**12-20-13.2. Counting provisional ballots -- Certification.**

The provisional ballot counting board or resolution board and tabulation machine operators shall convene one hour prior to the convening of the canvassing board. The provisional ballots, which the person in charge of the election has determined are not invalid according to § 12-20-5.1, shall be counted. Upon completion of the count, the provisional ballot counting board or resolution board shall complete a certification of provisional ballot count and give the certification to the canvassing board. The certification form shall be prescribed by the State Board of Elections.

**12-20-13.3. Counting provisional ballots -- Alternate time.**

The person in charge of the election may establish an alternative time prior to the official canvass for provisional ballot counting provided that notice of the time and location is given to the county party chairperson of each political party for primary, secondary, and general elections and to each candidate for any other election.

**12-20-13.4. Counting provisional ballots -- Notice.**

Within ten days after the official county canvass each person voting by provisional ballot shall be sent by the person in charge of the election a notice advising whether the provisional ballot was counted. The notice shall be prescribed by the State Board of Elections.

**12-20-14. Transmittal of unofficial returns to secretary of state.** Repealed by SL 1981, ch 126, § 1.

**12-20-15. State messenger to secure delinquent returns - Expenses deducted from county auditor's salary.**

If any county auditor fails to perform the duties required of him by § 12-20-38.1, the secretary of state shall send a messenger to the county auditor to secure such returns. All expenses for such service shall be paid by the county of which such auditor is an officer upon the filing of a certificate from the secretary of state as to the amount of

such expenses, and the amount so paid shall be deducted from the next monthly salary of the county auditor of such county.

**12-20-16. Examination and recording of voting machine counters - Printed or photographic record - Return of record and absentee ballot tally.** Repealed by SL 1996, ch 94, § 33.

**12-20-17. Returns not disclosed until all polls in state closed.**

No public disclosure of the returns of state and federal elections in any primary or general election is permitted until each precinct polling place in the state is closed. This provision applies to each precinct polling place within the state.

**12-20-18. Entry of candidates' votes in precinct pollbooks.**

After the votes have been counted, the members of the precinct election board shall set down in the pollbook and duplicate tally sheet on forms therein prescribed by the State Board of Elections the name of each person voted for, the office for which the person received votes, and the number of votes each person received, the number of votes each person received shall be expressed at length.

**12-20-19. Gummed seals provided for ballot boxes and envelopes.** Repealed by SL 1974, ch 118, § 200.

**12-20-20. Sealing of ballot boxes after deposit of counted ballots - Violation as misdemeanor.**

The counted ballots shall be sorted in the manner provided in § 12-20-2 and wrapped, sealed, and deposited in the ballot box. The precinct superintendent and precinct deputies, after the counting of ballots and deposit of the ballots counted in the ballot box, shall properly seal, with seals furnished pursuant to § 12-16-26, any ballot box opening and the place where the clasp and box connect, and each place where a ballot box may be opened before turning the ballot box over to the person deputed to deliver it. A violation of this section is a Class 1 misdemeanor.

**12-20-21. Return of ballot boxes, returns, records and supplies to officer in charge - Tampering prohibited - Violation as felony.**

The sealed ballot box, together with the pollbook and duplicate tally sheet, registration lists, and the envelope containing the unofficial returns and all supplies and returns required, shall be returned by the precinct superintendent or a precinct deputy designated by the precinct superintendent, to the officer in charge of the election immediately after completion of the vote count. No person may deface, destroy, or tamper with the ballot box, envelope, pollbook, duplicate tally sheet, or registration lists or remove any seals. A violation of this section is a Class 6 felony.

**12-20-21.1. Circumstances requiring report of official returns by telephone.**

Notwithstanding the provisions of § 12-20-21, if the person in charge of the election determines that the roads are impassable between a polling place and the office of the person in charge of the election, the superintendent shall report unofficial election returns by telephone to the person in charge of the election immediately following completion of the vote count. The superintendent shall return the sealed ballot box together with the pollbooks, registration lists, the envelope containing the unofficial returns and all supplies to the person in charge of the election as soon as possible but no later than noon on the day following the election.

**12-20-21.2. Write-in votes not to be counted - Other votes on ballot.**

If a name is written on a ballot in an attempt to cast a write-in-vote, the write-in vote may not be counted. However, all other votes for which the voter's intent may be determined shall be counted.

**12-20-22. Delivery of registration lists, pollbook and keys to auditor or clerk.** Repealed by SL 1974, ch 118, § 200.

**12-20-23. Delivery of ballot boxes to clerk or auditor.** Repealed by SL 1974, ch 118, § 200.

**12-20-24. Delivery of registration cards and notices to county auditor.** Repealed by SL 1974, ch 118, § 200.

**12-20-25. Preservation of pollbooks and ballot boxes.** Repealed by SL 1974, ch 118, § 200.

**12-20-26. Delivery of primary and general election pollbooks, ballot boxes and keys to auditor and clerk of court - Failure to deliver as misdemeanor - Penalty.** Repealed by SL 1974, ch 118, § 200.

**12-20-27. Administration of oath to separate precinct canvassing board - Reconciliation of ballot count performed by judges of election.** Repealed by SL 1974, ch 118, § 200.

**12-20-28. Certificate executed by judges and clerks.** Repealed by SL 1999, ch 69, § 48.

**12-20-29. Completion of canvass and returns by separate precinct canvassing board.** Repealed by SL 1974, ch 118, § 200.

**12-20-30. Preservation of primary and general election pollbooks, ballots and ballot boxes.** Repealed by SL 1974, ch 118, § 200.

**12-20-31. Destruction of ballots and pollbooks - Period for which held - Pending recount or contest.**

The officer in charge of an election may destroy voted ballots and pollbooks from a nonfederal election sixty days following the election at which such ballots were voted. However, they may not be destroyed if any recount or contest of such election is pending. The officer in charge of an election may destroy voted ballots, pollbooks and all other election material relating to a federal election twenty-two months after the election at which the ballots were voted. For the purpose of this section, a federal election is any election to nominate or elect persons to the United States Congress or other national elected position, including national issues or questions. If a ballot is used for a federal election and a state or local election, the ballots and all other election material shall be maintained for twenty-two months. All federal election material may be removed from the ballot box if it is maintained in such a manner as to guarantee the safety and integrity of such material.

**12-20-32. Preservation of ballot boxes and pollbooks - Delivery of pollbooks to county canvassing board - Violation as felony.**

The county auditor shall keep the ballot boxes and pollbooks in the same condition as when received, until the meeting of the county canvassing board, when he shall deliver the pollbooks to such board. A violation of this section is a Class 6 felony.

## *Return and Canvass of Votes*

**12-20-33. Safeguarding of ballot boxes by clerk of courts.** Repealed by SL 1974, ch 118, § 200.

**12-20-34. Failure to safeguard or deliver ballot boxes or pollbooks as felony - Penalty.** Repealed by SL 1982, ch 86, § 94.

**12-20-35. Returns not refused for irregularity - Certificate issued to candidate with most votes.**

No election returns shall be refused by any officer for the reason that the same may be returned or delivered to him in any other than the manner directed in this chapter, nor shall he refuse to include any returns in his estimate of votes for any informality in holding an election or making returns thereof; but all returns shall be received and the votes canvassed by such officer, and a certificate given to the person or persons who may by such returns have the greatest number of votes.

**12-20-36. Time for canvass of vote - Governing board as canvassing board - Representatives for absent board members.**

Within six calendar days after the close of any election, the officer in charge of the election, with the assistance of a majority of the governing board as the canvassing board, shall make the canvass of votes. Each member of the governing board may name and have on file with the officer in charge of the election a person to represent the member at the official canvass in the event of the member's absence for cause.

**12-20-37. Envelopes with directions for return of county vote furnished by secretary of state.**

The secretary of state shall, at least thirty days before each primary and general election, transmit to each county auditor envelopes for all returns of votes required to be made to the secretary of state's office. Printed directions shall accompany the envelope for the guidance and direction of the auditor in making the returns according to law.

**12-20-38. Abstracts of precinct returns prepared by board of canvassers - Certification - Deposit.**

The board of canvassers for both primary and general elections shall at the time provided by 12-20-36 proceed to open the returns from the various voting precincts in the county and make abstracts of the votes cast for each of the candidates and each of the issues. Each of the abstracts of the votes made shall be signed and certified by the canvassers, under the seal of the county auditor, and be deposited in the office of the auditor.

**12-20-38.1. Certified copy of official county canvass furnished to secretary of state - Permanent record.**

The county auditor shall immediately transmit by mail, fax, or electronic means to the secretary of state a certified copy of the official county canvass of votes prepared pursuant to § 12-20-38 which shall be used for the official state canvass. The certified copy shall bear a visible county seal. If the copy is faxed or sent by electronic means, the original certified copy shall also be mailed or hand delivered to the secretary of state. The certified copies shall be microfilmed to become permanent records of the State of South Dakota and be kept by the secretary of state.

**12-20-39. Election by plurality.**

Except when otherwise specially provided in all elections for the choice of any officer, the person receiving the highest number of votes for any office shall be deemed to have been elected to that office.

**12-20-40. Certificate of election delivered by county auditor to persons elected to local office.**

It shall be the duty of the county auditor to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers, respectively, and to deliver such certificate to the person entitled to it.

**12-20-41. Abstract of county votes for legislative and local offices forwarded to secretary of state.** Repealed by SL 1974, ch 118, § 200.

**12-20-42. Abstract of county votes for federal office forwarded to secretary of state - Endorsement on envelope.** Repealed by SL 1974, ch 118, § 200.

**12-20-43. Abstracts of county votes for state office forwarded to members of state canvassing board - Endorsement on envelopes.** Repealed by SL 1974, ch 118, § 200.

**12-20-44. State messenger to obtain delayed abstracts of county votes - Expense reimbursed by county - Payment of expense to messenger.** Repealed by SL 1974, ch 118, § 200.

**12-20-45. Preservation of unopened abstracts - Opening before board of canvassers.** Repealed by SL 1974, ch 118, § 200.

**12-20-46. Composition of state canvassing board - Candidate disqualified from participation.**

The Governor, or his designee, the chief justice of the Supreme Court, or his designee, and the secretary of state, in the presence of the attorney general shall constitute a board of canvassers to canvass the returns of the votes for representatives in Congress, United States senators, and for electors of President and vice-president of the United States and all state officers, members of the state Legislature, constitutional amendments, initiated measures, and referred laws, but no member thereof shall take part in canvassing the votes for any office for which he is a candidate.

**12-20-47. Time of convening of state canvassers - Adjournment to obtain late returns.**

Within seven days after the day of election, the Board of State Canvassers shall open and examine the returns from each county. However, if the returns from each county have not been received, the board may adjourn, not exceeding ten days, for the purpose of obtaining the returns from each county. The board shall proceed with the canvass after the returns have been received from each county.

**12-20-48. Abstract by state canvassers of county returns - Signature and seal - Recording and filing of abstracts.**

The board of state canvassers shall make an abstract stating the number of votes cast for each of such officers, the names of all persons voted for, for what office they respectively received the votes, and the number of votes each received, in words at length, and stating whom they declare to be elected to each office, which abstract shall

be signed by the canvassers in their official capacity and as state canvassers, and have the great seal of the state affixed.

The secretary of state shall record such abstracts in a book to be kept by him for recording the result of state elections, called the "election book," and also file such abstracts.

**12-20-48.1. Certification to state party chairman of votes for national convention slates.**

Upon the completion of the state canvass of the results of the primary election for delegates and alternates to the national convention, the state canvassing board shall certify to the state chairman of each political party the slates (groups of delegates and alternates) entered in the primary for each political party and the number of votes in the primary for each slate pursuant to § 12-5-3.10.

**12-20-49. Certificate of election issued for federal, state or legislative office.**

A certificate of election, signed by the Governor, attested by the secretary of state, with the great seal of the state affixed, shall be issued to each person elected to a federal or state office, or a member of the state Legislature. The secretary of state shall forward to the appropriate federal officer certified copies of the certificates as may be required.

**12-20-50. State canvass of returns for federal office - Tie vote - Certificates of election.** Repealed by SL 1973, ch 76, § 6.

**12-20-51. Disputes decided by majority of state canvassers - Irregularities disregarded.**

A majority of the members of the state canvassing board shall decide all matters of dispute, and it shall be their duty to disregard all technicalities and misspelling, the use of initial letters or abbreviations of the names of candidates, if it can be ascertained from the returns for whom the votes were intended.

**12-20-52. Rules and regulations for counting and canvass of vote.**

The state board of elections may, by rule, in accordance with chapter 1-26, promulgate rules and regulations to clarify the procedure by which ballots are counted and canvassed in all elections.

## CHAPTER 12-21.

## RECOUNTS

Section

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## *Recounts*

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### 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 SL 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 SL 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 due 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. Materials to be provided to recount board--Determination as to whether ballot countable.**

The county auditor shall provide the pollbooks, automatic tabulating system election night print outs, 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.**

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 SL 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.**

## *Recounts*

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.

## CHAPTER 12-22.

## CONTESTS

Section

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## *Contests*

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12-22-34. Elections to which primary contest law applies.
12-22-35. Supreme Court jurisdiction of primary contests for state office.

### 12-22-1. "Contest" defined.

"Contest," as used in §§ 12-22-1 to 12-22-28, inclusive, shall mean a legal proceeding, other than a recount, instituted to challenge the determination of any election under the provisions of this title, or any municipal, school, or township election.

### 12-22-2. Candidate's right to institute contest - Legislative contests excepted.

A contest may be instituted by any candidate for a public office, other than a candidate for the Legislature. A legislative contest shall be instituted as provided in § 12-22-26.

### 12-22-3. Right to institute contest on submitted question - Judge's permission required.

Such contest may be instituted by any registered voter who was entitled to vote on a referred or submitted question, but in such case such contest may be instituted only with the permission of a judge of the court in which such contest is instituted, endorsed upon the complaint before the same is filed.

### 12-22-4. Electoral candidates' and party chairman's right to institute contest of presidential election.

Such contest may be instituted, in the case of a presidential elector, by any one or more of a group of candidates for election as such electors, or by the chairman of the state central committee of any political party, which had on the ballot candidates duly nominated for such position.

### 12-22-5. Time of commencement of contest - Commencement after recount.

Any such contest, except as to the election of presidential electors, shall not be commenced until after the official canvass of the returns as to the office, nomination, position, or question involved; and must be commenced within ten days thereafter, except that where upon a recount there is a determination that is contrary to the result as pronounced on the official returns, such contest may be started within five days after such pronouncement of such result of such recount.

**12-22-6. Time of commencement of contest of presidential election.**

Any such contest as to the election of presidential electors shall not be instituted at any time after the expiration of the time limit prescribed by § 12-22-5. In case any person or persons entitled to institute such contest as to presidential electors, claim that for any reason returns from any precinct or precincts should be eliminated in the determination of the result, or that any ballots should be eliminated, such contest may be instituted at any time after the election and prior to the expiration of such time limit.

**12-22-7. Original jurisdiction of contests.**

Original jurisdiction over such contests shall be as follows:

(1) As to contests involving state offices, or judicial officers in the Supreme Court;

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

**12-22-8. Summons and complaint to commence contest.**

Such contest shall be deemed commenced upon the filing with the clerk of the court of a summons and complaint, which complaint shall be duly verified, and set forth a concise statement of the facts on which the contest is based. The summons shall be in the same form as the summons in a civil action, except that the time for answer shall be specified as within ten days after the service, unless the court shorten such time, as provided by 12-22-10, in which event the time fixed by the court shall be specified.

**12-22-9. Service of summons and complaint - Time of serving.**

Forthwith upon the filing of the summons and complaint, the same shall be served on the defendant or defendants, or on such other persons as may be required by §§ 12-22-11 to 12-22-15, inclusive. If such filing is within the time prescribed by §§ 12-22-5 and 12-22-6, such service may be made after expiration of such time, if made as soon as reasonably possible.

**12-22-10. Court orders to expedite proceedings.**

Whenever it shall appear that substantial rights may be lost or impaired by delay, the court may, at any time after the contest is commenced, upon application of any party, and upon reasonable notice to the other party or parties, make such order or orders as the court deems necessary to bring about the expeditious and just determination of the contest, including the shortening of the time for answer, the time, manner, and method of taking depositions, reference to a referee or referees, including power to appoint different referees for different purposes, and directing that when feasible the taking of evidence on depositions or before referees may proceed simultaneously, safeguarding the right of each party to be represented, if he so desires, in all such proceedings.

**12-22-11. Joinder of parties in commencement of contest - Denomination of plaintiffs and defendants.**

When two or more persons are entitled to commence any such contest, any one of them may institute it, or two or more may join. The person or persons instituting any

such contest involving an election or nomination to any office or position shall be denominated plaintiff or plaintiffs. The person or persons who at the time of starting such contest are officially declared elected or nominated to such office or position shall be named defendant or defendants.

**12-22-12. Intervention by other candidates - Assertion of right to nomination or office.**

Any other person who was a candidate for such office or nomination may be permitted at any time to intervene, but shall not be permitted to assert any right to such nomination or office unless such intervention is within the time in which he might have started a contest.

**12-22-13. Designation of defendants in contest of presidential election.**

In case of commencement of a contest involving presidential electors, prior to the official canvass, the plaintiff or plaintiffs must in good faith designate as defendants all candidates for such electors as shall have received a sufficient number of votes so there is a reasonable chance of their election.

**12-22-14. Title of proceeding on submitted question.**

In the case of a contest as to a submitted or referred question, the proceeding shall be entitled: "In the matter of election contest as to _____ (naming the question involved)."

**12-22-15. Service of summons and complaint in contest on submitted question - Intervention.**

In a contest as to a submitted or referred question voted upon in more than one county, the summons and complaint must be served on the attorney general. In other cases involving a submitted or referred question, the court shall, upon filing the complaint, direct by order the service upon such persons or officials as the court believes might be interested in resisting the relief sought. Any person on whom such complaint is served may answer the complaint, and shall thereafter be deemed a party. After commencement of a contest involving a submitted or referred question, any voter who was entitled to vote on such question may be permitted to intervene as a party plaintiff or defendant.

**12-22-16. Answer to present all defenses - Admission of matters not denied - Affirmative defense.**

No pleading to the complaint, other than an answer, shall be permitted, and all defenses of fact or law must be presented in such answer. Any matters alleged in the complaint and not denied shall be deemed admitted, but the court may, in its discretion, require that such admitted matters be nevertheless shown by competent evidence. The answer may also set forth matter in the nature of an affirmative defense.

**12-22-17. Hearing on contest - Default judgment prohibited.**

After answer has been interposed or after time for answer has expired, and when no answer is interposed, the court on application of any party, and on five days' notice to all other parties, unless the court for cause shall shorten such time, shall conduct a hearing on which a date for trial shall be fixed, which date shall be as early as reasonably possible, and the procedure to be followed determined, with full power in the court to provide for any and all of the matters specified in § 12-22-10. No judgment

shall be entered by default, and if no answer is interposed, the court shall nevertheless proceed to determine the relevant and material facts.

**12-22-18. Court to proceed expeditiously - Designation of judge and relief from other duties.**

The court shall proceed as expeditiously as reasonably possible, and the chief justice of the Supreme Court may, upon the application of the judge of any circuit court, before which such a contest is pending, or upon the application of any party, make an order designating any judge of any circuit court of the state to hear such contest, and relieving such judge of his other official duties pending the final determination of the contest.

**12-22-19. Official returns or recount conclusive as to accuracy of count - Other issues determined in contest.**

In such proceeding the accuracy of the count of the ballots as established by the official returns or as corrected by a recount, if a recount has been had under chapter 12-21, or as ultimately determined upon certiorari proceedings if such certiorari proceedings have been had, shall be accepted as conclusive, the intent hereof being that the remedies provided by chapter 12-21 for determination of the accuracy of the count shall be deemed exclusive as to such accuracy. There may, however, be determined in such contest all other questions relevant or material to the ultimate question of whether the official determination of the result of the election is correct.

**12-22-20. Certiorari to review recount as alternative remedy - Consolidation of proceedings.**

Whenever any person entitled to commence certiorari proceedings to review any recount under chapter 12-21 also desires to institute a contest under §§ 12-22-1 to 12-22-28, inclusive, he may resort to both remedies, and such remedies shall be deemed consistent and concurrent. The court may, in such a case, order the consolidation of such proceedings.

**12-22-21. Judgment withheld while recount or certiorari pending - Judgment declaring election result.**

When any recount is pending under chapter 12-21, or when there are pending certiorari proceedings to review such recount, judgment shall not be entered until the result of such recount is finally determined. The judgment finally entered shall declare the result of the election.

**12-22-22. Supreme Court order directing consolidation of contests involving same office or question - Duty of judges and attorneys to notify Supreme Court.**

Whenever it shall come to the attention of the Supreme Court that two or more contests are pending involving nomination or election to the same office or position, or the same submitted or referred question, the court may, on its own motion, or on the motion of any interested person and on reasonable notice to the parties, make an order, under its power of supervision of lower courts, directing that such proceedings be consolidated, and designating the circuit court in which further proceedings are to be had, with such provisions as the court considers necessary to safeguard the rights of the parties. It shall be the duty of any attorney appearing in any such case, upon learning of the pendency of any such other proceedings, to call the same to the attention of the Supreme Court. Any circuit judge before whom any such case is pending, upon learning of the pendency of any such other case, shall proceed no further, but shall at once notify the Supreme Court of the situation.

**12-22-23. Conflicting circuit court decisions on same submitted question - Appeal determinative - Direction to attorney general to prosecute appeal.**

In any instances where two or more such contests involve the same submitted or referred question, and where judgments are rendered by different circuit courts with conflicting results, and an appeal is taken in any such case, the appeal shall be determinative of any other such case in which no such appeal is taken, and in case no appeal is taken in any such case, where the determinations in circuit courts are conflicting, within the time provided by law, the time for appeal shall be deemed extended in all of such cases, and the Supreme Court may, at any time, direct that the attorney general prosecute an appeal in some one of such cases.

**12-22-24. Procedure as in other civil proceedings.**

Except as otherwise specifically provided, and so far as applicable, the procedure shall be the same as in other civil proceedings.

**12-22-25. Right of appeal to Supreme Court - Expediting proceedings in Supreme Court - Combining with appeal from certiorari to review recount.**

An appeal may be taken from the judgment of the circuit court the same as in other civil proceedings, but within the time, and subject to the same conditions, as specified in subdivisions 12-21-61 (1), (2), (3), and (4), relating to appeals in certiorari proceedings to review recounts. An appeal from a judgment rendered under the provisions of 12-22-1 to 12-22-28, inclusive, and an appeal from a judgment in such certiorari proceeding, may be combined into one appeal, and if taken separately may be consolidated by order of the Supreme Court.

**12-22-26. Notice of intention to institute legislative contest - Time for service - Answer.**

Any person who intends to contest the election of any person to either branch of the Legislature may within ten days after the official canvass of the votes, or within five days after final determination of a recount, if a recount has been had, give written notice to such other person of such contest, specifying the grounds of such contest. The person on whom such notice is served may within ten days after such service, serve on the person giving such notice an answer, admitting or denying the grounds alleged, and shall be deemed to admit any grounds not denied.

**12-22-27. Depositions in legislative contest - Filing with secretary of state.**

At any time after the service of the notice of such contest, the person serving the same may proceed to take depositions as hereinafter provided, and the person to whom a notice is given may proceed to take such depositions as soon as he serves his answer. Such depositions shall be taken with the same notice and under the same procedure and subject to the same conditions, so far as applicable, as depositions in a civil action, and shall be returned by the officer taking the same to the secretary of state, and filed in the office of the secretary of state, who shall be authorized to open the same at the instance of either party, his attorney, or agent.

**12-22-28. Public funds not used for legislative contest.**

No payment shall be made or authorized by the Legislature out of its contingent fund or from public funds to either party to a contested election, for expenses incurred in prosecuting or defending any contest.

**12-22-29. Candidate's right to contest primary election - Filing of complaint - Circuit court jurisdiction.**

Any candidate for nomination to any elective office, or for election to any party position, whose name appears on the official primary election ballot of any political party may contest the primary election as to the office or position for which he was a candidate for nomination or election, by filing with the clerk of the circuit court for the county in which his nominating petition was filed, a complaint in writing within ten days after the returns have been canvassed by the county canvassing board or boards, setting forth the grounds of his contest, which complaint shall be verified by the complainant. The complainant shall give security for all costs. Authority and jurisdiction are hereby vested in the circuit court to hear and determine such contests.

**12-22-30. Notation of filing of complaint in primary contest - Date of hearing - Apparently successful candidate as defendant.**

When a complaint has been filed it shall forthwith be presented to the judge of the circuit court in which it is filed, who shall note thereon the day of presentation and also the day and place where he will hear the same, which shall be not later than ten days thereafter. The candidate who appears upon the face of the returns to have been elected, or to whom a certificate of nomination has been issued, shall be named as defendant.

**12-22-31. Service of order fixing hearing date on primary contest - Answer.**

When the court has fixed the day for hearing the complaint, an order fixing such hearing shall be personally served upon the defendant, in the same manner as is provided for the service of a summons in a civil action. The defendant must answer on or before the day of hearing.

**12-22-32. Hearing of primary contest in or out of term - Preference in order of hearing.**

The cause may be heard and determined by the court in term time, or by the judge thereof in vacation, and shall have preference in order of hearing to all other cases.

**12-22-33. Dismissal of insufficient complaint - Hearing of evidence - Entry of orders and decisions.**

If, in the opinion of the court, the grounds alleged for the contest are insufficient, the complaint shall be dismissed. If the grounds are sufficient, the court shall proceed in a summary manner and may hear evidence, examine the returns, recount the ballots, and enter such orders and decisions as the facts and the law may require.

**12-22-34. Elections to which primary contest law applies.**

The judgment of the court shall be final, and the provisions of 12-22-29 to 12-22-35, inclusive, shall, so far as applicable, apply to contests of nominations and elections by primary election.

**12-22-35. Supreme Court jurisdiction of primary contests for state office.**

Where the nominating petitions have been filed with the secretary of state, a contest affecting such candidates shall be brought in and determined by the Supreme Court in the same manner.

# CHAPTER 12-23

# ELECTIONS IN UNORGANIZED COUNTIES

**[Repealed by SL 1974, ch 118, 200; 1982, ch28, 47]**

# CHAPTER 12-24

# PRESIDENTIAL ELECTORS

Section
12-24-1. Elector's notice to Governor of readiness to perform duties - Certificate of names presented to electors.
12-24-2. Replacement of elector failing to appear.
12-24-3. Notice to and powers of elector chosen to fill vacancy.
12-24-4. Time and place of performance of constitutional duties by electors.
12-24-5. Compensation and mileage of electors.

**12-24-1. Elector's notice to Governor of readiness to perform duties - Certificate of names presented to electors.**

Each elector of President and vice-president of the United States shall, before the hour of eleven o'clock in the morning of the day fixed by the act of Congress to elect a President and vice-president, give notice to the Governor that he is at the seat of government and ready at the proper time to perform the duties of an elector; and the Governor shall forthwith deliver to the electors present a certificate of all the names of the electors.

**12-24-2. Replacement of elector failing to appear.**

If any elector named in the Governor's certificate fails to appear before nine o'clock in the morning of the day of election of President and vice-president as aforesaid, the electors there present shall immediately proceed to elect by ballot, in the presence of the Governor, a person to fill such vacancy. If more than one person voted for to fill such vacancy shall have the highest and an equal number of votes, the Governor, in the presence of the electors attending, shall decide by lot which of such persons shall be elected.

**12-24-3. Notice to and powers of elector chosen to fill vacancy.**

Immediately after such choice is made, the name of the person so chosen shall forthwith be certified to the Governor by the electors making such choice; and the Governor shall cause notice to be immediately given, in writing, to the elector chosen to fill such vacancy; and the person so chosen shall be an elector and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined upon him as an elector by the Constitution and laws of the United States and of this state.

**12-24-4. Time and place of performance of constitutional duties by electors.**

The electors of President and vice-president shall, at twelve o'clock noon on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this state and then and there perform the duties enjoined upon them by the Constitution and laws of the United States.

**12-24-5. Compensation and mileage of electors.**

The electors shall receive the same compensation per diem and the same mileage as members of the Legislature.

## CHAPTER 12-25.

## CANDIDATES' FINANCIAL INTEREST STATEMENTS

Section

12-25-1 to 12-25-26. Repealed.
12-25-27. Candidates' financial statements - Definition of terms.
12-25-28. Statements of financial interest by candidates for state or federal office subject to primary - Violation as petty offense - Intentional violation as misdemeanor.
12-25-29. Statements of financial interest by convention nominees for state office - Violation as petty offense - Intentional violation as misdemeanor.
12-25-30. Filing of statements by candidates for local office - Violation as petty offense - Intentional violation as misdemeanor.
12-25-31. Forms for financial statements - Value not required - Verification - Open to public.
12-25-32. Repealed.
12-25-33. No filing fee for required statements.
12-25-34. Information from reports or statements - Sale or use for solicitation or commercial purpose prohibited - Misdemeanor.

**12-25-1 to 12-25-26.** Repealed.

**12-25-27. Candidates' financial statements - Definition of terms.**

Terms as used in §§ 12-25-27 to 12-25-31, inclusive, unless the context otherwise requires, mean:

(1) "Close economic interest," any enterprise that, in the calendar year preceding filing of a statement under any of §§ 12-25-28 to 12-25-30, inclusive, contributes either more than ten percent of or more than two thousand dollars, to the gross income of the family which shall include the individual required to file the statement and any member of his immediate family, or an enterprise in which such individual or any member of his immediate family control more than ten percent of the capital or stock;

(2) "Any member of his immediate family," a spouse or minor children living at home;

(3) "Enterprise," any business or economic relationship;

(4) "Statement of financial interest," a description of the type of financial activity and the nature of the association with the enterprise as provided in subdivision (1) of this section.

**12-25-28. Statements of financial interest by candidates for state or federal office subject to primary - Violation as petty offense - Intentional violation as misdemeanor.**

All candidates for the United States Senate, the United States House of Representatives, Governor, circuit court judge, and the state Legislature shall file a statement of financial interest with the secretary of state within fifteen days after filing nominating petitions. A Supreme Court justice shall file a statement of financial interest with the secretary of state within fifteen days of notifying the secretary of state of his

intention to place his name on the retention ballot. A violation of this section is a petty offense. An intentional violation of this section is a Class 2 misdemeanor.

**12-25-29. Statements of financial interest by convention nominees for state office - Violation as petty offense - Intentional violation as misdemeanor.**

All candidates for lieutenant governor, state treasurer, attorney general, secretary of state, state auditor, public utilities commissioner and commissioner of school and public lands shall file a statement of financial interest with the secretary of state within fifteen days after their nominations have been certified. A violation of this section is a petty offense. An intentional violation of this section is a Class 2 misdemeanor.

**12-25-30. Filing of statements by candidates for local office - Violation as petty offense - Intentional violation as misdemeanor.**

Each candidate for county commissioner, school board member in a school district with a total enrollment of more than two thousand students, or commissioner, council member or mayor in any first class municipality, shall file a statement of financial interest with the office at which the candidate's nominating petitions are filed within fifteen days after filing such petitions or, if otherwise nominated, within fifteen days after such nomination is certified. A violation of this section is a petty offense. An intentional violation of this section is a Class 2 misdemeanor.

**12-25-31. Forms for financial statements - Value not required - Verification - Open to public.**

The secretary of state shall prescribe and provide forms for the reporting of close economic interest. The value of a close economic interest need not be reported. Each individual filing a statement of financial interest shall subscribe to an oath or affirmation verifying the contents of such statement. All statements of financial interest shall be open to public inspection.

**12-25-32. Violation as misdemeanor - Penalty - Willful violation.** Repealed by SL 1982, ch 86, § 110.

**12-25-33. No filing fee for required statements.**

No filing fee may be charged for any report required by this chapter.

**12-25-34. Information from reports or statements - Sale or use for solicitation or commercial purpose prohibited - Misdemeanor.**

Any information copied, or otherwise obtained, from any report or statement, or copy, reproduction, or publication thereof, filed with the secretary of state under this chapter, shall not be sold or utilized by any person for the purpose of soliciting contributions, or any commercial purpose. For purposes of this section, "any commercial purpose" does not include the sale of newspapers, magazines, books, or other similar communications, the principal purpose of which is not to communicate lists or other information obtained from a report filed in accordance with this chapter.

Any violation of this section shall be a Class 2 misdemeanor.

## CHAPTER 12-25A.

## STATE ETHICS COMMISSION

**[Repealed by SL 1979, ch 108, 9]**

# CHAPTER 12-26.

# OFFENSES AGAINST THE ELECTIVE FRANCHISE

Section

12-26-1. Elections to which chapter applies.
12-26-2. Repealed.
12-26-3. False representation to procure registration or acceptance of vote as misdemeanor - Failure to deny false statement as misrepresentation.
12-26-4. Voting or offer to vote by unqualified person as misdemeanor.
12-26-5, 12-26-6. Repealed.
12-26-7. Impersonation of registered voter as felony.
12-26-8. Voting more than once at any election as felony.
12-26-9. Good faith defense to prosecution for illegal voting.
12-26-10. Threats or intimidation to prevent public assembly of electors as misdemeanor - Hindering attendance at meeting.
12-26-11. Disturbance of public meeting of voters as misdemeanor.
12-26-12. Persecution, threats or intimidation to influence vote as misdemeanor - Obstruction of voter on way to polls.
12-26-13. Unlawful influence of employees' political activities or voting as misdemeanor - Forfeiture of corporate charter.
12-26-14. Use of public relief, loans or grants to influence political activity or vote as misdemeanor.
12-26-15. Bribery of voter as misdemeanor - Acts constituting bribery.
12-26-16. Acceptance of bribe by voter as misdemeanor - Acts constituting acceptance of bribe.
12-26-17. Bribery or acceptance of bribe as infamous crime - Forfeiture of office.
12-26-18. Repealed.
12-26-19. Betting with intent to procure challenge as misdemeanor.
12-26-20. Repealed.
12-26-21. Disobedience of precinct superintendent or precinct deputy as misdemeanor.
12-26-22. Disturbance of election proceedings as misdemeanor.
12-26-23. Tampering with ballots, ballot box or poll list as felony.
12-26-23.1. Tampering with automatic ballot counting devices, direct recording electronic voting machines, and electronic ballot marking systems as felony.
12-26-24. Exclusion by precinct superintendent or precinct deputy of lawful vote as misdemeanor.
12-26-25. False count or return by election official as misdemeanor - Defacement or concealment of statement or certificate.
12-26-26. Repealed.
12-26-27. Bribery of election official as misdemeanor.
12-26-28. Offenses relating to election on submitted question.
12-26-29. Prevention of unlawful election not prohibited.
12-26-30. Irregularities in proceedings not a defense.
12-26-31. Offender as witness against another - Compelling testimony - Immunity from prosecution.

## 12-26-1. Elections to which chapter applies.

## *OFFENSES AGAINST THE ELECTIVE FRANCHISE*

The word "election" as used in this chapter includes any election held in this state for the purpose of enabling the voters to nominate or elect any United States, state, or local officer, or to vote upon any question submitted to them.

**12-26-2. Unqualified voter permitting registration - Penalty.** Repealed by SL 1974, ch 118, § 200.

**12-26-3. False representation to procure registration or acceptance of vote as misdemeanor - Failure to deny false statement as misrepresentation.**

Any person who, at the time of requesting his name to be registered as a voter, or who at the time of offering his vote at any election, knowingly makes any false statement or employs any false representation to procure his name to be registered or his vote to be received, is guilty of a Class 2 misdemeanor. A false statement or representation made or used in the presence and to the knowledge of a person requesting his name to be registered, or offering his vote, is to be deemed made by himself if it appears that it was made or used in support of his claim to be registered or to vote, that he knew it to be false and that he allowed it to pass uncontradicted.

**12-26-4. Voting or offer to vote by unqualified person as misdemeanor.**

Any person knowing himself not to be a qualified voter who votes or offers to vote at any election is guilty of a Class 2 misdemeanor.

**12-26-5. Aiding or advising vote by unqualified person as misdemeanor.** Repealed by SL 1982, ch 86, § 113.

**12-26-6. Voting or offer to vote in wrong precinct as misdemeanor.** Repealed by SL 1974, ch 118, § 200.

**12-26-7. Impersonation of registered voter as felony.**

A person who impersonates a registered voter and, as such, offers to vote at any election, is guilty of a Class 5 felony.

**12-26-8. Voting more than once at any election as felony.**

A person who votes more than once at any election or who offers to vote after having once voted, either in the same or in another election precinct in South Dakota or elsewhere, is guilty of a Class 6 felony.

**12-26-9. Good faith defense to prosecution for illegal voting.**

Upon any prosecution for procuring, offering, or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed upon good reason that the vote complained of was a lawful one; and the jury may take such facts into consideration in determining whether the acts complained of were knowingly done or not.

**12-26-10. Threats or intimidation to prevent public assembly of electors as misdemeanor - Hindering attendance at meeting.**

A person who by threats, intimidation, or unlawful force or violence, intentionally hinders or prevents voters from assembling in a public meeting for considering of public questions, or who hinders or prevents any individual voter from attending any such meeting, is guilty of a Class 2 misdemeanor.

**12-26-11. Disturbance of public meeting of voters as misdemeanor.**

A person who intentionally disturbs or breaks up any public meeting of voters lawfully being held for the purpose of considering public questions is guilty of a Class 2 misdemeanor.

**12-26-12. Persecution, threats or intimidation to influence vote as misdemeanor - Obstruction of voter on way to polls.**

A person who directly or indirectly, intentionally, by force or violence, or by unlawful arrest, or by any abduction, duress, damage, harm, or loss, or by any forcible or fraudulent contrivance, or by threats to do or employ any of them, or by threats of bringing civil suit or criminal prosecution, withdrawal of customs or dealing in business or trade, or enforcing payment of debts, or by any kind of injury or threat of injury inflicted or to be inflicted on any voter or person to influence any voter, and attempted, done, or threatened, or caused to be attempted, done, or threatened by any person in his own behalf or in behalf of any other person or question voted upon or to be voted upon at any election, for the purpose of preventing, causing, or intimidating a voter to vote or refrain from voting for or against any person or question, or who does or causes to be done any of such things because of a voter having voted or refrained from voting on any such matter, or who intentionally and without lawful authority obstructs, hinders, or delays a voter on his way to any poll where an election is to be held, is guilty of a Class 2 misdemeanor.

**12-26-13. Unlawful influence of employees' political activities or voting as misdemeanor - Forfeiture of corporate charter.**

It is a Class 2 misdemeanor for any employer in paying his employees the salary or wages due them, to enclose their pay in "pay envelopes" upon which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees.

It is a Class 2 misdemeanor for any employer, within ninety days of a general election, to put up or otherwise exhibit in his factory, mill, workshop, or other establishment or place where his employees may be working, any handbill or placard containing any threat, notice, or information that in case any particular tickets or candidate shall be elected, work in his place or establishment will cease in whole or in part, or that his establishment will be closed, or the wages of his workmen will be reduced, or other threats, express or implied, intended or calculated to influence the political opinion or the actions of his employees in voting.

Any corporation violating this section shall, upon proof thereof, forfeit its charter.

**12-26-14. Use of public relief, loans or grants to influence political activity or vote as misdemeanor.**

It is a Class 1 misdemeanor for any person, directly or indirectly, to promise or threaten to grant or withhold or to cause to be granted or withheld, any public relief, assistance loans or grants for the purpose or with the intention of controlling or influencing the political affiliations, party registration, support or vote at any election, of any person so promised or threatened.

The terms "public relief" and "assistance" include all forms of direct public relief and also all forms of indirect relief such as employment on any public works or project. The terms "loans" and "grants" include all forms of financial assistance granted by the federal government or any of its agencies and also by this state or any of its political subdivisions.

**12-26-15. Bribery of voter as misdemeanor - Acts constituting bribery.**

## *OFFENSES AGAINST THE ELECTIVE FRANCHISE*

It is a Class 2 misdemeanor for any person, directly or indirectly, by himself or through any other person:

(1) To pay, lend, contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration, to or for any voter or to or for any other person, to induce such voter to vote or refrain from voting at any election or to induce any voter to vote or refrain from voting at such election for any particular person or to induce such voter to go to the polls or remain away from the polls at such election, or on account of such voter having voted, refrained from voting or having voted or refrained from voting for any particular person, or having gone to the polls or remained away from the polls at such election;

(2) To give, offer, or promise any office, place or employment, or to promise to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person in order to induce such voter to vote or refrain from voting at such election for any particular person;

(3) To make any gift, loan, or promise, offer, procurement, or agreement as aforesaid to, for, or with any person in order to induce such person to procure or endeavor to procure the election of any person, or the vote of any voter at any election;

(4) To procure or engage, promise, or endeavor to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement, the election of any person or the vote of any voter at such election;

(5) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same or any part thereof shall be used in bribery at any election, or to knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

**12-26-16. Acceptance of bribe by voter as misdemeanor - Acts constituting acceptance of bribe.**

It is a Class 2 misdemeanor for any person, directly or indirectly, by himself or through any other person:

(1) To receive, agree, or contract for, before or during any election, any money, gift, loan, or other valuable consideration, offer, place, or employment for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls at any such election;

(2) To receive any money or other valuable thing during or after an election, for himself or any other person for having voted or refrained from voting at such election, or on account of himself or any other person having voted or refrained from voting for any particular person at such election, or on account of himself or any other person having gone to the polls or remained away from the polls at such election, or on account of having induced any other person to vote or refrain from voting, for any particular person at such election.

**12-26-17. Bribery or acceptance of bribe as infamous crime - Forfeiture of office.**

Any person committing the offense of bribery of voters or receiving a bribe as specified in 12-26-15 and 12-26-16 is guilty of an infamous crime, and any person convicted thereof shall, in addition to the criminal punishment, forfeit any office to which he may have been elected at the election at which such offense was committed.

**12-26-18. Betting on election as misdemeanor.** Repealed by SL 1976, ch 105, 84.

**12-26-19. Betting with intent to procure challenge as misdemeanor.**

Any person who shall directly or indirectly make a bet with a voter depending upon the result of any election, with the intent thereby to procure the challenge of such voter or to prevent his voting at an election, is guilty of a Class 2 misdemeanor.

**12-26-20. Betting by candidate as misdemeanor.** Repealed by SL 1976, ch 105, 84.

**12-26-21. Disobedience of precinct superintendent or precinct deputy as misdemeanor.**

A person who intentionally disobeys a lawful command of a precinct superintendent or precinct deputy of any election, given in the execution of the person's duty as such at an election, is guilty of a Class 2 misdemeanor.

**12-26-22. Disturbance of election proceedings as misdemeanor.**

No person may cause any disturbance or breach of the peace, or engage in disorderly conduct in violation of § 22-13-1, or use threats of violence, whereby an election is impeded or hindered, or whereby the lawful proceedings of the precinct superintendent or precinct deputies, ballot counters, or canvassers of an election, in the discharge of the person's duty, are interfered with. A violation of this section is a Class 2 misdemeanor.

**12-26-23. Tampering with ballots, ballot box or poll list as felony.**

A person who intentionally breaks, destroys, steals, or conceals any ballot box or any poll list used or intended to be used at any election, or who, before the ballots have been counted or canvassed, or during the time within which a contest or recount may be instituted or is pending and undisposed of, shall intentionally deface, change, injure, destroy, steal or conceal any ballot or ballots which have been voted and deposited in any ballot box at an election, is guilty of a Class 6 felony.

**12-26-23.1. Tampering with automatic ballot counting devices, direct recording electronic voting machines, and electronic ballot marking systems as felony.**

No person may intentionally program or alter an automatic ballot counting device, direct recording electronic voting machine, or electronic ballot marking system to erroneously mark, record, or count voted ballots or to render an erroneous total. A violation of this section is a Class 5 felony.

**12-26-24. Exclusion by precinct superintendent or precinct deputy of lawful vote as misdemeanor.**

A precinct superintendent or precinct deputy who intentionally excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at the election, is guilty of a Class 2 misdemeanor.

**12-26-25. False count or return by election official as misdemeanor - Defacement or concealment of statement or certificate.**

No precinct superintendent, precinct deputy, member of any counting board, member of any board of canvassers, messenger, or other officer authorized to take part in or perform any duty in relation to any count, canvass, or official statement of the votes cast at any election, may intentionally make any false count or canvass of the votes, or make, sign, publish, or deliver any false return of the election, knowing it to be false. No such person may intentionally deface, destroy, or conceal any statement or certificate entrusted to the person's care. A violation of this section is a Class 2 misdemeanor.

**12-26-26. Mutilation, destruction or prevention of delivery of election returns and certificates - Penalty.** Repealed by SL 1974, ch 118, § 200.

**12-26-27. Bribery of election official as misdemeanor.**

A person who gives or offers a bribe to any precinct superintendent, precinct deputy, canvasser, or other officer of an election as a consideration for doing or omitting to do any act in violation of the person's official duty in relation to such election, is guilty of a Class 2 misdemeanor.

**12-26-28. Offenses relating to election on submitted question.**

Every act which by the provisions of this chapter is made criminal when committed with reference to the election of a candidate is equally criminal when committed with reference to the determination of a question submitted to voters to be decided by votes cast at an election.

**12-26-29. Prevention of unlawful election not prohibited.**

Nothing in this chapter shall be construed to authorize the punishment of any person who, by authority of law, may interfere to prevent or regulate an election which has been unlawfully noticed or convened, or is being, or is about to be, unlawfully conducted.

**12-26-30. Irregularities in proceedings not a defense.**

Irregularities or defects in the mode of noticing, convening, holding, or conducting an election authorized by law, form no defense to a prosecution for a violation of the provisions of this chapter.

**12-26-31. Offender as witness against another - Compelling testimony - Immunity from prosecution.**

A person offending against any provision of this title is a competent witness against another person so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation, in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, and he shall not thereafter be liable to prosecution or punishment for the offense with reference to which his testimony was given.

## CHAPTER 12-27

## CAMPAIGN FINANCE REQUIREMENTS

Section

12-27-1. Definitions.
12-27-2. Political committee chair and treasurer required--Violation as misdemeanor.
12-27-3. Statement of organization and candidate campaign committee required--Exception-- Violation as misdemeanor.
12-27-4. Incorporation of political committee permitted--Treasurer remains personally responsible.
12-27-5. Time for existing political committees to file statement of organization—Violation as misdemeanor.
12-27-6. Contents of statement of organization.

12-27-7. Limit on contributions to candidates for statewide office--Violation as misdemeanor.
12-27-8. Limit on contributions to candidates for legislative or county office--Violation as misdemeanor.
12-27-9. Limit on contributions to political action committees--Violation as misdemeanor.
12-27-10. Limit on contributions to political parties--Violation as misdemeanor.
12-27-11. Name and address of contributor required--Donation of contributions from unknown sources to charitable organization--Violation as misdemeanor.
12-27-12. Disguised contributions prohibited--Misdemeanor.
12-27-13. Property purchased with contributions to be property of political committee or party.
12-27-14. Report of sale of property--Violation as misdemeanor.
12-27-15. Printed political communications to contain certain language--Exceptions—Violation as misdemeanor.
12-27-16. Statements to be filed regarding independent expenditures for communications advocating for or against candidate, office holder, ballot question, or political party-- Time for filing--Contents—Exceptions.
12-27-17. Statements to be filed regarding payments for communications identifying candidate or office holder but not advocating election or defeat—Contents--Exceptions.
12-27-18. Certain contributions and independent expenditures by organizations prohibited—Violation as misdemeanor.
12-27-18.1. Restriction on acceptance of contributions by ballot question committee --Violation as misdemeanor.
12-27-19. Statements required for organization to make contribution to ballot question committee--Disclosure of information by committee--Violation as misdemeanor.
12-27-20. Expenditure of public funds to influence election outcome prohibited.
12-27-21. Acceptance of contributions from public entities prohibited--Misdemeanor.
12-27-22. Persons and entities required to file campaign finance disclosure statements--Time for filing--Violation as misdemeanor.
12-27-23. Time for statewide ballot question committee to file campaign finance disclosure statement--Violation as misdemeanor.
12-27-24. Contents of campaign finance disclosure statement.
12-27-25. Termination statement.
12-27-26. Requirements for dissolution of political committee.
12-27-27. Conditions requiring filing of amended statement--Time for filing--Violation as misdemeanor--Civil penalty.
12-27-28. Conditions requiring filing of supplemental statement--Time for filing—Violation as misdemeanor.
12-27-29. Records required to be kept by treasurer of political committee and political party-- Violation as misdemeanor.
12-27-29.1. Administrative penalty for failure to timely file statement, amendment, or correction.
12-27-29.2. Administrative order assessing administrative penalty – Hearing - Appeal.
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12-27-31. Forms to be adopted by secretary of state--Oath or affirmation.
12-27-32. Preservation and destruction of statements in public records.
12-27-33. Sale and certain uses of information in statements prohibited—Misdemeanor.
12-27-34. Intentionally false or misleading statements prohibited--Felony.
12-27-35. Investigation and prosecution of violations by attorney general--Civil actions.
12-27-36. Access to records by attorney general--Violation as misdemeanor.
12-27-37. Confidentiality of records.

12-27-38. Candidate may not be certified or to forfeit office for felony violation.
12-27-39. Application of campaign finance requirements.
12-27-40. Investigation and prosecution of violations by state's attorney--Civil actions.
12-27-41. Filing by facsimile or e-mail.
12-27-42. Place of filing.
12-27-43. Action for civil penalty for certain violations.
12-27-44. Repealed.

**12-27-1. Definitions.**

Terms used in this chapter mean:

(1) "Ballot question," any referendum, initiative, proposed constitutional amendment, or other measure submitted to voters at any election;

(2) "Ballot question committee," a person or organization that raises, collects, or disburses contributions for the placement of a ballot question on the ballot or the adoption or defeat of any ballot question. A ballot question committee is not a person, political committee, or political party that makes a contribution to a ballot question committee. A ballot question committee is not an organization that makes a contribution to a ballot question committee from treasury funds;

(3) "Candidate campaign committee," any entity organized by a candidate to receive contributions and make expenditures for the candidate. Only one candidate campaign committee may be organized for each candidate;

(4) "Candidate," any person who seeks nomination for or election to public office, and for the purpose of this chapter a person is deemed a candidate if the person raises, collects, or disburses contributions in excess of five hundred dollars; has authorized the solicitation of contributions or the making of expenditures; or has created a candidate campaign committee for the purpose of obtaining public office. The person is also deemed a candidate if the person has taken all actions required by state law to qualify for nomination for or election to public office;

(5) "Clearly identified," the appearance of the name, nickname, a photograph or a drawing of a candidate or public office holder, or the unambiguous reference to the identity of a candidate or public office holder;

(6) "Contribution," any gift, advance, distribution, deposit, or payment of money or any other valuable consideration, or any contract, promise or agreement to do so; any discount or rebate not available to the general public; any forgiveness of indebtedness or payment of indebtedness by another person; or the use of services or property without full payment made or provided by any person, political committee, or political party whose primary business is to provide such services or property for the purpose of influencing:

(a) The nomination, election, or re-election of any person to public office; or

(b) The placement of a ballot question on the ballot or the adoption or defeat of any ballot question submitted.

The term does not include services provided by a person as a volunteer for or on behalf of any candidate, political committee, or political party, including the free or discounted use of a person's residence. Nor does the term include the purchase of any item of value or service from any political committee or political party. The purchase price of the item may not exceed the fair market value and may not include an intent to contribute beyond the item's value. A contribution does not include administration and solicitation of a contribution for a political action committee established by an organization and associated expenses, nor the use of an organization's real or personal property located on its business premises for such purposes. A contribution does not include nominal use of a candidate's real or personal property or nominal use of resources available at a candidate's primary place of business;

(7) "County office," any elected office at a county in this state;

(8) "Election," any election for public office; any general, special, primary, or runoff election; and any election on a ballot question;

(9) "Expressly advocate," any communication which:

(a) In context has no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question by use of explicit words of advocacy of election or defeat. The following words convey a message of express advocacy: vote, re-elect, support, cast your ballot for, reject, and defeat; or

(b) If taken as a whole and with limited reference to external events, such as the proximity to the election, may only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question because:

(i) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(ii) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates, public office holders, or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question or encourages some other kind of action;

(10) "Immediate family," a spouse of a candidate or public office holder, or a person under the age of eighteen years who is claimed by that candidate or public office holder or that candidate's or public office holder's spouse as a dependent for federal income tax purposes or any relative within the third degree of kinship of the candidate or the candidate's spouse, and the spouses of such relatives;

(11) "Independent expenditure," an expenditure, including the payment of money or exchange of other valuable consideration or promise, made by a person, organization, political committee, or political party to expressly advocate the election or defeat of a clearly identified candidate or the placement of a ballot question on the ballot or the adoption or defeat of any ballot question, but which is not made to, controlled by, coordinated with, requested by, or made upon consultation with a candidate, political committee, or agent of a candidate or political committee. The term does not include administration and solicitation of any contribution for a political action committee established by an organization and associated expenses, nor the use of an organization's real or personal property located on its business premises for such purposes. The term does not include any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to any member of the organization and the member's family;

(12) "In-kind," a good or service provided at no charge or for less than its fair market value. The term does not include the value of services provided by a person as a volunteer for or on behalf of any candidate, political committee, or political party, including the free or discounted use of any person's residence or office;

(13) "Legislative office," the Senate and the House of Representatives of the South Dakota Legislature;

(14) "Loan," a transfer of money, property, guarantee, or anything of value in exchange for an obligation, conditional or not, to repay in whole or part;

(15) "National political party," the organization which is responsible for the day-to-day operation of a political party at the national level, as determined by the Federal Election Commission;

(16) "Organization," any business corporation, limited liability company, nonprofit corporation, limited liability partnership, limited partnership, partnership, cooperative, trust except a trust account representing or containing only a contributor’s personal funds, business trust, association, club, labor union, collective bargaining organization, local, state, or national organization to which a labor organization pays membership or per capita fees, based upon its affiliation and membership, trade or professional association that receives its funds from membership dues or service fees, whether organized inside or outside the state, any entity organized in a corporate form under federal law or the laws of this state, or any group of persons acting in concert which is not defined as a political committee or political party in this chapter;

(17) "Person," a natural person;

(18) "Political action committee," a person or organization that raises, collects or disburses contributions to influence the outcome of an election and who is not a candidate, candidate campaign committee, ballot question committee, or a political party. A political action committee is not any:

(a) Person that makes a contribution to a political committee or political party; or

(b) Organization that makes a contribution to a ballot question committee from treasury funds;

(19) "Political committee," any candidate campaign committee, political action committee, or ballot question committee;

(20) "Political party," any state or county political party qualified to participate in a primary or general election, including any auxiliary organization of such political party. An auxiliary organization is any organization designated as an auxiliary organization in the political party's bylaws or constitution except any auxiliary organization that only accepts contributions to support volunteer of the organization and does not make monetary or in-kind contributions or any independent expenditures to any political committee;

(21) "Public office," any statewide office, legislative office, or county office;

(22) "Recognized business entity," any:

(a) Domestic corporation, limited liability company, nonprofit corporation, limited liability partnership, or cooperative duly registered with the secretary of state as of the first day of January of the current calendar year, and which is currently in good standing;

(b) Foreign corporation, limited liability company, nonprofit corporation, limited liability partnership, or cooperative duly registered with the secretary of state as of the first day of January of the current calendar year, and which is currently in good standing; or

(c) Entity organized in a corporate form under federal law.

A political committee or political party is not a recognized business entity. An organization which was established by or is controlled, in whole or in part, by a candidate, political committee, or agent of a candidate or political committee is not a recognized business entity;

(23) "Statewide office," the offices of Governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, commissioner of school and public lands, and public utilities commissioner;

(23A) “Treasury funds,” funds of an organization that were not raised or collected from any other source for the purpose of influencing a ballot question;

(24) "Volunteer," a person who provides services free of charge.

**12-27-2. Political committee chair and treasurer required--Violation as misdemeanor.**

A political committee shall have and continually maintain a chair and a treasurer, which may be the same person. The chair and treasurer for a candidate campaign committee shall be appointed by the candidate, and the candidate may serve as either, or both, such officers. No political committee may receive or make contributions or pay expenses while the office of treasurer is vacant. A violation of this section is a Class 2 misdemeanor.

**12-27-3. Statement of organization and candidate campaign committee required--Exception-- Violation as misdemeanor.**

The treasurer for a political action committee or ballot question committee shall file a statement of organization with the secretary of state not later than fifteen days after the date upon which the committee made contributions, received contributions, or paid expenses in excess of five hundred dollars unless such activity falls within thirty days of any statewide election in which case the statement of organization shall be filed within forty-eight hours. A candidate shall file a statement of organization for a candidate campaign committee with the secretary of state not later than fifteen days after becoming a candidate pursuant to this chapter. Notwithstanding the provisions of § 12-27-41, the statement of organization shall include the original signature of each person filing the statement. A political committee that regularly files a campaign finance disclosure statement with another state or the Federal Election Commission or a report of contributions and expenditures with the Internal Revenue Service is not required to file a statement of organization. A violation of this section is a Class 2 misdemeanor.

**12-27-4. Incorporation of political committee permitted--Treasurer remains personally responsible.**

A political committee may incorporate and not be subject to the provisions of § 12-27-18 if the political committee incorporates for liability purposes only. Notwithstanding the corporate status of the political committee, the treasurer of an incorporated political committee remains personally responsible for carrying out the treasurer's duties under this chapter.

**12-27-5. Time for existing political committees to file statement of organization--Violation as misdemeanor.**

A political committee created prior to July 1, 2007 that has not filed a termination statement shall file a statement of organization with the secretary of state not later than fifteen days after this chapter becomes effective. A violation of this section is a Class 2 misdemeanor.

**12-27-6. Contents of statement of organization.**

The statement of organization shall include:

(1) The name, street address, postal address, and daytime telephone number of the committee;

(2) The name, street address, postal address, and daytime telephone number of the chair and the treasurer of the committee;

(3) A statement of the type of political committee that has been or is being organized;

(4) In the case of a candidate campaign committee, the name, street address, and postal address of the candidate;

(5) In the case of a political action committee or ballot question committee, a concise statement of its purpose and goals, and the full name, street address, and postal address of the organization with which the committee is connected or affiliated, or if the committee is not connected or affiliated with any one organization, the trade, profession, or primary interest of the committee;

(6) If the committee is organized as a corporation under federal or state laws for liability purposes only as authorized by § 12-27-4, a statement affirming such organization; and

(7) The name, street address, postal address, and telephone number of each financial institution where an account or depository is maintained.

The statement shall be signed by the candidate and treasurer for a candidate campaign committee and by the chair and treasurer for other political committees. A political committee continues to exist until a termination statement is filed pursuant to

The treasurer of a political committee shall file an updated statement of organization not later than fifteen days after any change in the information contained on the most recently filed statement of organization.

**12-27-7. Limit on contributions to candidates for statewide office--Violation as misdemeanor.**

If the contributor is a person, no candidate for statewide office or the candidate's campaign committee may accept any contribution which in the aggregate exceeds four thousand dollars during any calendar year. A candidate campaign committee may accept contributions from any candidate campaign committee, political action committee, or political party. The limitation on any contribution from a person in this section does not apply to any contribution by the candidate or the candidate's immediate family. A violation of this section is a Class 1 misdemeanor.

**12-27-8. Limit on contributions to candidates for legislative or county office--Violation as misdemeanor.**

If the contributor is a person, no candidate for legislative or county office or the candidate's campaign committee may accept any contribution which in the aggregate exceeds one thousand dollars during any calendar year. A candidate campaign committee may accept contributions from any candidate campaign committee, political action committee, or political party. The limitation on any contribution from a person in this section does not apply to any contribution by the candidate or the candidate's immediate family. A violation of this section is a Class 1 misdemeanor.

**12-27-9. Limit on contributions to political action committees--Violation as misdemeanor.**

If the contributor is a person or an organization, no political action committee may accept any contribution which in the aggregate exceeds ten thousand dollars during any calendar year. A political action committee may accept contributions from any candidate campaign committee, political action committee, or political party. A violation of this section is a Class 1 misdemeanor.

**12-27-10. Limit on contributions to political parties--Violation as misdemeanor.**

If the contributor is a person, no political party may accept any contribution which in the aggregate exceeds ten thousand dollars during any calendar year. A political party may accept contributions from any candidate campaign committee, political action committee, or political party. A violation of this section is a Class 1 misdemeanor.

**12-27-11. Name and address of contributor required--Donation of contributions from unknown sources to charitable organization--Violation as misdemeanor.**

No person, organization, candidate, political committee, or political party may give or accept a contribution unless the name and residence address of the contributor is made known to the person receiving the contribution. Any contribution, money, or other thing of value received by a candidate, political committee, or political party from an unknown source shall be donated to a nonprofit charitable organization. A violation of this section is a Class 2 misdemeanor.

**12-27-12. Disguised contributions prohibited--Misdemeanor.**

No person or organization may make a contribution in the name of another person or organization, make a contribution disguised as a gift, make a contribution in a fictitious name, make a contribution on behalf of another person or organization, or knowingly permit another to use that person's or organization's name to make a contribution. No candidate may accept a contribution disguised as a gift. A violation of this section is a Class 1 misdemeanor.

**12-27-13. Property purchased with contributions to be property of political committee or party.**

Equipment, supplies, and materials purchased with contributions are property of the political committee or political party, and are not property of the candidate or any other person.

**12-27-14. Report of sale of property--Violation as misdemeanor.**

The sale of any property shall be reported in the campaign finance disclosure statement. A violation of this section is a Class 1 misdemeanor.

**12-27-15. Printed political communications to contain certain language--Exceptions-- Violation as misdemeanor.**

Any printed material or communication made, purchased, paid for, or authorized by a candidate, political committee, or political party which expressly advocates for or against a candidate, public office holder, ballot question, or political party shall prominently display or clearly speak the statement: "Paid for by (Name of candidate, political committee, or political party)." This section does not apply to buttons, balloons, pins, pens, matchbooks, clothing, or similar small items upon which the inclusion of the statement would be impracticable. A violation of this section is a Class 1 misdemeanor.

**12-27-16. Statements to be filed regarding independent expenditures for communications advocating for or against candidate, office holder, ballot question, or political party--Time for filing-- Contents--Exceptions.**

The following apply to independent expenditures by individuals and organizations related to communications advocating for or against candidates, public office holders, ballot questions, or political parties, and expenditures by individuals and organizations within sixty days of an election that clearly identify a candidate or public office holder but do not expressly advocate the election of the candidate or public office holder:

(1) Any person or organization that makes an independent expenditure for a communication which expressly advocates for or against a candidate, public office holder, ballot question, or political party, regardless of the amount of the expenditure, shall append to or include in each communication a disclaimer that clearly and forthrightly:

(a) Identifies the person or organization making the independent expenditure for that communication;

(b) States the address or website address of the person or organization; and

(c) States that the communication is independently funded and not made in consultation with any candidate, party, or political committee.

A violation of this subdivision is a Class 1 misdemeanor;

(2) Any person or organization that makes an expenditure, including the payment of money or exchange of other valuable consideration or promise, for a communication that clearly identifies a candidate or public office holder, but does not expressly advocate the election or defeat of the candidate or public office holder, and that is disseminated, broadcast, or otherwise published within sixty days of an election shall append to or include in the communication a disclaimer that clearly and forthrightly:

(a) Identifies the person or organization making the expenditure for that communication; and

(b) States the address or website address of the person or organization.

A violation of this subdivision is a Class 1 misdemeanor;

(3) Any organization which is not a recognized business entity and which makes an expenditure for a communication described in subdivision (1) or (2) shall file a statement within forty-eight hours of the time that the communication is disseminated, broadcast, or otherwise published;

(4) Any person or recognized business entity that makes expenditures in excess of two thousand dollars during any calendar year for communications described in subdivision (1) or (2) shall file a statement with the secretary of state that is received within forty-eight hours of the time that the person's or organization's expenditures exceed two thousand dollars, and thereafter, within forty-eight hours of the time that any such subsequent communication is disseminated, broadcast, or otherwise published during the remainder of that calendar year;

(5) The statements required by this section shall include the name, street address, city, and state of the person or organization and, for any expenditures made for communications described in subdivision (1) or (2) during that calendar year but not yet reported on a prior statement, the name of each candidate, public office holder, ballot question, or political party mentioned or identified in each communication, the amount spent on each communication, and a description of the content of each communication. For an organization, the statement shall also include the name and title of the person filing the report, the name of its chief executive, if any, and the name of the person who authorized the expenditures on behalf of the organization;

(6) For an organization whose majority ownership is owned by, controlled by, held for the benefit of, or comprised of twenty or fewer persons, partners, owners, trustees, beneficiaries, participants, members, or shareholders, the statement shall identify by name and address each person, partner, owner, trustee, beneficiary, participant, shareholder, or member who owns, controls, or comprises ten percent or more of the organization;

(7) An organization shall also provide supplemental statements, as defined in subdivision (5), for any of its partners, owners, trustees, beneficiaries, participants, members, or shareholders identified pursuant to subdivision (6) which are owned by, controlled by, held for the benefit of, or comprised of twenty or fewer persons, partners, owners, trustees, beneficiaries, participants, members, or shareholders, until no organization identified in the supplemental statements meets the ownership test set forth in subdivision (6);

(8) For the purposes of this section, the term, communication, does not include:

(a) Any news articles, editorial endorsements, opinion, or commentary writings, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate, political committee, or political party;

(b) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, political committee, or political party;

(c) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families; and

(d) Any communication that refers to any candidate only as part of the popular name of a bill or statute.

**12-27-17. Statements to be filed regarding payments for communications identifying candidate or office holder but not advocating election or defeat--Contents--Exceptions.**

Any political committee or political party that makes a payment or promise of payment totaling one thousand dollars or more for a communication that clearly identifies a

candidate or public office holder, but does not expressly advocate the election or defeat of the candidate or public office holder, and that is disseminated, broadcast, or otherwise published within sixty days of an election, shall file a statement with the secretary of state disclosing the name, street address, city, and state of such political committee or political party. The statement shall also include the name of the candidate or public office holder mentioned in the communication, the amount spent on the communication, and a description of the content of the communication. The statement shall be received and filed within forty-eight hours of the time that the communication is disseminated, broadcast, or otherwise published.

For the purposes of this section, the term, communication, does not include:

(1) Any news articles, editorial endorsements, opinion or commentary writings, or letter to the editor printed in a newspaper, magazine, flyer, pamphlet, or other periodical not owned or controlled by a candidate, political committee, or political party;

(2) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, political committee, or political party;

(3) Any communication by a person made in the regular course and scope of the person's business or ministry or any communication made by a membership organization solely to members of the organization and the members' families; and

(4) Any communication that refers to any candidate only as part of the popular name of a bill or statute.

**12-27-18. Certain political contributions and independent expenditures by organizations prohibited--Violation as misdemeanor.**

No organization may make a contribution to a candidate committee or political party. An organization may make a contribution to a ballot question committee organized solely for the purpose of influencing an election on a ballot question and independent expenditures regarding the placement of a ballot question on the ballot or the adoption or defeat of a ballot question. Any organization making expenditures, equal to or exceeding fifty percent of the organization's annual gross income, for the adoption or defeat of a ballot measure is a ballot question committee. An organization may create a political action committee. A violation of this section is a Class 1 misdemeanor.

**12-27-18.1. Restriction on acceptance of contributions by ballot question committee --Violation as misdemeanor.**

A ballot question committee may only accept contributions from a person, organization, political committee, or political party. A violation of this section is a Class 1 misdemeanor.

**12-27-19. Statements required for organization to make contribution to ballot question committee--Disclosure of information by committee--Violation as misdemeanor.**

Before making a contribution to a ballot question committee pursuant to § 12-27-18, an organization shall provide to the ballot question committee the following:

(1) A statement that the organization is filed as a domestic or foreign entity in good standing with the Office of the Secretary of State of this state;

(2) A statement that the organization is filed as an entity in good standing with another jurisdiction, and setting forth the following:

(a) The name of the organization;

(b) The name of the state or nation under whose law the organization is incorporated or organized; and

(c) The street address of the organization's principal office; or

(3) If neither of the above apply, a statement providing:

(a) The name of the organization;

(b) The street address of the organization's principal office;

(c) The name and street address of the person authorizing the contribution; and

(d) The name and street address of every owner, director, and officer of the organization.

Before contributing more than ten thousand dollars in the aggregate to a ballot question committee pursuant to § 12-27-18, an organization shall provide to the ballot question committee a sworn written statement made by the president and treasurer of the organization declaring and affirming, under the penalty of perjury, the following:

(1) The name and street address of every person who owns ten percent or more of the organization, has provided ten percent or more of the organization's gross receipts, including capital contributions, in the current or preceding year, or has provided ten percent or more of the funds being contributed to the ballot question committee; and

(2) That no part of the contribution was raised or collected by the organization for the purpose of influencing the ballot question.

A ballot question committee shall disclose in its applicable campaign financial disclosure statement or supplement statement all information received from an organization pursuant to this section. No ballot question committee may accept any contribution from an organization not preceded or accompanied by the statements required by this section. Except as provided by § 22-29- 1, violation of this section is a Class 1 misdemeanor.

**12-27-20. Expenditure of public funds to influence election outcome prohibited.**

The state, an agency of the state, and the governing body of a county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question.

**12-27-21. Acceptance of contributions from public entities prohibited--Misdemeanor.**

No candidate, political committee, or political party may accept any contribution from any state, state agency, political subdivision of the state, foreign government, Indian tribal entity as defined in the Federal Register Vol. 72, No. 55 as of March 22, 2007, federal agency, or the federal government. A violation of this section is a Class 1 misdemeanor.

**12-27-22. Persons and entities required to file campaign finance disclosure statements--Time for filing--Violation as misdemeanor.**

A campaign finance disclosure statement shall be filed with the secretary of state by the treasurer of every:

(1) Candidate or candidate campaign committee for any statewide or legislative office;

(2) Political action committee;

(3) Political party; and

(4) Ballot question committee.

The statement shall be signed and filed by the treasurer of the political committee or political party. The statement shall be received by the secretary of state and filed by 5:00 p.m. each February first and shall cover the contributions and expenditures for the preceding calendar year. The statement shall also be received by the secretary of state and filed by 5:00 p.m. on the second Friday prior to each primary and general election complete through the fifteenth day prior to that election. If a candidate is seeking nomination at the biennial state convention, the candidate or the candidate campaign committee shall file a campaign finance disclosure statement with the secretary of state by 5:00 p.m. on the second Friday prior to any biennial state convention. Any statement filed pursuant to this section shall be consecutive and shall cover contributions and expenditures since the last statement filed.

The following are not required to file a campaign finance disclosure statement:

(1) A candidate campaign committee for legislative or county office on February first following a year in which there is not an election for the office;

(2) A county, local, or auxiliary committee of any political party, qualified to participate in a primary or general election, prior to a statewide primary election;

(3) A legislative or county candidate campaign committee without opposition in a primary election, prior to a primary election;

(4) A ballot question committee prior to a primary election unless the committee is involved in a ballot question voted on at the primary;

(5) A candidate campaign committee whose name is not on the general election ballot, prior to the general election; and

(6) A political committee that regularly files a campaign finance disclosure statement with another state or the Federal Election Commission or a report of contributions and expenditures with the Internal Revenue Service.

A violation of this section is a Class 1 misdemeanor.

### 12-27-23. Time for statewide ballot question committee to file campaign finance disclosure statement--Violation as misdemeanor.

A campaign finance disclosure statement shall be received by the secretary of state and filed by the treasurer of any statewide ballot question committee by 5:00 p.m. on the fifth day of July during the year in which the ballot question is to be voted on complete through the month of June. A violation of this section is a Class 1 misdemeanor.

### 12-27-24. Contents of campaign finance disclosure statement.

A campaign finance disclosure statement shall include the following information:

(1) Political committee or political party name, street address, postal address, city, state, zip code, daytime and evening telephone number, and e-mail address;

(2) Type of campaign statement (pre-primary, pre-general, mid-year, year-end, amendment, supplement, or termination);

(3) If a ballot question committee, the ballot question number and whether the committee is for or against the measure;

(4) The balance of cash and cash equivalents on hand at the beginning of the reporting period;

(5) The total amount of all contributions received during the reporting period;

(6) The total amount of all in-kind contributions received during the reporting period;

(7) The total of refunds, rebates, interest, or other income not previously identified during the reporting period;

(8) The total of contributions, loans, and other receipts during the reporting period;

(9) The total value of loans made to any person, political committee, or political

party during the reporting period;

(10) The total of expenditures made during the reporting period;

(11) The total amount of all expenditures incurred but not yet paid. An expenditure incurred but not yet paid shall be reported on each report filed after the date of receipt of goods or services until payment is made to the vendor. A payment shall be listed as an expenditure when the payment is made;

(12) The statement shall state the cash balance on hand as of the close of the reporting period;

(13) The total amount of contributions of one hundred dollars or less in the aggregate from one source received during the reporting period;

(14) The name, residence address, city, and state of each person contributing a contribution of more than one hundred dollars in the aggregate during the reporting period and the amount of the contribution. Any contribution from any political committee or political party shall be itemized. Any contribution from a federal political committee or political committee organized outside this state shall also include the name and internet website address of the filing office where campaign finance disclosure statements are regularly filed for the committee. If all of the information required is not on file, the political committee or political party may not deposit the contribution;

(15) The statement shall contain the same information for in-kind contributions as for monetary contributions, and shall also include a description of the in-kind contribution;

(16) Upon the request of the treasurer, a person making an in-kind contribution shall provide all necessary information to the treasurer, including the value of the contribution;

(17) Any monetary or in-kind contribution made by the reporting political committee or political party to any political committee, political party, or nonprofit charitable organization shall be itemized;

(18) A categorical description and the amount of the refunds, rebates, interest, sale of property, or other receipts not previously identified during the reporting period;

(19) A categorical description and the amount of funds or donations by any organization to its political committee for establishing and administering the political committee and for any solicitation costs of the political committee;

(20) The total balance of loans owed by the political committee or political party;

(21) The balance of loans owed by the political committee or political party, itemized by lender's name, street address, city, and state, including the terms, interest rate, and repayment schedule of each loan;

(22) The total balance of loans owed to the political committee or political party;

(23) The amount of each loan made during the reporting period. The name, street address, city,
and state of the recipient of the loan;

(24) The balance of each loan owed to the political committee or political party, itemized by name, street address, city, and state;

(25) The expenditures made during the reporting period shall be categorized. Disbursements to consultants, advertising agencies, credit card companies, and similar firms shall be itemized into expense categories. Any contribution made by the reporting political committee or political party that is not in exchange for any item of value or service shall be itemized;

(26) The expenditures incurred but not yet paid during the reporting period and to whom the expenditure is owed;

(27) The amount of each independent expenditure, as defined in this chapter, made during the reporting period, the name of the candidate, public office holder, or ballot question related to the expenditure and a description of the expenditure;

(28) The information contained in any statement provided under § 12-27-19; and

(29) The statement shall include a certification that the contents of the

statement is true and correct signed by the treasurer of the political committee or political party.

**12-27-25. Termination statement.**

The last campaign finance statement filed shall be a termination statement. The termination statement shall be filed by the treasurer within thirty days following disposition of all funds and property and the payment of all obligations.

**12-27-26. Requirements for dissolution of political committee.**

A political committee may not dissolve until the political committee has settled all of its debts, disposed of all of its assets, and filed a termination statement.

**12-27-27. Conditions requiring filing of amended statement--Time for filing--Violation as misdemeanor--Civil penalty.**

Any treasurer or other person filing a statement pursuant to this chapter, shall file an amended statement within three days of discovering any omission, inaccuracy, or other change necessary to make the statement accurate. A person responsible for filing a statement pursuant to this chapter, who willfully fails to report a material change or correction, is guilty of a Class 1 misdemeanor. A person responsible for filing a statement pursuant to this chapter, who willfully fails to file an amendment pursuant to this section is subject to the administrative penalty in § 12-27-29.1 beginning on the first day following the third day after the candidate, treasurer, or other person is notified of the omission, inaccuracy, or other change necessary to make the statement accurate.

**12-27-28. Conditions requiring filing of supplemental statement--Time for filing--Violation as misdemeanor.**

If any candidate campaign committee for statewide office, political action committee, ballot question committee, or political party required to file a campaign finance disclosure statement pursuant to this chapter receives a contribution of five hundred dollars or more within the fourteen days immediately prior to an election for which a campaign finance disclosure statement may be filed, a supplemental statement shall be filed. The statement shall state the name, street address, city, and state of the contributor and the amount and date of the contribution, and information contained in any statement provided under § 12-27-19, if applicable. The statement shall be filed by the treasurer within forty-eight hours of the receipt of the contribution. A violation of this section is a Class 1 misdemeanor.

**12-27-29. Records required to be kept by treasurer of political committee and political party-- Violation as misdemeanor.**

The treasurer of a political committee and political party shall maintain and preserve detailed and accurate records of the following:

(1) Each contribution and in-kind contribution received by the political committee or political party;

(2) In the case of a ballot question committee, the information required by § 12-27-19 for any organization contribution;

(3) Each loan received or made by the political committee or political party;

(4) Each refund, rebate, interest, or other income received by the political committee or political party;

(5) All receipts, invoices, bills, canceled checks, or other proofs of payment, with an explanation of each, for each expenditure;

(6) The name and address of any financial institution where an account or depository for the political committee or political party is maintained including the

account number.

The treasurer shall maintain and preserve the records for a period of seven years or three years past the date of filing the termination statement for the election for which the contribution or expenditure was made, whichever is earlier. A violation of this section is a Class 1 misdemeanor.

**12-27-29.1. Administrative penalty for failure to timely file statement, amendment, or correction.**

In addition to any other penalty or relief provided under this chapter, the secretary of state, after notice and opportunity for hearing pursuant to chapter 1-26, may impose an administrative penalty for the failure to timely file any statement, amendment, or correction required to be filed by this chapter. The administrative penalty is fifty dollars per day for each violation not to exceed three thousand dollars. However, if the violation is made by a county political party or auxiliary, the administrative penalty is ten dollars per day for each violation not to exceed six hundred dollars. Any administrative penalty collected pursuant to this section shall be deposited in the state general fund.

**12-27-29.2. Administrative order assessing administrative penalty – Hearing - Appeal.**

Any administrative penalty imposed pursuant to section 13 of this Act shall be assessed against the violator by an administrative order of the secretary of state. The order shall state the date and facts of each violation addressed under the penalty assessed and the citations to the provisions of each law alleged to be violated. The order shall contain a statement that the violator may request a contested case hearing on the violation and penalty pursuant to chapter 1-26, by filing a written request with the secretary of state no later than twenty days after the receipt of the order. The secretary of state shall serve the order and assessment by certified mail. If not contested within twenty days of receipt of the order, an administrative order assessing an administrative penalty constitutes a judgment and may be executed by delivery of a true and correct copy certified by the secretary of state in the manner provided for the execution of money judgments provided in chapter 15-18.

If a hearing is requested, the matter shall be scheduled for a hearing before the secretary of state within thirty days from the receipt of the request. The secretary of state shall provide notice of the hearing consistent with the provisions of § 1-26-17. A final determination by the secretary of state may be appealed to the circuit court or Supreme Court as provided in chapter 1-26.

If the time to take an appeal has lapsed after the final determination by the secretary of state, the administrative order assessing an administrative penalty constitutes a judgment and may be executed by delivery of a true and correct copy certified by the secretary of state in the manner provided for the execution of judgments in chapter 15-18.

**12-27-30. Civil penalty for delinquent statements.**

Notwithstanding the provisions of § 12-25-33, the failure to timely file any statement, amendment, or correction with any county, township, municipality, school district, or special purpose district covered by this chapter pursuant to § 12-27-39 or covered by local ordinance or resolution subjects the treasurer responsible for filing to a civil penalty of fifty dollars per day for each day that the statement remains delinquent. The civil penalty shall be in addition to any criminal sanctions and shall be paid to the county, township, municipality, school district, or special purpose district and deposited in its general fund.

**12-27-31. Forms to be adopted by secretary of state--Oath or affirmation.**

The secretary of state shall adopt forms for statements of organization and campaign finance disclosure statements. Each person filing a statement of organization or campaign finance disclosure statement shall subscribe to an oath or affirmation verifying that the contents of the statement are true and correct to the best of the knowledge and belief of the signer.

**12-27-32. Preservation and destruction of statements in public records.**

The secretary of state shall endorse the date of the filing on each statement filed pursuant to this chapter, and shall preserve the statement among the public records of the office. However, the statement may be destroyed if the Records Destruction Board, acting pursuant to § 1-27-19, declares the records to have no further administrative, legal, fiscal, research, or historical value.

**12-27-33. Sale and certain uses of information in statements prohibited--Misdemeanor.**

No information copied, or otherwise obtained, from any statement, or copy, reproduction, or publication thereof, filed with the secretary of state, county auditor, or other person in charge of conducting the election under this chapter may be sold or utilized by any person for any commercial purpose or for the purpose of soliciting contributions. Any violation of this section is a Class 2 misdemeanor.

**12-27-34. Intentionally false or misleading statements prohibited--Felony.**

Any person who intentionally makes any false, fraudulent, or misleading statement or entry in any statement of organization, campaign finance disclosure statement, other statement, or amendment filed pursuant to this chapter is guilty of a Class 5 felony.

**12-27-35. Investigation and prosecution of violations by attorney general--Civil actions.**

The attorney general shall investigate violations of the provisions of this chapter relating to a legislative office, statewide office, or statewide ballot question and prosecute any violation thereof. In lieu of bringing a criminal action, the attorney general may elect to file a civil action. In a civil action, in addition to other relief, the court may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation. Any civil penalty recovered shall be paid to the state general fund. A civil action brought by the attorney general shall be commenced in Hughes County, in the county where the person resides, or in the county where the organization, political party, or political committee has its principal office.

**12-27-36. Access to records by attorney general--Violation as misdemeanor.**

The attorney general may, for the purpose of enforcing the provisions of this chapter, inspect or examine any political committee or political party records required to be maintained by this chapter. It is a Class 1 misdemeanor for any person having charge, control, or possession of political committee or political party records to neglect or refuse the attorney general reasonable access to any records required to be maintained by this chapter which are necessary to enforce the provisions of this chapter.

**12-27-37. Confidentiality of records.**

The attorney general shall keep each record inspected or examined confidential except when the records are used to enforce provisions of this chapter associated with a criminal or civil action.

**12-27-38. Candidate may not be certified or to forfeit office for felony violation.**

If any candidate is proved in a contest of an election or is proved to have violated any provision of this chapter punishable by a felony, the candidate may not be certified for election or the candidate shall forfeit his or her office. The office shall be declared vacant and shall be filled in the manner provided by law for filling vacancies occasioned by death or resignation.

**12-27-39. Application of campaign finance requirements.**

The provisions of this chapter apply to each statewide office, legislative office, statewide ballot question, county offices and ballot questions in counties with population greater than five thousand according to the most recent Federal census, and school district offices and ballot questions in school districts with more than two thousand average daily membership. Any school district election covered by this chapter shall conform to the contribution limits applicable to legislative offices. This chapter does not apply to the unified judicial system, nor does this chapter apply to any township, municipal, or special purpose district offices or ballot questions. However, the governing body of any county, township, municipality, school district, or special purpose district not otherwise covered by this chapter may adopt an ordinance or resolution to make the provisions of this chapter, with or without amendments, applicable to county, township, municipal, school district, or special purpose district elections.

**12-27-40. Investigation and prosecution of violations by state's attorney--Civil actions.**

The state's attorney shall investigate any violation of the provisions of this chapter relating to elections for county and school district office or ballot questions, and prosecute any violation thereof. In lieu of bringing a criminal action, the state's attorney may elect to file a civil action for any violation of this chapter. In a civil action, in addition to other relief, the court may impose a civil penalty in an amount not to exceed one thousand dollars for each violation. Any civil penalty recovered shall be paid to the county general fund if the violation arose out of a county office or ballot question or the school district general fund if the violation arose out of a school district office or ballot question. A civil enforcement action for a violation of the chapter concerning a school district office or ballot question may, with the consent of the state's attorney, be brought by the school district's attorney. A civil action brought under this section shall be commenced in the county where filings under the chapter are required, in the county where the person resides or in the county where the organization, political party, or political committee has its principal office.

**12-27-41. Filing by facsimile or e-mail.**

Any statement required to be filed under this chapter may be filed by facsimile device or electronic mail in accordance with the methods approved by the secretary of state. To be timely filed, any statement received by facsimile device or electronic mail shall be legible and readable when received by the means it was delivered. The original shall be filed with the secretary of state within one week following the date the facsimile or electronic mail transmission was received.

**12-27-42. Place of filing.**

Any statement, form, or filing required by this chapter shall be filed with the secretary of state in the case of a statewide office or legislative office election. Any statement, form, or filing required by this chapter shall be filed with the county auditor in the case of a county office election, with the school business manager in the case of a school

district office election, or with the person in charge of the election in the case of other political subdivisions or special purpose districts.

**12-27-43. Action for civil penalty for certain violations.**

The attorney general may bring an action for a civil penalty against any person, political committee, political party, or organization that violates § 12-27-16 or 12-27-17, in addition to any other penalties provided by law. The civil penalty may not exceed two thousand dollars for each violation.

**12-27-44. Limited filing required for legislative candidates receiving and spending less than ten thousand dollars.** Repealed SL 2009, ch 68 § 1.

## CHAPTER 13-7.

## SCHOOL DISTRICT ELECTIONS

Section

13-7-1, 13-7-2. Repealed.
13-7-3. Public offices incompatible with board membership.
13-7-4. Registration of voters - Notice of registration.
13-7-4.1. Repealed.
13-7-4.2. Registration and residence required to vote in school election - Residence defined - Challenge - Contest of election.
13-7-5. Publication of notice prior to filing of nominating petitions for school board membership.
13-7-6. Filing of candidate's nominating petition--Formal declaration of candidacy--Contents, circulation, and verification of nominating petition.
13-7-6.1. Option to adopt campaign finance law.
13-7-6.2. Candidate's nominating petition in newly created school district.
13-7-7. Withdrawal by candidate for board membership.
13-7-8. Publication of notice of election - Contents - Facsimile of ballot.
13-7-8.1. Notice of special election.
13-7-9. Election not held if no contest or question - Certificates of election.
13-7-9.1. Death or withdrawal of candidate resulting in no contest.
13-7-9.5, 13-7-9.6. Repealed.
13-7-10. Date and hours of annual school elections - Procedure for absentee voting, voter registration, and counting ballots.
13-7-10.1. Joint school district and municipal elections authorized - Date - Sharing costs and responsibilities.
13-7-10.2. Notices and nomination procedure for certain joint elections.
13-7-10.3. Joint school board and primary election.
13-7-10.4. Notices and nomination procedure for joint board and primary elections.
13-7-11. Voting precincts and polling places.
13-7-12. Precinct superintendents and precinct deputies of school elections - Compensation.
13-7-13. Ballots and election supplies - Form and content of ballots – Absentee ballots.
13-7-14. Absentee voting in school elections.
13-7-15, 13-7-16. Repealed.
13-7-17. Certification of school district election returns - Preservation of ballots and ballot boxes.
13-7-18. Canvass of election results - Certificates of election - Certification of results.
13-7-19. Repealed.
13-7-19.1. Tie vote - Recount procedure - Resolution by lot.

13-7-19.2. Close margin in school board election - Request for recount - Recount board established.
13-7-19.3. Close margin in school election - Petition for recount - Appointment of recount board - Production of ballot boxes - Disputes.
13-7-19.4. Compensation of recount board.
13-7-20 to 13-7-26. Repealed.
13-7-27. Definitions.

**13-7-1. Qualifications to vote and hold office in school districts.** Repealed by SL 1973, ch 69, § 4.

**13-7-2. Residence for school district purposes.** Repealed by SL 1973, ch 69, § 4.

**13-7-3. Public offices incompatible with board membership.**

No elective county, municipal or state officer or the holder of any other office, the duties of which are incompatible or inconsistent with the duties of a school board member, shall be eligible for such membership.

**13-7-4. Registration of voters - Notice of registration.**

Registration to vote and notice of registration in school district elections shall be as provided in chapter 12-4.

**13-7-4.1. Notice concerning voter registration.** Repealed by SL 1995, ch 87, § 20.

**13-7-4.2. Registration and residence required to vote in school election - Residence defined - Challenge - Contest of election.**

No person may vote at any school election unless the person is registered to vote pursuant to chapter 12-4 and resides in the school district at the time of the election. For the purposes of this section, a person resides in the school district if the person actually lives in the school district for at least thirty days each year, is a full-time postsecondary education student who resided in the school district immediately prior to leaving for the postsecondary education, or is on active duty as a member of the armed forces whose home of record is within the school district. A voter's qualification as a resident may be challenged in the manner provided in § 12-18-10. No election may be contested on the grounds that any nonresident was allowed to vote if the nonresident was not challenged in the manner provided in § 12-18-10.

**13-7-5. Publication of notice prior to filing of nominating petitions for school board membership.**

Between the fifteenth day and the thirtieth day of the month three months preceding the election, except in the case of the joint election as provided in § 13-7-10.1, the business manager of each school district shall publish once each week for two consecutive weeks in the official newspaper, a notice setting forth the vacancies which will occur by termination of the terms of the elective or appointive school board members. However, if the vacancies set forth in the notice exist within a new school board of a newly created school district entity pursuant to § 13-6-62, the county auditor of the county having jurisdiction over the election shall publish the notice once each week for two consecutive weeks at least one month preceding the election. The notice shall also state the time and place where nominating petitions for school board membership may be filed for the vacancies.

**13-7-6. Filing of candidate's nominating petition--Formal declaration of candidacy--Contents, circulation, and verification of nominating petition.**

No candidate for elective school board membership may be nominated unless such person is a resident voter of the school district and unless a nominating petition has been filed on such person's behalf with the business manager of the school district. The nominating petition shall be filed no later than five p.m. on the Friday thirty-nine days before the date of the election. The petition is considered filed if it is mailed by registered mail by five p.m. on the Friday thirty-nine days before the election. A formal declaration of a candidate shall be signed by the candidate before the circulation of the petition. The petition shall be signed by not less than twenty voters of the school district or if the school district is divided into school board representation areas, the petition shall be signed by not less than twenty voters who reside within the school board representation area. No petition may be circulated until ten weeks prior to the election. There shall be added by either the signer or the circulator the signer's place of residence and date of signing. The petition shall be verified under oath by the person circulating it. The filing of the nominating petition shall constitute nomination and will entitle the candidate to have the candidate's name placed on the ballot for the term the candidate specifies on the petition only upon verification signed by the business manager that the nominating petition contains the minimum number of signatures and that the candidate is a resident voter.

**13-7-6.1. Option to adopt campaign finance law.**

The school district governing body may, by ordinance or resolution, adopt the provisions of chapter 12-27.

**13-7-6.2. Candidate's nominating petition in newly created school district.**

If the nominating petition is from a candidate for a vacancy on a new school board within a newly created school district entity pursuant to § 13-6-62, the nominating petition shall be circulated no more than sixty days prior to the date of the election and filed no later than thirty days prior to the date of the election.

**13-7-7. Withdrawal by candidate for board membership.**

Any person who has filed a nominating petition pursuant to § 13-7-6 may withdraw from nomination by request in writing signed by the person and properly acknowledged and filed with the election official of the school district by five p.m. on the deadline day for filing nominating petitions. No name withdrawn may be printed on the ballots to be used.

**13-7-8. Publication of notice of election - Contents - Facsimile of ballot.**

The business manager of the school district shall publish in the official newspaper notices of an election once each week for two consecutive weeks with the first publication not less than ten days before the election. The notice shall state the date of the coming school election, the vacancies to be filled with terms of each, the candidates who have filed for these vacancies, questions, if any, to be submitted at the election, and the location of polling places. A facsimile of the official ballot shall be published in the calendar week prior to each election.

**13-7-8.1. Notice of special election.**

When a special election is held to decide an issue, the business manager of the school district shall publish notices as provided in § 13-7-8.

## *SCHOOL DISTRICT ELECTIONS*

**13-7-9. Election not held if no contest or question - Certificates of election.**

In school districts if only one nominating petition is filed for each board vacancy to be filled and if there are no other questions to be submitted to the voters, there shall be no election and the notices and publication provided in § 13-7-8 will not be necessary, but the business manager shall issue certificates of election to the nominees in the same manner as to successful candidates after election.

**13-7-9.1. Death or withdrawal of candidate resulting in no contest.**

If death or withdrawal of a candidate or candidates at any time prior to forty-eight hours preceding the opening of the polls in any school district election occasions that there is no contest on the ballot, that ballot need not be voted and if it constitutes the only ballot to be voted upon, then the election may be canceled by the officer responsible for its conduct and the unopposed candidate issued certificate of election as though duly elected.

**13-7-9.5. Secondary election to break tie vote.** Repealed by SL 1999, ch 78, § 1.

**13-7-9.6. Secondary election - Time and place - Notice - Tie vote after secondary election.** Repealed by SL 1999, ch 78, § 2.

**13-7-10. Date and hours of annual school elections - Procedure for absentee voting, voter registration, and counting ballots.**

The annual election for school districts shall be held between the second Tuesday in April and the third Tuesday in June between the hours of seven a.m. and seven p.m. of the day of the election. The school board shall select the date of the election by resolution no later than the first regular meeting after January first of each year. Voter registration, absentee voting, and procedures used in counting ballots shall be in accordance with Title 12 except as specifically provided in chapter 13-7.

**13-7-10.1. Joint school district and municipal elections authorized - Date - Sharing costs and responsibilities.**

The members of the governing body of a school district may choose to hold a general school district election in conjunction with a regular municipal election. The combined election is subject to approval by the governing body of the municipality. The combined election shall be held on the regular date set for either the school district election or the general municipal election. Expenses of a combined election shall be shared in a manner agreed upon by the governing bodies of the municipality and the school district. All other governmental responsibilities associated with holding elections under the provisions of chapters 9-13 and 13-7 shall be shared as agreed upon by the governing bodies.

**13-7-10.2. Notices and nomination procedure for certain joint elections.**

If the joint election provided for in § 13-7-10.1 is held on the second Tuesday in April, no candidate for elective school board membership may be nominated unless the candidate is a resident voter of the school district and unless a nominating petition has been filed on the candidate's behalf with the business manager of the school district no later than the last Friday in February at five p.m. prior to the date of the election. If the petition is mailed by registered mail by the last Friday in February at five p.m. before the election, it shall be considered filed. A formal declaration of a candidate shall be signed by the candidate before the circulation of the petition. The petition shall be signed by not less than twenty voters of the school district. No petition may be circulated until the last Friday in January before the election. There shall be added by either the signer or

the circulator the signer's place of residence and date of signing. The petition shall be verified under oath by the person circulating the petition. The filing of the nominating petition shall constitute nomination and will entitle the candidate to have the candidate's name placed on the ballot for the term the candidate specifies on the petition only upon verification signed by the business manager that the nominating petition contains the minimum number of signatures and that the candidate is a resident voter.

Publication of the notice of the election provided for in § 13-7-10.1 shall be in accordance with § 13-7-8.

**13-7-10.3. Joint school board and primary elections.**

Any other provision of this chapter notwithstanding, the school board may choose to hold the school board election in conjunction with the regular June primary election. The combined election is subject to approval by the county commissions of the counties in which the school district is located. Expenses of a combined election shall be shared in a manner agreed upon by the school board and the county commissions involved. All other governmental responsibilities associated with holding elections under the provisions of chapter 13-7 and Title 12 shall be shared as agreed upon by the governing bodies. The school election official shall certify to the appropriate county auditor the candidate names and ballot language to be voted on by the first Thursday after the last Tuesday in March.

**13-7-10.4. Notices and nomination procedure for joint board and primary elections.**

For any school board election held on the first Tuesday after the first Monday in June, the deadlines in this section apply. The school's election official shall publish the notice provided in § 13-7-5 between February fifteenth and March first. No nominating petition may be circulated for signatures until March first. Nominating petitions shall be filed under the provisions of § 13-7-6 by the last Tuesday in March.

**13-7-11. Voting precincts and polling places.**

The number and place of voting precincts shall be determined by the school board.

**13-7-12. Precinct superintendents and precinct deputies of school elections - Compensation.**

Each voting precinct shall be presided over by an election board consisting of a minimum of two clerks and one judge appointed by the school board. Members of school boards may serve on election boards.

Judges and clerks other than members of school boards shall receive such compensation as shall be fixed by the school board and paid from the district treasury.

**13-7-13. Ballots and election supplies - Form and content of ballots – Absentee ballots.**

The business manager of the school district shall provide proper ballots, pollbooks, voting booths, and necessary supplies as required by law to the proper election officials on election day. The ballots shall be similar in form to those authorized by law for municipal elections. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. No party affiliation may appear on the ballot and the names of the candidates for the respective vacancies shall be printed on the ballot. Each candidate's position on the ballot shall be chosen by lot by the business manager and each candidate may be present or represented when the position on the ballot is being determined. The ballots for school elections shall be available for absentee voting no later than fifteen days prior to election day.

## *SCHOOL DISTRICT ELECTIONS*

**13-7-14. Absentee voting in school elections.**

Absentee voting shall be permitted in school district elections, including school district bond elections. The school board, with the approval of the county auditor and board of county commissioners, may permit absentee ballots to be voted at the county auditor's office in the county of jurisdiction.

**13-7-15. Nomination of candidates in common school district - Casting of votes.** Repealed by SL 1973, ch 86, § 20.

**13-7-16. Supplies and procedure for common school district elections - Quorum.** Repealed by SL 1973, ch 86, § 20.

**13-7-17. Certification of school district election returns - Preservation of ballots and ballot boxes.**

The returns from a school district election shall be certified by the election board in each polling place, and the ballots, properly sealed in ballot boxes, together with the pollbooks, shall be placed in the custody of the school district's business manager, who shall keep such boxes inviolate for at least sixty days after the canvass of the returns.

**13-7-18. Canvass of election results - Certificates of election - Certification of results.**

The pollbooks shall be opened and the election results shall be canvassed by the school board at the next meeting and certificates of election shall be issued by the business manager of the district to each successful candidate and election results shall be certified to the county auditor of each county in which the school district is located.

**13-7-19. Tie vote settled by lot.** Repealed by SL 1981, ch 130, § 1.

**13-7-19.1. Tie vote - Recount procedure - Resolution by lot.**

If a tie vote exists after the canvass of the original official returns, the school board making the canvass shall certify the vote to the business manager. The business manager shall then notify the candidates that if no request for recount is made in writing to the business manager within five days, the winner shall be determined by drawing of lots. If no recount request is made or a tie vote between candidates is found to exist on the basis of such recount, the business manager shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the candidates involved in the tie vote. Drawing of lots shall be in the manner directed by the business manager and the certificate of election shall be issued to the candidate winning in the drawing of lots.

**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.

**13-7-20. General election laws applicable - Conduct of elections.** Repealed by SL 1973, ch 67, § 4.

**13-7-21. Annual business meeting of common school district - Instructions to board - Nomination of candidates for five-member boards - Presiding officer.** Repealed by SL 1973, ch 86, § 20.

**13-7-22. Clerk's and treasurer's reports to annual business meeting of common school district.** Repealed by SL 1973, ch 86, § 20.

**13-7-23. Adjournment of annual common school district meeting - Minutes of meeting.** Repealed by SL 1973, ch 86, § 20.

**13-7-24. Binding effect of instructions at annual meeting of common school district - Discretion of board.** Repealed by SL 1973, ch 86, § 20.

**13-7-25. Petition by voters for special meeting of common school district - Posting of notice.** Repealed by SL 1973, ch 86, § 20.

**13-7-26. Business permitted at special meeting of common school district - Reconsideration of questions previously considered.** Repealed by SL 1973, ch 86, § 20.

**13-7-27. Definitions.**

The terms "election," "candidate," "election officials," "elector," "voter," and "registration officials" when used in a school district election or petition are defined in § 12-1-3.

## *SCHOOL DISTRICT ELECTIONS*

**13-7-28. Large school districts authorized to conduct 2011 school board elections using voting centers and electronic records.**

Notwithstanding any other provision of law, any school district with a fall enrollment, as defined in § 13-13-10.1, greater than fifteen thousand may conduct a 2011 school board election using the provisions of this section. The election shall be conducted in conformance with all applicable election laws and rules with the following exceptions:

(1) The school district may use voting centers that allow voters in the district to vote at any one of the voting centers in lieu of establishing precincts and wards for the election;

(2) Polling place deputies and superintendents registered to vote and living in the school district may be appointed as polling place deputies and superintendents to any of the voting centers;

(3) Secure, encrypted electronic pollbooks may be used in lieu of paper registration books;

(4) The poll list may be kept electronically;

(5) The electronic pollbook shall be connected via a secure intranet to a single database of voters registered for this election. As a voter presents himself or herself to vote, the electronic pollbook shall be updated with an indicator that the person has voted. At least every ten minutes the electronic pollbook shall update the single database and any other electronic pollbook with the same information; and

(6) The entire school district is designated as one voting precinct for this election. (This section is repealed effective January 1, 2012 pursuant to SL 2010, ch 80, § 3.)

**13-7-29. Report to secretary of state and Legislature.**

Any school district conducting an election pursuant to § 13-7-28 shall provide a written report detailing the results of the election to the secretary of state and to the Legislature by September 1, 2011. The report shall include actual costs, estimated cost savings achieved as a result of the voting center approach, any challenges, problems, or benefits that resulted from using the voting center approach, and any other relevant information related to the election. (This section is repealed effective January 1, 2012 pursuant to SL 2010, ch 80, § 3.)

# ARTICLE 5:02

# STATE BOARD OF ELECTIONS RULES

Chapter

1. GENERAL RULES AFFECTING BOARD.
2. DECLARATORY RULINGS.
3. FORMS FOR REGISTRATION.
4. FORMS OF NOTICES.
5. FORMS FOR CONDUCT OF ELECTIONS.

6. BALLOT FORMS AND COLOR.
7. MISCELLANEOUS FORMS.
8. PETITIONS.
9. AUTOMATIC TABULATING EQUIPMENT.
10. ABSENTEE VOTING.
11. VOTING RIGHTS ACT.
12. INTERPRETIVE RULES.
13. RESERVED.
14. ABSENTEE BALLOT PRECINCTS.
15. CERTIFICATES OF ELECTION, NOMINATION.
16. COUNTING AND CANVASSING OF BALLOTS.
17. POLLBOOKS AND TALLY SHEETS.
18. CIRCUIT COURT ELECTIONS (Repealed).
19. RECOUNTS.
20. PRESIDENTIAL PREFERENCE PRIMARY (Repealed).
21. REVOCATION OF VOTER REGISTRAR AUTHORIZATION (Repealed).

## Chapter 5:02:01

## General Rules Affecting Board

Sec.
5:02:01:01. Official office.
5:02:01:02. Filing and notice.
5:02:01:03. Special meetings of the board.
5:02:01:04. Quorum and presiding officer.

### 5:02:01:01. Official office

The South Dakota state board of elections shall maintain an office as its principal place of business which shall be located, until otherwise designated, at the office of the Secretary of State, Capitol Building, Pierre, South Dakota 57501.

Source: 2 SDR 5, effective July 30, 1975.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-1-5, 12-1-9.

### 5:02:01:02. Filing and notice

Whenever filing with, or notice to, the board is permitted or required by these rules, the same shall be done, unless otherwise specifically provided, by written document addressed to the South Dakota state board of elections and delivered in person or mailed to the board at its principal place of business. The date of such filing or notice, unless otherwise specifically provided in these rules, shall be the date upon which the document is received at the principal place of business of the board.

Source: 2 SDR 5, effective July 30, 1975.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-1-5, 12-1-9.

### 5:02:01:03. Special meetings of the board

A special meeting of the board may be set upon call of the chairperson or upon written request by a majority of the board.

## *General Rules Affecting Board*

Source: 2 SDR 5, effective July 30, 1975.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-1-5, 12-1-9.

### 5:02:01:04. Quorum and presiding officer

Four of the seven members shall constitute a quorum for the conduct of business. In the absence of the chairperson specified in SDCL 12-1-5, members present shall appoint one of their number as chairperson for that meeting.

Source: 2 SDR 5, effective July 30, 1975; 10 SDR 27, effective September 26, 1983.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-1-5, 12-1-9.

# Chapter 5:02:02

# Declaratory Rulings

Sec.
5:02:02:01. Petition for declaratory ruling.
5:02:02:02. Board action on petition.

### 5:02:02:01. Petition for declaratory ruling

The form of a petition to the board for a declaratory ruling shall be substantially as follows:

State of South Dakota State Board of Elections Petition for Declaratory Rulings

Pursuant to the provisions of SDCL 1-26-15, I (name of petitioner) of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the South Dakota State Board of Elections for its declaratory ruling in regard to the following:

1. The state statute or state board of elections rule or order or form in question is: (identify and quote the pertinent statute, rule or order or form)
2. The facts and circumstances which give rise to the issue to be answered by the board's declaratory ruling are:
3. The precise issue to be answered by the board's declaratory ruling is:

Dated at (city and state), this _____ day of _____, 19_____ .

_____
(Signature of petitioner)

Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 1-26-15.

### 5:02:02:02. Board action on petition

Upon receipt of the petition the board may request from the petitioner such other or further information as may be required by it for the issuance of its ruling. Within 30 days following the receipt of the petition, or within 30 days following receipt of such further requested information, the board shall issue its declaratory ruling and serve a copy of the same by mail upon the petitioner.

Source: 2 SDR 5, effective July 30, 1975.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 1-26-15.

# Chapter 5:02:03

# Forms for Registration

Sec.
5:02:03:00. Repealed.
5:02:03:01. Voter registration form.
5:02:03:01.01 to 5:02:03:11. Repealed.
5:02:03:12. Agency voter registration instructions.
5:02:03:13. Voter registration instructions.
5:02:03:14. Acknowledgement notice for invalid or incomplete voter registration applications.
5:02:03:15. Acknowledgement notice for valid voter registrations.
5:02:03:16. Confirmation mailing notice.
5:02:03:17. Retention of confirmation mailing notice records.
5:02:03:18. Voter registration statistics.
5:02:03:19. Voter registration address verification notice.
5:02:03:20. Potential duplicate notice.
5:02:03:21. Statement by person registering without a driver license or social security number.
5:02:03:22. Parameters for voter registration verification with driver's license records.
5:02:03:23. Parameters for voter registration verification with social security administration records.
5:02:03:24. Notice to removed felons.

**5:02:03:00. Binder for master registration list.** Repealed.

**5:02:03:01. Voter registration form**

The voter registration form shall be legibly printed. It is recommended that the form be printed on 90-pound index stock 5 inches wide by 10.5 inches tall and horizontally perforated seven inches from the top and scored for folding 3.5 inches from the top. The voter registration form shall contain the following information:

**South Dakota Voter Registration**

Are you a citizen of the United States of America? ☐Yes ☐No
Will you be 18 years of age on or before election day? ☐Yes ☐No

If you checked 'no' in response to either of these questions, do not complete this form.

VOTER REGISTRATION for _____ County, SD
Name _____
(Last) (First) (Middle)
Residence Address _____
City State Zip
Mailing Address (if different) _____
City State Zip
If residence address is a post office box, rural box, or general delivery, you must give the location of your residence: _____
_____
Print previous name, if changed: _____
South Dakota driver license number required:_____
(if you do not have a valid South Dakota driver license, you must give the last four numbers of your social security number)
Please register me as a member of the _____ Party.
Birth Date Required: _____ Phone Number: _____

## *Forms for Registration*

I declare, under penalty of perjury (2 years imprisonment and $4,000 fine), that: I am a citizen of the United States; I actually live at and have no present intention of leaving the above address; I will be 18 on or before the next election; I have not been judged mentally incompetent; and I am not currently serving a sentence for a felony conviction which included imprisonment, served or suspended, in an adult penitentiary system. I authorize cancellation of my previous registration as written below.

Dated _____ Voter Signature _____

For county auditor's office use only:

| ____ | _____ | _____ | _____ | _____ | _____ | _____ | _____ |
|---|---|---|---|---|---|---|---|
| Ward | Precinct | Water Dist | Leg Dist | Comm Dist | Township | School Dist | Other |

(perforated)

Previous Voter Registration Information Required

I wish to be registered as shown above. I was last registered with the following name and address which will be cancelled:

Name_____

Previous Address_____

City_____ State_____ Zip_____

County_____ Birth Date: _____

Driver license number: _____

Dated_____ Voter Signature_____

If the form is printed on index stock, on the reverse of the form above the score must be the following:

_____ County Auditor

_____

_____, SD 57_____

An alternative voter registration form may be printed on an 8.5 inch wide by 11 inch tall paper in the following format:

### Voter Registration Application for _____ County

Use this form to: Register to vote or report a name, address or party change.

**Please print. Complete entire form. Return this form to your county auditor.**

**The deadline for registration is 15 days before any election. Your form must be received by the auditor by this deadline if you are to vote in the next election.** Within 15 days you will receive a notice of your registration. If you do not, contact your county auditor. Any private person or entity registering voters is required to provide you with their contact information.

Are you a citizen of the United States of America? ☐ Yes ☐ No

Will you be 18 years of age on or before election day? ☐ Yes ☐ No

If you checked 'no' in response to either of these questions, do not complete this form.

| Last | First | | Middle | Circle one: Jr Sr II III IV |
|---|---|---|---|---|
| Residence Address | Apt or Lot # | City/Town | State | Zip |
| Mailing Address (if different) | | City/Town | State | Zip |

| | | |
|---|---|---|
| If residence address is a post office box, rural box, or general delivery, you must give the location of your residence: | | |
| Print previous name, if changed: | | |
| South Dakota Driver License Number Required:<br>(if you do not have a valid South Dakota driver license, you must give the last four numbers of your social security number) | | |
| Please register me as a member of the _____Party. | Birth Date Required: | Phone Number: |

I declare, under penalty of perjury (2 years imprisonment and $4,000 fine), that:

* I am a citizen of the United States;
* I actually live at and have no present intention of leaving the above address;
* I will be 18 on or before the next election;
* I have not been judged mentally incompetent;
* I am not currently serving a sentence for a felony conviction which included imprisonment, served or suspended, in an adult penitentiary system.
* I authorize cancellation of my previous registration as written below.

| | |
|---|---|
| Dated ____/____/_____ | Voter Signature: |

For county auditor's office use only:

| _____ | _____ | _____ | _____ | _____ | _____ | _____ | ___ ___ |
|---|---|---|---|---|---|---|---|
| Ward | Precinct | Water | Leg | Comm | Township | School | other |

## Previous Voter Registration Information Required

I wish to be registered as shown above. I was last registered with the following name and address which will be cancelled:

| | | | |
|---|---|---|---|
| Last | First | Middle | Circle one: Jr Sr II III IV |
| Previous Address | City/Town | State | Zip |
| County: | Birth Date: | Driver license number: | |
| Dated ____/____/_____ | Voter Signature: | | |

Voter registration cards signed prior to January 1, 2009 may be on the form in effect July 17, 2008.

Source: 2 SDR 5, effective July 30, 1975; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 23 SDR 115, effective January 22, 1997; 25 SDR 167, effective July 6, 1999; 29 SDR 177, effective July 2, 2003; 30 SDR 171, effective May 10, 2004; 31 SDR 214, effective July 4, 2005; 32 SDR 225, effective July 3, 2006; 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(1).
Law Implemented: SDCL 12-4-3, 12-4-5.4, 12-4-6, 12-4-8.

**5:02:03:01.01. Prohibited reasons for denying right to register.** Repealed.

**5:02:03:02. Authorization for removal of name from voter registration list.** Repealed.

**5:02:03:03. Authorization to return registration card.** Repealed.

**5:02:03:04. Receipt.** Repealed.

**5:02:03:05. Voter change of name or address, or both, card.** Repealed.

**5:02:03:06. Party designation card.** Repealed.

**5:02:03:07. Voter registration instructions.** Repealed.

**5:02:03:08. Authorization to register voters.** Repealed.

**5:02:03:09. Auditor's record of voter registration cards.** Repealed.

**5:02:03:10. Record of registered voters.** Repealed.

**5:02:03:11. Notice of change of voter registration information and voter registration cancellation card.** Repealed.

**5:02:03:12. Agency voter registration instructions**

The declination form and instructions provided with each voter registration form used by an agency which provides food stamps; temporary assistance for needy families (TANF); the women, infants, and children nutrition program (WIC); military recruitment; or assistance to the disabled as provided by the Department of Human Services must be in the following form:

**South Dakota Agency Voter Registration Form**

If you are (bold) **not registered** (unbold) to vote where you live now, would you like to apply to register to vote here today? Yes_____ No_____

If you do not check either box, you will be considered to have decided not to register to vote at this time.

If you register to vote, the information regarding the office to which the application was submitted will remain confidential and be used only for voter registration purposes.

If you don’t register to vote, this decision will remain confidential and be used only for voter registration purposes.

If you would like help filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.

If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Secretary of State, 500 E. Capitol, Pierre, SD 57501, 605-773-3537.

Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.

To register, please complete the entire registration card by printing the requested information. If you are currently registered to vote, please also fill out the attached

cancellation card. Return the registration card to the County Auditor in your county of residence or to your local TANF, food stamp, WIC, military recruitment, or Department of Human Services office. (Bold)**The deadline for registration is 15 days before any election.** (Unbold)

Source: 21 SDR 77, effective October 24, 1994; 23 SDR 115, effective January 22, 1997; 29 SDR 177, effective July 2, 2003; 31 SDR 214, effective July 4, 2005.
General Authority: SDCL 12-4-35.
Law Implemented: SDCL 12-4-2.

**5:02:03:13. Voter registration instructions**

The instructions attached to each voter registration form other than those used in the county auditor's office, the alternative form provided in § 5:02:03:01, or those used by agencies listed in § 5:02:03:12 must be in the following form:

**South Dakota Voter Registration Form**

Please follow these instructions carefully to ensure that your voter registration is properly completed.

You can use this form to:
* Register to vote in South Dakota
* Change your registration name or address
* Change your party affiliation

To register to vote in South Dakota, you must:
* Be a United States citizen
* Reside in South Dakota
* Be at least 18 years old on or before the next election
* Not be currently serving a sentence for a felony conviction which included imprisonment, served or suspended, in an adult penitentiary system
* Not be judged mentally incompetent by a court of law

To register, please complete the entire registration card by printing the requested information. If you are currently registered to vote, please also fill out the attached cancellation card. Return the registration/cancellation card to the County Auditor in your county of residence. Any private person or entity registering voters is required to provide you with their contact information. (Bold) **The deadline for registration is 15 days before any election. Your card must be received by the auditor by this deadline if you are to vote in the next election.** (Unbold)

Within 15 days you will receive a notice of your registration. If you do not, contact your county auditor.

Source: 21 SDR 77, effective October 24, 1994; 23 SDR 115, effective January 22, 1997; 29 SDR 177, effective July 2, 2003; 31 SDR 214, effective July 4, 2005.
General Authority: SDCL 12-4-35.
Law Implemented: SDCL 12-4-2, 12-4-3.

**5:02:03:14. Acknowledgement notice for invalid or incomplete voter registration applications.**

The acknowledgement notice sent by forwardable mail to each person who submits a voter registration application to the county auditor that is invalid or incomplete and cannot be filed shall be in the following form:

**Invalid or Incomplete Voter Registration Acknowledgement Notice**

_____ Your voter registration is not valid because you are not eligible to be a registered voter. Reason: _____.

_____ Your voter registration has not been processed because your application is incomplete. Please call or visit our office to complete your registration. You will not be able to vote unless you have provided the needed information by _____.

To complete your voter registration or if you have further questions, please call our office at _____.

Thank You,

_____

_____County Auditor

_____

_____

Source: 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 28 SDR 99, effective January 17, 2002.
General Authority: SDCL 12-4-35.
Law Implemented: SDCL 12-4-5.3.

**5:02:03:15. Acknowledgement notice for valid voter registrations.**

The acknowledgement notice sent by nonforwardable mail to each person who submits a valid voter registration application to the county auditor shall contain the following heading:

**Voter Registration Acknowledgement Notice**

and the following information:

Voter's name, complete mailing address, political party, ward, precinct, school district, county commission district, legislative district, water district, township and date of registration

and the following instruction:

Please review the information on this card. If any of the information is incorrect, please call _____ so that we may correct any errors before the next election.

The postal endorsement shall be: Return Service Requested.

Source: 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 28 SDR 99, effective January 17, 2002.
General Authority: SDCL 12-4-35.
Law Implemented: SDCL 12-4-5.3.

**5:02:03:16. Confirmation mailing notice**

The mailing notice sent by forwardable mail to confirm voter registration information must contain the following information:

Voter Registration Information

(List voter's name, complete mailing, address, complete residence address, political party, ward, precinct, school district, county commission

(postage)
_____ County Auditor
_____
_____ ,SD _____

district, legislative district, water district, township, and location of precinct polling place)

If this information is correct and you wish to remain registered to vote, please check the first box, sign below, tear off this preaddressed and prepaid card and mail. If this is not correct, please see reverse side for further instructions.

Forwarding Service Requested
or Address Service Requested

(Bold) You must check one: (Unbold)

☐ I certify that the above information is correct or has been corrected; or

☐ I certify that I have registered elsewhere and/or please cancel my registration.

(Voter's Name)
(Voter's Address)
(Voter's City, State, Zip)

Date _____
Voter Signature _____

The reverse side shall be in the following form:

Voter Registration Confirmation

(Postage Prepaid)

1. If the information on the reverse side is correct and you wish to remain registered to vote, please check the first box, sign, tear off, and return the attached card.

2. If any of this information is not correct, please check the first box, make the appropriate changes, sign, tear off, and return the attached card. Your voter registration will be changed to reflect the information which you provide. If you indicate a residence address outside of your registration county, your voter registration will be canceled; and we encourage you to register to vote in your new county or state.

(County Auditor's Address)

3. If this card is not returned within 30 days, your voter registration will become inactive. With an inactive registration you will be able to vote by signing an affirmation of current address at your polling place.

4. If this card is not returned within 30 days and you do not vote by the second general election from today, your registration will be canceled.

5. If you have registered to vote elsewhere, please check the second box, sign, and return.

Source: 21 SDR 77, effective October 24, 1994; 25 SDR 8, effective August 3, 1998; 27 SDR 146, effective July 9, 2001; 31 SDR 214, effective July 4, 2005; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(1), 12-4-35.

Law Implemented: SDCL 12-4-19, 12-4-19.1.

**5:02:03:17. Retention of confirmation mailing notice records**

Information on who confirmation mailing notices have been sent to and any subsequent response must be kept for two years.

Source: 21 SDR 77, effective October 24, 1994.
General Authority: SDCL 12-4-35.
Law Implemented: SDCL 12-4-19.

**5:02:03:18. Voter registration statistics**

Following each general election, each county auditor shall supply the following information to the secretary of state for compilation of statewide statistics:

(1) The number of active and inactive voter registrations at the time of the last general election;

(2) The number of active and inactive voter registrations at the time registration closes for the current general election;

(3) The number of new voter registrations between the last two general elections. This does not include any registrations which only provide for change of name, party, or address within the county;

(4) The number of active and inactive voter registrations following the current general election;

(5) The number of registrations which were canceled between the last two general elections;

(6) The number of registrations between the last two general elections received from:

(a) Driver's license offices;
(b) Mail-in;
(c) Public assistance agencies such as food stamps, AFDC, and WIC;
(d) Department of Human Services;
(e) Armed forces recruitment offices;
(f) Municipal finance offices;
(g) In-person registration at the auditor's office;
(h) Voter registration drives which deliver cards;

(7) The number of duplicate registrations between the last two general elections received from:

(a) Driver's license offices;
(b) Mail-in;
(c) Public assistance agencies such as food stamps, AFDC, and WIC;
(d) Department of Human Services;
(e) Armed forces recruitment offices;
(f) Municipal finance offices;
(g) In-person registration at the auditor's office;
(h) Voter registration drives which deliver cards;

(8) The number of confirmation mailings sent between the last two general elections; and

(9) The number of responses received from confirmation mailings sent between the last two general elections in the following categories:

(a) No change in registration;
(b) Address change within the county;
(c) Registration change to new county;
(d) Cancellation because of change to new state;
(e) No response to confirmation mailing;
(f) Confirmation mailing card undeliverable.

Source: 21 SDR 77, effective October 24, 1994.
General Authority: SDCL 12-4-35.
Law Implemented: SDCL 12-4-35.

**5:02:03:19. Voter registration address verification notice.**

The verification notice sent by nonforwardable, return-if-undeliverable mail to the mailing address of registered voters as required by SDCL 12-4-19 must contain the following:

(1) Heading: **Voter Registration Address Verification Notice**;

(2) First instruction: (bold) **If this person no longer lives at this address, write "No longer here" on the front of this card and place in a mailbox. Do not throw away.** (unbold);

(3) Information: Voter's name, complete residence address, political party, ward, precinct, school district, county commission district, legislative district, water district, township, and date of registration;

(4) Second instruction: Please review the information on this card. If any of the information is not correct and you wish to change it, please call _____ to request a new voter registration form; and

(5) Postal endorsement: Return Service Requested.

Source: 25 SDR 8, effective August 3, 1998; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(1), 12-4-35.
Law Implemented: SDCL 12-4-19.

**5:02:03:20. Potential duplicate notice.**

The mailing notice sent to potential duplicates by forwardable mail to confirm voter registration information must contain the following information:

Voter Registration Information (postage)

(List voter's name, complete mailing, address, complete residence address, political party, ward, precinct, school district, county commission district, legislative district, water district, township, and location of precinct polling place)

_____
_____
_____ ,SD _____

If this information is correct and you Forwarding Service Requested

wish to remain registered to vote, please check the first box, sign below, tear off this preaddressed and prepaid card and mail. If this is not correct, please see reverse side for further instructions.

or Address Service Requested

(Bold) You must check one: (Unbold)

☐ I certify that the above information is correct or has been corrected and that I am not registered at any other address; or

☐ I certify that I have registered elsewhere or cancel my registration.

(Voter's Name)
(Voter's Address)
(Voter's City, State, Zip)

Date _____
Voter Signature _____

The reverse side shall be in the following form:

Potential Duplicate Voter Registration Notice

1. Your voter registration has been identified as a possible duplicate voter registration in South Dakota. Please follow these instructions to confirm the validity of this voter registration.

2. If you are not registered at any other address, the information on the reverse side is correct and you wish to remain registered to vote, please check the first box, sign, tear off, and return the attached card.

(Postage Prepaid)

3. If any of this information is not correct, please check the first box, make the appropriate changes, sign, tear off, and return the attached card. Your voter registration will be changed to reflect the information which you provide.

(County Auditor's Address)

4. (Bold) If this card is not returned within 30 days, your voter registration will become inactive. (Unbold) With an inactive registration you will be able to vote by signing an affirmation of current address at your polling place.

5. If this card is not returned within 30 days and you do not vote by the second general election from today, your registration will be canceled.

6. If you have registered to vote elsewhere, please check the second box, sign, and return.

Source: 28 SDR 99, effective January 17, 2002; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(1).
Law Implemented: SDCL 12-4-40.

**5:02:03:21. Statement by person registering without a driver license or social security number.**

The statement which must be signed by a person registering to vote who does not have a South Dakota driver license or social security number shall be in the following form:

Statement by Person Registering Without a Driver License or Social Security Number

I, _____ (print complete name), under oath, declare that I do not have a valid South Dakota driver license and that I have not been issued a social security number. Because I do not have a South Dakota driver license or social security number, my voter registration form is blank in the spot requiring such number.

(Signed) _____
Sworn to before me this ____ day of _____, 20___.
(Seal) _____
Signature of County Auditor

Source: 29 SDR 177, effective July 2, 2003; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-4-5.4.
Law Implemented: SDCL 12-4-5.4.

**5:02:03:22. Parameters for voter registration verification with driver license records**

The voter registration fields being compared to the South Dakota driver license system fields are:

- SSN or driver's license number to DRVR-LIC-NO-SSN
- last name to LAST-NAME DL
- first name to FIRST-NAME DL
- date-of birth to DATE-OF-BIRTH DL

Four steps will be performed to check a South Dakota driver license number:

(1) A number check will be executed to see if the voter registrant's driver license number matches. If a match is not found no further checks are conducted on that record.
(2) If the number check matches, a check will be performed against the last name on the driver license.
(3) If the number check matches, a check will be performed against the first name on the driver license.
(4) If the number check matches, a check will be performed against the date-of-birth on the driver license.

Source: 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 12-4-5.5.
Law Implemented: SDCL 12-4-5.5.

**5:02:03:23. Parameters for voter registration verification with social security administration records**

If the State of Driver License Issuance field is marked "SN", the voter registration fields to be compared to the social security administration records are:

- SSN for an exact match with the last four digits of the social security number

- last name for an exact match with the last name
- first name for an exact match with the first name
- date of birth for an exact match of the month and year

For each record checked, the Social Security Administration will respond with one of the following codes and the county auditor will take the action indicated by the code:

| Code | Code Description | County Auditor Action |
|---|---|---|
| S | Invalid input data | Correct data and resubmit |
| T | Multiple matches – all deceased | Withdraw registration and investigate |
| V | Multiple matches – all alive | Remains registered |
| W | Multiple matches – at least one alive and at least one deceased | Withdraw registration and investigate |
| X | Single match – alive | Remains registered |
| Y | Single match – deceased | Withdraw registration and investigate |
| Z | No match found | Withdraw registration and investigate |
| 9 | System Error | Not returned to County – Resubmitted by State |

Source: 31 SDR 214, effective July 4, 2005.
General Authority: SDCL 12-4-5.5.
Law Implemented: SDCL 12-4-5.5.

**5:02:03:24. Notice to removed felons.**

The notice sent by forwardable mail to each person who is removed from the voter registration list due to a disqualifying state felony conviction shall be in the following form:

**State Felony Conviction Voter Registration Cancellation Notice**

We have been notified by the Unified Judicial System that you have been convicted of a state felony.

Under South Dakota law, a person convicted of a felony in state court who is sentenced to imprisonment in the adult penitentiary system loses the right to vote even if the execution of that sentence is suspended. S.D.C.L. § 23A-27-35 and 12-4-18. You will be eligible to register to vote upon completion of your entire sentence.

Further information is available at www.sdsos.gov .

If you have any questions or believe this to be an error, please contact our office at _____ (phone number).

The notice sent by forwardable mail to each person who is removed from the voter registration list due to a disqualifying federal felony conviction shall be in the following form:

**Federal Felony Conviction Voter Registration Cancellation Notice**

We have been notified by the United States Department of Justice that you have been convicted of a federal felony.

Under South Dakota law, a person convicted of a felony in federal court loses the right to vote if sentenced to a term of imprisonment in the adult penitentiary system. S.D.C.L. § 12-4-18. You will be eligible to register to vote upon completion of your term of imprisonment including supervised release. A person sentenced only to probation or to pay a fine or restitution does not lose the right to vote.

Further information is available at www.sdsos.gov .

If you have any questions or believe this to be an error, please contact our office at _____ (phone number).

Source: 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 12-4-18, 23A-27-35, USC 1973gg-6(g).

## Chapter 5:02:04

## Forms of Notices

Sec.
5:02:04:01 to 5:02:04:03. Repealed.
5:02:04:04. Notice of deadline for voter registration.
5:02:04:05. Notice of general election.
5:02:04:06. Notice of vacancy for municipal election.
5:02:04:07. Repealed.
5:02:04:08. Notice of municipal election.
5:02:04:09. Notice of special election.
5:02:04:10. Notice of vacancy which may occur due to filing of recall petitions.
5:02:04:11. Notice of special recall election and of filing of nominating petitions for special recall election.
5:02:04:12. Repealed.
5:02:04:13. Notice of secondary (runoff) election.
5:02:04:14. Notice of vacancy on school board.
5:02:04:15. Notice of school board election.
5:02:04:16. Notice of primary election.
5:02:04:17. Notice of deadline for filing primary nominating petitions.
5:02:04:18. Notice of statewide secondary election.
5:02:04:19. Publication of ballot for secondary election.
5:02:04:20. Repealed.
5:02:04:21. Notice of cancellation of municipal election.
5:02:04:22. Notice of election for special district formation.

**5:02:04:01. First notice of proposed cancellation of voter registration** Repealed.

**5:02:04:02. Final notice of proposed cancellation of voter registration** Repealed.

**5:02:04:03. Authorization to update registration records** Repealed.

**5:02:04:04. Notice of deadline for voter registration**

The notice of deadline for voter registration must be in the following form:

**NOTICE OF DEADLINE FOR VOTER REGISTRATION**

Voter registration for the _____ Election to be held on _____, will close on _____. Failure to register by this date will cause forfeiture of voting rights for this election. If you are in doubt about whether you are registered, check the Voter Information Portal at www.sdsos.gov or call the county auditor at (telephone number).

Registration may be completed during regular business hours at the county auditor's office, municipal finance office, secretary of state's office and those locations which provide driver's licenses, SNAP, TANF, WIC, military recruitment, and assistance to the disabled as provided by the Department of Human Services. You may contact the county auditor to request a mail-in registration form or access a mail-in form at (www.sdsos.gov or a county provided web site with a link to a voter registration form - insert one option or the other).

Voters with disabilities may contact the county auditor for information and special assistance in voter registration, absentee voting, or polling place accessibility.

_____
(Person in charge of election - Title)

_____
(Political Subdivision)

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 6 SDR 123, effective July 2, 1980; 8 SDR 24, effective September 16, 1981; 12 SDR 43, effective September 23, 1985; 21 SDR 77, effective October 24, 1994; 25 SDR 8, effective August 3, 1998; 27 SDR 146, effective July 9, 2001; 30 SDR 171, effective May 10, 2004; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 12-4-3, 12-4-5.2, 12-4-7.2
Cross-References: Pub L No 98-435.

**5:02:04:05. Notice of general election**

The notice of general election must be in the following form:

**NOTICE OF GENERAL ELECTION**

A General Election will be held on Tuesday, November ____, _____, in all the voting precincts in _____ County.

The election polls will be open from seven a.m. to seven p.m. (mountain or central) standard time on the day of the election.

The polling place in each precinct of the county is as follows:

(Here list precincts and polling places. A map showing the precincts and location of the polling places within the county may be inserted. A map showing the voting precincts and polling places of a city may also be inserted.)

Voters with disabilities may contact the county auditor for information and special assistance in absentee voting or polling place accessibility.

_____
County Auditor

_____
County

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 16 SDR 20, effective August 10, 1989; 25 SDR 8, effective August 3, 1998; 29 SDR 113, effective January 30, 2003.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 12-2-3, 12-12-1.

**5:02:04:06. Notice of vacancy for municipal election**

The notice of vacancy for a municipal election shall be in the following form:

**NOTICE OF VACANCY**
**MUNICIPALITY OF _____**

The following offices will become vacant due to the expiration of the present term of office of the elective officer:

Circulation of nominating petitions may begin on _____ and petitions may be filed in the office of the finance officer located at _____ between the hours of _____ a.m. and _____ p.m., (mountain or central standard or mountain or central daylight) time not later than the _____ day of _____ , 19 _____ .

_____
Finance Officer

Source: 4 SDR 26, effective October 27, 1977; 8 SDR 24, effective September 16, 1981; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 9-13-6, 9-13-9.

**5:02:04:07. Notice of filing of nominating petitions** Repealed.

**5:02:04:08. Notice of municipal election**

The notice of municipal election must be in the following form:

**NOTICE OF MUNICIPAL ELECTION**
**MUNICIPALITY OF _____**

A Municipal Election will be held on _____ , in _____ , South Dakota. If the polls cannot be opened because of bad weather, the election may be postponed one week.

The election polls will be open from seven a.m. to seven p.m. _____ (mountain or central standard or mountain or central daylight savings) time on the day of the election.

At the election, the following questions will be voted upon or offices will be filled:

(HERE LIST QUESTIONS TO BE VOTED UPON AND OFFICES TO BE FILLED, WITH TERM LENGTHS AND CANDIDATES' NAMES)
(FURTHERMORE, THE FOLLOWING ARE UNOPPOSED)

The polling place in each precinct of this municipality is as follows:

(Here list the precincts and polling places. Here also may be inserted a map showing the precincts and location of the polling places within the municipality.)

Voters with disabilities may contact the city finance officer for information and special assistance in absentee voting or polling place accessibility.

_____
Finance Officer

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 23 SDR 236, effective July 17, 1997; 25 SDR 8, effective August 3, 1998; 29 SDR 113, effective January 30, 2003; 31 SDR 35, effective September 23, 2004.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 9-13-13, 12-2-4.

**5:02:04:09. Notice of special election**

The notice of special election must be in the following form:

**NOTICE OF SPECIAL ELECTION**
**(MUNICIPALITY OF _____) or (_____ County)**

A Special Election will be held on _____ , in _____ South Dakota. If the polls cannot be opened because of bad weather, the election may be postponed one week.

The election polls will be open from seven a.m. to seven p.m. _____ (mountain or central standard or mountain or central daylight savings) time on the day of the election.

At the election, the following questions will be voted upon:

(HERE LIST THE QUESTIONS TO BE VOTED UPON)

The polling place in each precinct of this (municipality or county) is as follows:

(Here list precincts and polling places. Here also may be inserted a map showing the precincts and location of the polling places.)

Voters with disabilities may contact the (finance officer or county auditor) for information and special assistance in absentee voting or polling place accessibility.

_____
(Finance Officer or County Auditor)

Source: 4 SDR 26, effective October 27, 1977; 16 SDR 20, effective August 10, 1989; 23 SDR 236, effective July 17, 1997; 25 SDR 8, effective August 3, 1998; 29 SDR 113, effective January 30, 2003; 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 7-18A-20, 9-13-14, 12-2-4.

**5:02:04:10. Notice of vacancy which may occur due to filing of recall petitions**

The notice of vacancy which may occur due to filing of recall petitions shall be in the following form:

**NOTICE OF VACANCY WHICH MAY OCCUR DUE TO FILING OF RECALL PETITIONS**
**MUNICIPALITY OF _____**

The following office(s) may become vacant due to the filing of recall petitions:

[HERE LIST THE OFFICE(S) TO BE FILLED]

Nominating petitions may be filed in the office of the Finance Officer located at _____ between the hours of _____ a.m. and _____ p.m., _____ (mountain or central standard or mountain or central daylight savings) time, not earlier than the _____ day of _____, 19___, and not later than the _____ day of _____ , 19 _____ .

_____
Finance Officer

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 9-13-6, 9-13-31.

**5:02:04:11. Notice of special recall election and of filing of nominating petitions for special recall election**

The notice of special recall election and the filing of nominating petitions for the special recall election must be in the following form:

**NOTICE OF SPECIAL RECALL ELECTION**
**MUNICIPALITY OF _____**

A Special Recall Election will be held on _____, in all the voting precincts in _____ , South Dakota. If the polls cannot be opened because of bad weather, the election may be postponed one week.

The following individual(s) (has or have) filed petitions in the office of the Finance Officer for the position(s) to be filled in the Special Recall Election:

(HERE LIST THE INDIVIDUAL(S) WHO (HAS OR HAVE) FILED NOMINATING PETITIONS)

The incumbent, _____ , (will also or will not) appear on the ballot.

The election polls will be open from seven a.m. to seven p.m. _____ , (mountain or central standard or mountain or central daylight savings) time, on the day of the election.

At the election the following office(s) will be filled:

[HERE LIST THE OFFICE(S) TO BE FILLED]

The polling place in each precinct of this municipality is as follows:

(Here list the precincts and polling places. Here also may be inserted a map showing the precincts and location of the polling places within the municipality.)

Voters with disabilities may contact the finance officer for information and special assistance in absentee voting or polling place accessibility.

_____
Finance Officer

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 16 SDR 20, effective August 10, 1989; 23 SDR 236, effective July 17, 1997; 25 SDR 8, effective August 3, 1998; 29 SDR 113, effective January 30, 2003.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 9-13-31, 9-13-32, 12-2-4.

**5:02:04:12. Notice of special recall election** Repealed.

**5:02:04:13. Notice of secondary (runoff) election**

The notice of secondary (runoff) election must be in the following form:

**NOTICE OF SECONDARY (RUNOFF) ELECTION**
**MUNICIPALITY OF _____**

The following candidates will appear on the ballot for the secondary (runoff) election to be held on _____ . If the polls cannot be opened because of bad weather, the election may be postponed one week.

(HERE LIST CANDIDATES APPEARING ON THE BALLOT AND POSITION FOR WHICH THEY ARE RUNNING.)

The election will be held during the same hours and at the same polling places as the annual municipal election held on _____ .

Voters with disabilities may contact the city finance officer for information and special assistance in absentee voting or polling place accessibility.

_____
Finance Officer

Source: 4 SDR 26, effective October 27, 1977; 16 SDR 20, effective August 10, 1989; 23 SDR 236, effective July 17, 1997; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 9-13-27.1, 12-2-4.

**5:02:04:14. Notice of vacancy on school board**

The notice of vacancy on a school board shall be in the following form:

**NOTICE OF VACANCY ON SCHOOL BOARD**
**_____ SCHOOL DISTRICT NO. _____**

The following school board position(s) will become vacant due to the expiration of the present term(s) of office of the following school board member(s).

(HERE LIST THE BOARD POSITION(S) AND TERM(S) TO BE FILLED)

Circulation of nominating petitions may begin on _____ and petitions may be filed in the office of the business manager located at _____ between the hours of _____ a.m. and _____ p.m., _____ (mountain or central standard or mountain or central daylight savings) time not later than _____, at 5:00 p.m., or mailed by registered mail not later than _____, at 5:00 p.m.

_____
Business Manager

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 14 SDR 19, effective August 9, 1987; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 9-13-1.1, 13-7-5, 13-7-6, 13-7-10.1.

**5:02:04:15. Notice of school board election**

The notice of school board election must be in the following form:

**NOTICE OF SCHOOL BOARD ELECTION**
**_____ SCHOOL DISTRICT NO. _____**

A School District Election will be held on _____, in all the voting precincts in School District No. ____, _____, South Dakota. If the polls cannot be opened because of bad weather, the election may be postponed one week.

The election polls will be open from seven a.m. to seven p.m. (mountain or central standard or mountain or central daylight savings) time on the day of the election.

(HERE LIST QUESTIONS AND OFFICES TO BE VOTED UPON, WITH TERM LENGTHS AND CANDIDATES WHO HAVE FILED)

The polling place in each precinct of this district is as follows:

(Here list precincts and polling places. Here also may be inserted a map showing the precincts and location of the polling places within the district.)

Voters with disabilities may contact the business manager for information and special assistance in absentee voting or polling place accessibility.

_____
Business Manager

Source: 4 SDR 26, effective October 27, 1977; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 23 SDR 236, effective July 17, 1997; 25 SDR 8, effective August 3, 1998; 29 SDR 113, effective January 30, 2003.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 12-2-4, 13-7-8.

**5:02:04:16. Notice of primary election**

The notice of primary election shall be in the following form:

**NOTICE OF PRIMARY ELECTION**

A Primary Election will be held on Tuesday, June ____ , ____ , in all the voting precincts in _____ County.

The election polls will be open from seven a.m. to seven p.m. _____ (mountain or central daylight savings) time on the day of the election.

The polling place in each precinct of this county is as follows:

(Here list precincts and polling places. Here also may be inserted a map showing the precincts and location of the polling places within the county. A map may also be inserted showing the voting precincts and polling places of a city.)

Voters with disabilities may contact the county auditor for information and special assistance in absentee voting or polling place accessibility.

_____ County Auditor
_____ County

Source: 4 SDR 26, effective October 27, 1977; 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 25 SDR 8, effective August 3, 1998; 29 SDR 113, effective January 30, 2003.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 12-12-1.

**5:02:04:17. Notice of deadline for filing primary nominating petitions**

Not less than ten nor more than fifteen days before the deadline for filing primary nominating petitions, the person in charge of the local election shall publish a notice in the following form:

**NOTICE OF DEADLINE FOR FILING NOMINATING PETITIONS**

The deadline for filing nominating petitions is _____, ___, at 5:00 p.m. If a petition is mailed by registered mail by _____, ___, at 5:00 p.m., it shall be considered filed.

Nominating petitions for the offices of (here list county offices) shall be filed in the office of the county auditor located in the county courthouse during regular business hours. Nominating petitions for the offices of (here list legislative, state, and federal offices) shall be filed in the office of the Secretary of State, State Capitol Building, Pierre, SD 57501, between the hours of 8:00 a.m. and 5:00 p.m.

_____
(Person in charge of election)

Source: 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 12-12-1.

**5:02:04:18. Notice of statewide secondary election**

The notice of the statewide secondary election shall be in the following form:

**NOTICE OF SECONDARY ELECTION STATE OF SOUTH DAKOTA**

Because no candidate for _____ received the required thirty-five percent of the vote in the _____ primary election held on June __, ____, a secondary election will be held on Tuesday, June ___, ____, in each county in the state. The polling places will be the same as those used in the primary election, and the polls will be open from seven a.m. to seven p.m. _____ (mountain or central daylight savings) time.

The candidates for nomination for _____ , as determined by the official state canvass, are _____
_____

_____
Secretary of State, South Dakota

Source: 12 SDR 43, effective September 23, 1985; 29 SDR 113, effective January 30, 2003.

General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 12-12-1.

**5:02:04:19. Publication of ballot for secondary election**

A copy of the secondary election ballot as prescribed in § 5:02:06:17 shall be printed with the notice prescribed in § 5:02:04:18.

Source: 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-12-1.

**5:02:04:20. Notice of presidential primary election** Repealed.

**5:02:04:21. Notice of cancellation of municipal election**

The notice of the cancellation of a municipal election shall be in the following form:

**NOTICE OF CANCELLATION OF MUNICIPAL ELECTION**
**MUNICIPALITY OF _____**

Notice is hereby given that no Municipal Election will be held on the ____ day of _____ , 20___ , in _____ , South Dakota.

The election for which public notice was given has been cancelled because

(a) no certificates of nomination were filed for (any of) the following position(s) and the incumbent(s) will hold over for the new term:

(HERE LIST POSITIONS AND NAME OF THE INCUMBENT(S))

(b) the following individual(s) has (have) filed certificates of nomination in the office of the Finance Officer for the position(s) to be filled:

(HERE LIST CANDIDATES FILING CERTIFICATES OF NOMINATION AND POSITIONS FOR WHICH THEY HAVE FILED)

Because (each of) the candidate(s) is unopposed, certificates of election will be issued in the same manner as to successful candidates after election.

Dated this _____ day of _____ , 20___ .

_____
Finance Officer

Source: 14 SDR 19, effective August 9, 1987; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 9-13-5.

**5:02:04:22. Notice of election for special district formation**

The notice of election for formation of county road, ambulance, rural fire protection, sanitary, irrigation, watershed, or water project districts must be in the following form:

**NOTICE OF MEETING AND ELECTION**
**PROPOSED** _____(insert district name and type) **DISTRICT**

## *Forms of Notices*

A Meeting and Election will be held on _____ to determine if the proposed _____ (insert district name and type)district shall be formed. (insert the following sentence only if trustees are to be elected at this meeting: If the district is formed by this election, nomination and election of a board of trustees will take place at the meeting.)

Residents within the proposed district who are also registered voters within the district are eligible to vote in this election.

The (meeting and) election will begin at _____ (mountain or central standard or mountain or central daylight savings) and continue until all present have voted.

The (meeting and) election will be held at the _____.

The area to be included in the proposed district is: (Include legal description of proposed district)

Voters with disabilities may contact the county auditor for information and special assistance in absentee voting or polling place accessibility.

_____
County Auditor
_____ County

Source: 25 SDR 8, effective August 3, 1998; 29 SDR 113, effective January 30, 2003; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 6-16-8
Law Implemented: SDCL 6-16-5, 6-16-8.

## Chapter 5:02:05

## Forms for Conduct of Elections

Sec.


5:02:05:00 Official stamp for ballots - All elections.
5:02:05:01 Certificate and receipt executed by the precinct election board and counting board.
5:02:05:02 Instructions to the voters using hand-counted paper ballots.
5:02:05:02.01 Instructions to the voters using optical scan ballots.
5:02:05:02.02 Repealed.
5:02:05:02.03 Instructions to the voters using an electronic ballot marking system.
5:02:05:03 to 5:02:05:05. Repealed.
5:02:05:06 Precinct election board receipt for official ballots.
5:02:05:07 Receipt for transmission of election supplies.
5:02:05:08 Receipt of superintendent of election for ballots and supplies.
5:02:05:09 Ballot box metal seal envelope.
5:02:05:10 Precinct election board record of spoiled ballots.
5:02:05:11 Notice of appointment of election officials.
5:02:05:11.01 Notice of appointment of election officials for school or municipal election.
5:02:05:12 Envelope for notification of appointment of election officials.
5:02:05:13 Notice of appointment of counting board.
5:02:05:14 Election supplies tag.
5:02:05:15 Auditor's ballot box seal.
5:02:05:16 to 5:02:05:18. Transferred.
5:02:05:19 Ballot wrapper or envelope seals.

5:02:05:20 Emergency voting card.
5:02:05:21 Affirmation of inactive voter's address.
5:02:05:22. Provisional ballot envelope.
5:02:05:23. Notice to provisional voter.
5:02:05:24. Notice of provisional ballot determination.
5:02:05:25. Personal identification affidavit.
5:02:05:26. Polling place voter identification sign.

**5:02:05:00. Official stamp for ballots - All elections**

Official ballots for each election must be stamped with an official stamp which must contain the following information:

OFFICIAL BALLOT
(NAME OF COUNTY, SCHOOL DISTRICT, MUNICIPALITY,
OR OTHER POLITICAL SUBDIVISION)
(Precinct name or number or both)
SOUTH DAKOTA

Source: 3 SDR 69, effective April 10, 1977; 4 SDR 26, effective October 27, 1977; transferred from 5:02:07:02, 6 SDR 25, effective September 24, 1979; 10 SDR 27, effective September 26, 1983; 25 SDR 8, effective August 3, 1998; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-1-9, 12-16-30.

**5:02:05:01. Certificate and receipt executed by the precinct election board and counting board**

The precinct superintendent and precinct deputies of the precinct election board and of the counting board shall complete and sign a certificate and receipt attesting to delivery and receipt of ballots and other election materials. The certificate and receipt shall be placed with the pollbook and returned to the county auditor. The form of the certificate and receipt is as follows:

**CERTIFICATE**

At the election held at _____ precinct, _____ County, South Dakota, on the _____ day of _____ , 20___ ,we, the undersigned election board members, had _____ voters cast ballots at that precinct, completed comparison and reconciliation in accord with SDCL 12-20-2, and then delivered:

1. ballot boxes
2. seals
3. registration list
4. pollbook
5. other election supplies, including voided and unused ballots

to the counting board, consisting of the following persons:
_____, precinct superintendent of counting board; _____, _____, _____ and _____, precinct deputies of counting board.

Dated at _____, South Dakota, this _____ day of _____, 20____ .
Attest: Certified by us:

_____
Precinct Superintendent of Precinct Election Board

| | |
|---|---|
| Precinct Deputy | Precinct Deputy |
| Precinct Deputy | Precinct Deputy |

**Receipt**

The undersigned members of the counting board of the precinct acknowledge receipt of the items provided in the certificate above.

Precinct Superintendent of Counting Board

| | |
|---|---|
| Precinct Deputy of Counting Board | Precinct Deputy of Counting Board |
| Precinct Deputy of Counting Board | Precinct Deputy of Counting Board |

Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 167, July 6, 1999.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-20-1.

**5:02:05:02. Instructions to the voters using hand-counted paper ballots.**

The instructions to be posted in two locations in the polling place in at least 48 point type for paper ballots must be in the following form:

**INSTRUCTIONS TO THE VOTERS**

TO MARK THE BALLOT

Use a cross (X) or a check mark (✓) for each vote.
Do not make any marks other than a cross (X) or check mark (✓).
Do not erase anything on your ballot.
Do not rip your ballot or make holes in it.
Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT(S) AFTER VOTING

Fold each ballot so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

PROVISIONAL BALLOT

You may vote a provisional ballot if your name is not on the voter list but you registered in this precinct by the deadline. You must complete both the envelope and ballot.

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person they choose to help them vote.
Any voter may ask for instruction in the proper procedure for voting.
Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

OTHER INFORMATION

The polls are open from 7:00 a.m. to 7:00 p.m. If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

The instructions to be posted in each voting booth for paper ballots must be in the following form:

**INSTRUCTIONS TO THE VOTERS**

TO MARK THE BALLOT

Use a cross (X) or a check mark (✓) for each vote.
Do not make any marks other than a cross (X) or check mark (✓).
Do not erase anything on your ballot.
Do not rip your ballot or make holes in it.
Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT(S) AFTER VOTING

Fold each ballot so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

The instructions to be published with the facsimile ballot for primary and general elections must be in the following form:

**INSTRUCTIONS TO THE VOTERS**

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person they choose to help them vote.
Any voter may ask for instruction in the proper procedure for voting.
Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.
If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney at _____.

A felon who receives a sentence of imprisonment to the adult penitentiary system, including a suspended execution of sentence, loses the right to vote. Felons so sentenced may register to vote following completion of their sentence. Further information is available at www.sdsos.gov .

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

Source: 2 SDR 5, effective July 30, 1975; 2 SDR 82, effective June 13, 1976; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 12 SDR 43, effective September 23, 1985; 23 SDR 236, effective July 17, 1997; 25 SDR 167, July 6, 1999; 27 SDR 146, effective July 9, 2001; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 30 SDR 171, effective May 10, 2004; 32 SDR 225, effective July 3, 2006; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(3), 12-1-9(9).
Law Implemented: SDCL 12-16-23, 12-16-25, 12-4-18, 23A-27-35, USC 1973gg-6(g).

**5:02:05:02.01 Instructions to the voters using optical scan ballots.**

The instructions to be posted in two locations in the polling place in at least 48 point type for optical scan ballots must be in the following form:

**INSTRUCTIONS TO THE VOTERS**

TO MARK THE BALLOT

Fill in the oval (●) next to the name or ballot question. Use only the pencil or marker given to you!
Do not make any marks other than filling the oval.
Do not erase anything on your ballot.
Do not rip your ballot or make holes in it.
Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

PROVISIONAL BALLOT

You may vote a provisional ballot if your name is not on the voter list but you registered in this precinct by the deadline. You must complete both the envelope and ballot.

VOTING RIGHTS

Any voter who can’t mark a ballot because the voter has a physical disability or can’t read, may ask any person they choose to help them vote.
Any voter may ask for instruction in the proper procedure for voting.

Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

OTHER INFORMATION

The polls are open from 7:00 a.m. to 7:00 p.m. If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

The instructions to be posted in each voting booth for optical scan ballots must be in the following form:

**INSTRUCTIONS TO THE VOTERS**

TO MARK THE BALLOT

Fill in the oval (●) next to the name or ballot question. Use only the pencil or marker given to you!
Do not make any marks other than filling the oval.
Do not erase anything on your ballot.
Do not rip your ballot or make holes in it.
Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

The instructions to be published with the facsimile ballot for primary and general elections must be in the following form:

**INSTRUCTIONS TO THE VOTERS**

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person they choose to help them vote.
Any voter may ask for instruction in the proper procedure for voting.
Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.
If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney at _____.
A felon who receives a sentence of imprisonment to the adult penitentiary system, including a suspended execution of sentence, loses the right to vote. Felons so

sentenced may register to vote following completion of their sentence. Further information is available at www.sdsos.gov .

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

Source: 27 SDR 146, effective July 9, 2001; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 30 SDR 171, effective May 10, 2004; 32 SDR 109, effective December 26, 2005; 32 SDR 225, effective July 3, 2006; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(3), 12-1-9(9).
Law Implemented: SDCL 12-16-23, 12-16-25, 12-4-18, 23A-27-35, USC 1973gg-6(g).

**5:02:05:02.02 Instructions to the voters using punchcard ballots.** Repealed.

**5:02:05:02.03 Instructions to the voters using an electronic ballot marking system.**

The instructions to be posted in each voting booth containing an electronic ballot marking system must be in the following form:

**INSTRUCTIONS TO THE VOTERS**

TO MARK THE BALLOT

When the screen shows “Please insert your ballot”, put the unvoted ballot into the machine.

Follow the instructions on the screen to complete voting.

IF YOU MAKE A MISTAKE

If you make a mistake before pressing “Mark Ballot”, you may change your vote on the screen.

If you find a mistake after your ballot has printed, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take to the ballot box.

IF YOU NEED HELP, ASK.

Source: 32 SDR 109, effective December 26, 2005.
General Authority: SDCL 12-1-9(3), 12-1-9(9).
Law Implemented: SDCL 12-16-23.

**5:02:05:03. Instructions to the voters - Primary election** Repealed.

**5:02:05:04. Election expense bill** Repealed.

**5:02:05:05. Envelope for election expense bill** Repealed.

**5:02:05:06. Precinct election board receipt for official ballots**

The precinct election board receipt for the official ballots shall be in the following form:

STATE OF SOUTH DAKOTA
_____ COUNTY
_____ PRECINCT

We, the Precinct Election Board Members, do hereby certify that on Tuesday the _____ day of _____, 20___, at the opening of the polls for the election held on that day, we received from _____, a sealed package containing the following official ballots:

(Here list the official ballots received)

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

for the use of the voters at the election.

Dated this _____ day of _____ , 20__ .

---------- ) Precinct Superintendent
)
---------- ) Precinct Deputy
)
---------- ) Precinct Deputy
)
---------- ) Precinct Deputy
)
---------- ) Precinct Deputy

Source: 4 SDR 85, effective June 14, 1978; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-17B-17(2).
Law Implemented: SDCL 12-16-20.

**5:02:05:07. Receipt for transmission of election supplies**

The receipt for transmission of election supplies shall be in the following form:

**RECEIPT FOR ELECTION SUPPLIES FOR TRANSMISSION**

RECEIVED of the County Auditor of _____ County, South Dakota, a package said to contain _____ (Primary, General, Special) election supplies for use in election precinct _____ for transmission to _____ , Superintendent of the election, whose postoffice address is _____ .

Dated this _____ day of _____ , 19 ____ .

_____
SHERIFF

Source: 4 SDR 85, effective June 14, 1978.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-19.

**5:02:05:08. Receipt of superintendent of election for ballots and supplies**

The receipt of the superintendent of election for ballots and supplies shall be in the following form:

STATE OF SOUTH DAKOTA )
COUNTY OF _____ )

I, _____, Superintendent of Election in and for the voting precinct of _____ in said County, do hereby certify that on the _____ day of _____, 19 _____, at the hands of _____ (Auditor, Sheriff), by _____, his deputy, of said County, I received a sealed package said to contain official ballots and necessary supplies for the use of the voters of said precinct at the _____ election to be held on Tuesday the ____ day of _____, 19_____.

Dated this _____ day of _____ , 19 _____ .

_____
SUPERINTENDENT OF ELECTION

Source: 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-19.

**5:02:05:09. Ballot box metal seal envelope**

The ballot box metal seal envelope shall be in the following form:

**THIS ENVELOPE CONTAINS BALLOT BOX METAL SEALS**
to be used at the _____ Election held on the ____ day of _____, 19___
for the _____ Precinct of _____ County, SD

These seals must be returned, in the envelope provided, to the Auditor. (All used seals must also be returned with unused seals.)

Source: 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-26, 12-20-20.

**5:02:05:10. Record of spoiled ballots**

The election board's record of spoiled ballots must be in the following form:

STATE OF SOUTH DAKOTA
_____ COUNTY
_____ PRECINCT

We do hereby certify that at the election held on Tuesday the _____ day of _____, 20__, official ballots were spoiled, returned by voters and cancelled as follows:

| NAME OF VOTER | Type & Number of Ballots | NAME OF VOTER | Type & Number of Ballots |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

Dated this _____ day of _____, 20___.

---------- ) Precinct Superintendent
)
---------- ) Precinct Deputy
)
---------- ) Precinct Deputy
)
---------- ) Precinct Deputy
)
---------- ) Precinct Deputy

Source: 4 SDR 85, effective June 14, 1978; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-17B-17(2).
Law Implemented: SDCL 12-18-24.

**5:02:05:11. Notice of appointment of election officials**

The notice of appointment of election officials must be in the following form:

STATE OF SOUTH DAKOTA )
) SS NOTICE OF APPOINTMENT
COUNTY OF _____ )

To _____ Precinct Superintendent
_____ Precinct Deputy
_____ Precinct Deputy
_____ Precinct Deputy
_____ Precinct Deputy

You are appointed as precinct election board members for the _____ Election, for _____ Precinct of _____ County. This election will be held at (polling place), from ____ a.m. to _____ p.m., local time, on the____ day of _____, 20___. _____ has been designated Superintendent of this precinct election board.

If you are unable to serve, please contact the county auditor immediately.

The Election School of Instruction will be held at _____ on the ___ day of _____, 20___, at _____ m.

Witness my hand and seal, this _____ day of _____, 20___.

_____
Person in charge of election

Source: 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-15-1, 12-15-7.

**5:02:05:11.01. Notice of appointment of election officials for school or municipal election**

The notice of appointment of election officials for school district or municipal elections must be in the following form:

STATE OF SOUTH DAKOTA ) MUNICIPALITY OF _____(or)
) SS _____ SCHOOL DISTRICT

COUNTY OF _____ ) NOTICE OF APPOINTMENT

To: _____ Precinct Superintendent
_____ Precinct Deputy
_____ Precinct Deputy
_____ Precinct Deputy
_____ Precinct Deputy

You are appointed as precinct election board members for the _____ election for _____ (Ward/Precinct). This election will be held at (polling place) from _____ a.m. to 7:00 p.m., local time, on the _____ day of _____, 20___.

If you are unable to serve, please contact the person in charge of the election immediately.

Dated this ____ day of _____, 20__.
(Signed) _____
Municipal Finance Officer or School Business Manager

Source: 12 SDR 43, effective September 23, 1985; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 9-13-16.1, 13-7-12.

**5:02:05:12. Envelope for notification of appointment of election officials**

The envelope for notification of appointment of election officials shall be a business envelope.

Source: 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-15-1, 12-15-1.2, 12-15-7.

**5:02:05:13. Notice of appointment of counting board**

The notice of appointment of the counting board must be in the following form:

STATE OF SOUTH DAKOTA )
) SS NOTICE OF APPOINTMENT
COUNTY OF _____ )

To _____ Precinct Superintendent
_____ Precinct Deputy _____ Precinct Deputy
_____ Precinct Deputy _____ Precinct Deputy
_____ Precinct Deputy _____ Precinct Deputy

You are appointed a member of a separate Counting Board for the general election in _____ precinct, _____ County, on November ___, 20__. Please report to the polling place at ____ p.m. the day of the election. If you are unable to serve, please notify the county auditor immediately.

The election school of instruction will be held at _____ on the ____ day of _____, 20__, at _____ m.

Witness my hand and the seal of this county, this ____ day of _____, 20___.

_____
County Auditor

Source: 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-15-7, 12-15-14, 12-15-14.1.

**5:02:05:14. Election supplies tag**

The election supplies tag shall be in the following form:

FRONT SIDE
To _____
Supt. of Election
_____
South Dakota
_____
_____

FROM COUNTY AUDITOR
or person in charge of election
_____
South Dakota

BACK SIDE
This package contains Supplies and
Official Ballots for _____
Precinct as follow:
_____ Official Ballots
_____ Nonpolitical Ballots
_____
_____

Source: 4 SDR 85, effective June 14, 1978.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-19.

**5:02:05:15. Auditor's ballot box seal**

The auditor's ballot box seal shall be in the following form:

AUDITOR'S
BALLOT BOX SEAL
_____
_____
THIS BALLOT BOX CONTAINS ELECTION SUPPLIES
FOR _____ PRECINCT
_____
AUDITOR
_____
DEPUTY

Source: 4 SDR 85, effective June 14, 1978.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-19.

**5:02:05:16. Transferred to 5:02:10:06.**

**5:02:05:17. Transferred to 5:02:10:07.**

**5:02:05:18. Transferred to 5:02:10:08.**

**5:02:05:19. Ballot wrapper or envelope seals**

Whenever a statute requires ballot wrappers or envelopes, those wrappers or envelopes shall be plain and sealed with a seal containing the following information:

BALLOT WRAPPER OR ENVELOPE _____ PRECINCT
# OF BALLOTS _____

Source: 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-18, 12-17A-42.1, 12-18-32, 12-20-20.

**5:02:05:20. Emergency voting card**

The emergency voting card must be printed on two-part NCR paper, 3 inches by 5 inches in size, and in the following form:

EMERGENCY VOTING CARD
For _____ County
_____ Ward _____ Precinct _____ Party
Name _____
Residence _____
The undersigned members of the precinct election board hereby certify that the above-named voter was permitted to vote in this precinct at the election held _____, 20___, pursuant to instructions from the office of the county auditor.

_____ _____
Signature of Voter Authorized by

_____
Signature of precinct election board member calling office

_____ _____
Precinct election board member Precinct election board member

_____ _____
Precinct election board member Precinct election board member

Source: 6 SDR 25, effective September 24, 1979; 25 SDR 167, July 6, 1999.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-18-7.2.

**5:02:05:21. Affirmation of inactive voter's address**

The form for an inactive voter to affirm his or her current address is the voter registration card prescribed in § 5:02:03:01.

Source: 21 SDR 77, effective October 24, 1994; 23 SDR 115, effective January 22, 1997.
General Authority: SDCL 12-4-35.
Law Implemented: SDCL 12-18-7.4.

**5:02:05:22. Provisional ballot envelope.**

The provisional ballot envelope shall be blue and in the following form:

Voter's Affirmation for a Provisional Ballot

My voter registration was completed on or about the following date and was left with the following person or agency for delivery to the county auditor: _____ _____.
My name is _____, I reside at _____, my mailing address is _____, my date of birth is _____, my South Dakota driver license number is _____, my daytime telephone number is _____ and my evening telephone number is _____. If I do not have a South Dakota driver license the last four digits of my social security number are _____.

I understand if the election authority determines that I am not registered in this precinct and therefore not eligible to vote in this precinct, my vote will not be counted. I further understand that my vote may not be secret if only one provisional ballot is cast in the precinct. I declare and affirm under penalty of perjury that I registered and am eligible to vote in this precinct.

_____ _____
Signature of Voter Date

To be completed by a precinct election worker:

Precinct number _____ Type of ballot provided to voter _____

_____
Signature of precinct worker

Source: 29 SDR 177, effective July 2, 2003; 31 SDR 214, effective July 4, 2005; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-18-40.
Law Implemented: SDCL 12-18-40.

**5:02:05:23. Notice to provisional voter.**

The notice handed to a provisional voter shall be in the following form:

Provisional Ballot

You will be sent a notice within 13 days whether your ballot was counted or not counted. If the ballot was not counted, you will be told of the reason.

Source: 29 SDR 177, effective July 2, 2003.
General Authority: SDCL 12-18-40, 12-20-13.4, 12-1-9(3).
Law Implemented: SDCL 12-18-40, 12-20-13.4, 12-1-9(3).

**5:02:05:24. Notice of provisional ballot determination.**

The notice sent to the mailing address of a person who has cast a provisional ballot shall contain:

(1) Voter's name;
(2) Voter's mailing address;
(3) Election at which the ballot was cast;
(4) Whether the ballot was counted;
(5) If the ballot was not counted, the reason why it was not counted; and
(6) A telephone number for further information.

A paper or electronic copy of the notice shall be maintained by the official in charge of the election for the time period defined in SDCL 12-20-31.

Source: 29 SDR 177, effective July 2, 2003; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-20-13.4.
Law Implemented: SDCL 12-20-13.4, 12-20-31.

**5:02:05:25. Personal identification affidavit.**

The personal identification affidavit to be signed by a voter at the polling place who does not have personal identification shall be in the following form:

I declare, under penalty of perjury, that my name is listed as _____ on the official voter registration list, that I am that person, and that I currently reside at _____. The maximum penalty for perjury is 2 years imprisonment and a $4,000 fine.

Dated _____ Voter Signature _____

Source: 29 SDR 177, effective July 2, 2003; 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-18-6.2.
Law Implemented: SDCL 12-18-6.2.

**5:02:05:26. Polling place voter identification sign.**

Voter identification signs must be posted at each polling place. A sign must be posted at each entrance to the polling place which is used by voters. In addition a voter identification sign must be posted in the voting area for each precinct voting at a polling place. The type size of the sign must be a minimum of 36 point type. The language of the sign, shall be in the following form:

Please Read

To vote, you must either:

- Present a photo ID, or if not able to do so,
- Sign an affidavit which will be given to you.

Accepted forms of photo identification include any one of the following:

- A SD driver license or nondriver ID card; or
- A US government photo ID; or
- A tribal photo ID; or
- A current student photo ID from a SD high school or SD accredited institution of higher education.

Source: 31 SDR 35, effective September 23, 2004; 32 SDR 225, effective July 3, 2006.
General Authority: SDCL 12-1-9(3).
Law Implemented: SDCL 12-18-6.1, 12-18-6.2.

## Chapter 5:02:06

## Ballot Forms and Color

Sec.

5:02:06:01. General election.
5:02:06:01.01. Constitutional amendments.
5:02:06:01.02. Optical scan ballot instructions.
5:02:06:01.03. Optical scan ballot political party notation.
5:02:06:02. Constitutional amendments proposed by Legislature - Title.
5:02:06:02.01. Constitutional amendments proposed by Legislature - Recitation of effect of yes or no vote.
5:02:06:02.02. Initiated constitutional amendment - Title.
5:02:06:02.03. Initiated constitutional amendment - Recitation of effect of yes or no vote.
5:02:06:03. Judiciary.
5:02:06:03.01. Repealed.
5:02:06:03.02. Deadline for request to be on retention ballot.
5:02:06:04. Repealed.
5:02:06:04.01. Initiated measures and referred laws.
5:02:06:05. Initiated measures - Title.
5:02:06:05.01. Initiated measures - Recitation of effect of yes or no vote.
5:02:06:06. Referred laws - Title.
5:02:06:06.01. Referred laws - Recitation of effect of yes or no vote.
5:02:06:07. Transferred to § 5:02:06:02.02
5:02:06:07.01. Transferred to § 5:02:06:02.03
5:02:06:08. Sample ballots.
5:02:06:09. Party precinct committeeman and committeewoman.
5:02:06:10. Primary.
5:02:06:10.01 to 5:02:06:11. Repealed.
5:02:06:12. Municipal election.
5:02:06:13. Municipal questions election.
5:02:06:14. Municipal bond election.
5:02:06:15. School board election.
5:02:06:16. Ballot for increasing or decreasing number of school board members.
5:02:06:17. Ballot for statewide secondary election.
5:02:06:18. Colors of ballots for combined elections.
5:02:06:19. Nonpolitical consumers power district election.
5:02:06:20. Tax levy opt-out ballot.
5:02:06:21. Special district formation ballot.
5:02:06:22. School district reorganization ballot.
5:02:06:23. Sanitary district election ballot.

**5:02:06:01. General election.**

The general election ballot must be white and must be in the following form, as applicable:

## OFFICIAL GENERAL ELECTION BALLOT

(Ballot Stamp)

November __, ____ _____ County, South Dakota

**INSTRUCTIONS TO THE VOTER:**
**Insert appropriate instructions from ARSD 5:02:06:01.02**

**For Presidential Electors**
You may vote for **one** slate or leave it blank.

- ◯ **Doe & Roe Electors** Party Label
  - John Hall
  - Jane Smith
  - Pat Jones
- ◯ **Lee & Jones Electors** Party Label
  - Jill Doe
  - John Doe
  - Shannon McGee
- ◯ **Hill & Hall Electors** Independent
  - Bill Smith
  - June Johnson
  - Kim Olson

**INSTRUCTIONS TO THE VOTER:**
**Insert appropriate instructions from ARSD 5:02:06:01.02**

**For United States Senator**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For United States Representative**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For Governor and Lieutenant Governor**
To be elected as a team, you may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
  - for Governor and
  - **Jane Doe**
  - for Lieutenant Governor
- ◯ **Pat Jones** Party Label
  - for Governor and
  - **Kim Olson**
  - for Lieutenant Governor
- ◯ **Mary Johnson** Independent
  - for Governor and
  - **Shannon McGee**
  - for Lieutenant Governor

**For Secretary of State**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For Attorney General**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For State Auditor**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For State Treasurer**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For Commissioner of School and Public Lands**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For Public Utilities Commissioner**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For State Senator, District __**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For State Representatives, District __**
You may vote for up to **two** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Party Label
- ◯ **Jill Doe** Party Label
- ◯ **Shannon McGee** Independent
- ◯ **Bill Smith** Independent

**For State Representative, District __**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For County Treasurer**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For County Auditor**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

**For States Attorney**
You may vote for **one** or leave it blank.

- ◯ **John Doe** Party Label
- ◯ **Jane Smith** Party Label
- ◯ **Pat Jones** Independent

Go to top of next column | Go to top of next column | Turn Page

| November __, ____ | _____ County, South Dakota | |
|---|---|---|
| **For Sheriff**<br>You may vote for **one** or leave it blank. | **NONPOLITICAL BALLOT** | **INSTRUCTIONS TO THE VOTER:**<br>**Insert appropriate instructions from ARSD 5:02:06:01.02** |
| | **Supreme Court Justice Retention** | **Constitutional Amendment(s)** |
| ◯ **John Doe** Party Label | Vote on each justice. Shall the justice(s) of the Supreme Court named on this ballot, whose term(s) expire(s) (date), be retained in office? | The following amendment(s) to the State Constitution (is/are) submitted to the voters by (the Legislature/petition). The amendment(s) will not become effective unless approved by majority vote. |
| ◯ **Jane Smith** Party Label | | |
| | **Justice John Doe**, representing the ___ Supreme Court District | **Constitutional Amendment A** |
| ◯ **Pat Jones** Independent | ◯ **Yes** | |
| | ◯ **No** | **Title:** |
| **For Register of Deeds**<br>You may vote for **one** or leave it blank. | | **Attorney General Explanation:** |
| | **Justice John Doe**, representing the ___ Supreme Court District | |
| ◯ **John Doe** Party Label | ◯ **Yes** | ◯ **Yes** |
| | ◯ **No** | |
| ◯ **Jane Smith** Party Label | | ◯ **No** |
| | **Judge of the Circuit Court** | **Initiated Measure(s)** |
| ◯ **Pat Jones** Independent | For _____ Circuit, Position ___, you may vote for **one** or leave it blank | The following initiated measure(s) (was/were) proposed by petition for submission to the voters. Th(is/ese) initiated measure(s) will not become effective unless approved by majority vote. |
| **For Coroner**<br>You may vote for **one** or leave it blank. | | **Initiated Measure 1** |
| | ◯ **John Doe** | |
| ◯ **John Doe** Party Label | | **Title:** |
| | ◯ **Jane Smith** | **Attorney General Explanation:** |
| ◯ **Jane Smith** Party Label | | |
| | **Water Development District** | ◯ **Yes** |
| ◯ **Pat Jones** Independent | For _____ Water Development District Director, Area _____, you may vote for **one** or leave it blank | |
| **For County Commissioner, District __**<br>You may vote for **one** or leave it blank. | | ◯ **No** |
| | ◯ **John Doe** | **Referred Law(s)** |
| ◯ **John Doe** Party Label | | The following law(s) (was/were) adopted by the Legislature and referred to the voters by petition. Th(is/ese) law(s) will not become effective unless approved by majority vote. |
| ◯ **Jane Smith** Party Label | ◯ **Jane Smith** | **Referred Law 2** |
| | | |
| ◯ **Pat Jones** Independent | **Heartland Consumers Power District** | **Title:** |
| | For Subdivision No._____ Director, you may vote for **one** or leave it blank | **Attorney General Explanation:** |
| **For County Commissioner At Large**<br>You may vote for up to __ or leave it blank. | | |
| | ◯ **John Doe** | ◯ **Yes** |
| ◯ **John Doe** Party Label | | |
| | ◯ **Jane Smith** | ◯ **No** |
| ◯ **Jane Smith** Party Label | | |
| | | |
| ◯ **Pat Jones** Party Label | | |
| | | |
| ◯ **Jill Doe** Party Label | | |
| | | |
| ◯ **Shannon McGee** Independent | | |
| | | |
| ◯ **Kim Olson** Independent | | |
| | | |
| | | |
| **Go to top of next column** | **Go to top of next column** | **Turn Page** |

## *Miscellaneous Forms*

Printing note: The top right corner of the front side of each ballot must be cut off approximately as indicated by the dashed line on the ballot form.

Source: 2 SDR 5, effective July 30, 1975; 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 12 SDR 43, effective September 23, 1985; 19 SDR 12, effective August 5, 1992; 22 SDR 95, effective January 18, 1996; 23 SDR 236, effective July 17, 1997; 27 SDR 146, effective July 9, 2001; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-16-2.1, 12-16-9, 12-16-10.

**5:02:06:01.01. Constitutional amendments.**

All constitutional amendments proposed by the Legislature or initiated by the people shall be printed on the general election optical scan ballot.

Source: 6 SDR 123, effective July 2, 1980; 27 SDR 146, effective July 9, 2001; 28 SDR 99, effective January 17, 2002; 32 SDR 225, effective July 3, 2006.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-13-11, 12-16-2.1.

**5:02:06:01.02. Optical scan ballot instructions.**

The instructions to voters found on optical scan ballots shall be enclosed in a box. The appropriate instructions shall be placed at the top of the first column containing presidential electors (subdivision 1 and 7) or presidential delegates and alternates (subdivision 2 and 7), at the beginning of the portion containing other candidates (subdivision 3 and 7) and at the beginning of the portion containing ballot questions (subdivision 4 and 7). The instructions for all elections must be in the following form without the subdivision numbers:

(1) To vote for a group of presidential electors FILL IN (Bold) the oval (●) next to the names.
(2) To vote for a group of presidential delegates and alternates FILL IN (Bold) the oval (●) next to the names.
(3) To vote for a person FILL IN (Bold) the oval (●) next to the name.
(4) To vote on a ballot question FILL IN (Bold) the oval (●) next to “yes” or “no”.
(5) Use only a pencil or pen.
(6) If you make a mistake, give the ballot back and get a new one.
(7) DO NOT (Bold) cast more votes than are allowed in each race.

Printers note: Subdivisions 5 and 6 shall be included in the first instruction box only. For subdivision 5, specify “pencil or pen”, “pencil” or “pen” as appropriate for your system. If the ballot has columns, the words “Go to top of next column” shall be printed on the bottom of any column preceding each column to be voted. If the ballot has races on the back side, the words “Turn page” shall be printed in the lower right corner.

Source: 22 SDR 95, effective January 18, 1996; 23 SDR 236, effective July 17, 1997; 26SDR168, effective June 25, 2000; 28 SDR 99, effective January 17, 2002; 29 SDR

113, effective January 30, 2003; 29 SDR 177, effective July 2, 2003; 31 SDR 35, effective September 23, 2004; 32 SDR 109, effective December 26, 2005; 32 SDR 225, effective July 3, 2006; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-16-9.

**5:02:06:01.03. Optical scan ballot political party notation.**

The full name of each candidate's political party shall be printed next to or below the candidate's name on optical scan general election ballots.

Source: 29 SDR 177, effective July 2, 2003.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-16-9.

**5:02:06:02. Constitutional amendments proposed by Legislature - Title** Repealed.

**5:02:06:02.01. Constitutional amendments proposed by Legislature - Recitation of effect of yes or no vote** Repealed.

**5:02:06:02.02. Initiated constitutional amendment - Title** Repealed.

**5:02:06:02.03. Initiated constitutional amendment - Recitation of effect of yes or no vote** Repealed.

**5:02:06:03. Judiciary.**

The judiciary ballots must be buff or tan and must be in the following form:

OFFICIAL NONPOLITICAL JUDICIARY BALLOT
_____ County, South Dakota
(Election Date)

To vote use a cross (X) or check mark (✓) in the square in front of the name. DO NOT cast more votes than are allowed in each race.

FOR JUDGE OF THE CIRCUIT COURT
_____ Circuit, Position _____
You may vote for one or leave it blank
☐ John Jones
☐ Joan Ray

Source: 2 SDR 5, effective July 30, 1975; 2 SDR 46, effective December 30, 1975; 4 SDR 26, effective October 27, 1977; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 14 SDR 19, effective August 9, 1987; 25 SDR 8, effective August 3, 1998; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-9-13, 12-16-2.1.

**5:02:06:03.01. Supreme Court justice retention ballot.** Repealed.

**5:02:06:03.02. Deadline for request to be on retention ballot.**

By the first Tuesday in August, an incumbent justice of the Supreme Court shall request the secretary of state to place his name on the Supreme Court justice retention ballot.

Source: 10 SDR 27, effective September 26, 1983.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 16-1-2.

**5:02:06:04. Special district.** Repealed.

**5:02:06:04.01. Initiated measures and referred laws.**

All measures initiated or laws referred by the people statewide shall be printed on the general election optical scan ballot. If a county ballot question is not placed on an optical scan ballot, the instructions to the voter must be in the following form: To vote use a cross (X) or check mark (✓) in the square next to “yes” or “no”.

Source: 6 SDR 123, effective July 2, 1980; 27 SDR 146, effective July 9, 2001; 28 SDR 99, effective January 17, 2002; 32 SDR 225, effective July 3, 2006.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-13-11, 12-16-2.1.

**5:02:06:05. Initiated measures - Title** Repealed.

**5:02:06:05.01. Initiated measures - Recitation of effect of yes or no vote** Repealed.

**5:02:06:06. Referred laws - Title** Repealed.

**5:02:06:06.01. Referred laws - Recitation of effect of yes or no vote** Repealed.

**5:02:06:07. Transferred to 5:02:06:02.02**

**5:02:06:07.01. Transferred to 5:02:06:02.03**

**5:02:06:08. Sample ballots.**

All sample ballots shall be canary yellow in color.

Source: 2 SDR 5, effective July 30, 1975.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-2.1.

**5:02:06:09. Party precinct committeeman and committeewoman.**

The official primary ballot for precinct committeeman and committeewoman must be in the following form:

_____ PARTY
_____ Precinct, _____ County, South Dakota,
June ___, _____

To vote use a cross (X) or check mark (✓) in the square in front of the name. DO NOT cast more votes than are allowed in each race.

For precinct committeeman, you may vote for <u>one</u> or leave it blank

☐ John Doe ☐ Richard Roe

For precinct committeewoman, you may vote for one or leave it blank

☐ Jane Doe ☐ Mary Roe

Source: 2 SDR 46, effective December 30, 1975; 25 SDR 8, effective August 3, 1998; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-5-8.

**5:02:06:10. Primary.**

The primary election ballot must have a blue indicator for the Democratic party, white for the Republican party, and a different color as certified by the Secretary of State for any other party. The ballot must be in either of the following forms, as applicable:

_____ PARTY
OFFICIAL PRIMARY ELECTION BALLOT
_____ COUNTY, SOUTH DAKOTA
JUNE ___, _____

To vote use a cross (X) or check mark (✓) in the square in front of the name. DO NOT cast more votes than are allowed in each race.

For United States Senator, you may vote for one or leave it blank
☐ _____
☐ _____
For United States Representative, you may vote for one or leave it blank
☐ _____
☐ _____
For Governor, you may vote for one or leave it blank
☐ _____
☐ _____
For State Senator, District ___, you may vote for one or leave it blank
☐ _____
☐ _____
For State Representative, District ___, (you may vote for up to two or leave it blank) or (you may vote for one or leave it blank)
☐ _____
☐ _____
For County Treasurer, you may vote for one or leave it blank
☐ _____
☐ _____
For County Auditor, you may vote for one or leave it blank
☐ _____
☐ _____
For States Attorney, you may vote for one or leave it blank
☐ _____
☐ _____
For Sheriff, you may vote for one or leave it blank
☐ _____
☐ _____
For Register of Deeds, you may vote for one or leave it blank
☐ _____
☐ _____

## *Miscellaneous Forms*

For Coroner, you may vote for one or leave it blank

☐ _____

☐ _____

For County Commissioner, District ___, you may vote for one or leave it blank

☐ _____

☐ _____

For County Commissioner at Large, you may vote for up to ____ or leave it blank

☐ _____

☐ _____

For Delegates to State Convention, you may vote for up to ____ or leave it blank

☐ _____

☐ _____

| OFFICIAL _____ PARTY PRIMARY ELECTION BALLOT | | (Ballot Stamp) |
|---|---|---|
| June __, ____ | _____ County, South Dakota | |
| **INSTRUCTIONS TO THE VOTER: Insert appropriate instructions from ARSD 5:02:06:01.02** | **For Governor**<br>You may vote for **one** or leave it blank. | **For States Attorney**<br>You may vote for **one** or leave it blank. |
| **For Presidential Delegates and Alternates**<br>You may vote for **one** slate or leave it blank. | | |
| | ◯ **John Doe** | ◯ **John Doe** |
| ◯ Candidates preferring | | |
| **John Hall** | ◯ **Jane Smith** | ◯ **Jane Smith** |
| for President | | |
| Delegates: | ◯ **Pat Jones** | ◯ **Pat Jones** |
| John Doe | | |
| | **For State Senator, District __**<br>You may vote for **one** or leave it blank. | **For Sheriff**<br>You may vote for **one** or leave it blank. |
| Jane Doe | | |
| Pat Jones | | |
| Alternates: | ◯ **John Doe** | ◯ **John Doe** |
| John Doe | | |
| Jane Doe | ◯ **Jane Smith** | ◯ **Jane Smith** |
| Pat Jones | | |
| | ◯ **Pat Jones** | ◯ **Pat Jones** |
| ◯ Candidates preferring | | |
| | **For State Representatives, District __**<br>You may vote for up to **two** or leave it blank. | **For Register of Deeds**<br>You may vote for **one** or leave it blank. |
| **Jane Smith** | | |
| for President | | |
| Delegates: | ◯ **John Doe** | ◯ **John Doe** |
| John Doe | | |
| Jane Doe | ◯ **Jane Smith** | ◯ **Jane Smith** |
| Pat Jones | | |
| Alternates: | ◯ **Pat Jones** | ◯ **Pat Jones** |
| John Doe | | |
| | ◯ **Jill Doe** | **For Coroner**<br>You may vote for **one** or leave it blank. |
| Jane Doe | | |
| Pat Jones | | |
| | ◯ **Shannon McGee** | ◯ **John Doe** |
| ◯ Candidates preferring | | |
| **Pat Jones** | ◯ **Bill Smith** | ◯ **Jane Smith** |
| for President | | |
| Delegates: | **For State Representative, District __** | ◯ **Pat Jones** |
| John Doe | | |
| | ◯ **John Doe** | **For County Commissioner, District __**<br>You may vote for **one** or leave it blank. |
| Jane Doe | | |
| Pat Jones | | |
| Alternates: | ◯ **Jane Smith** | ◯ **John Doe** |
| John Doe | | |
| Jane Doe | ◯ **Pat Jones** | ◯ **Jane Smith** |
| Pat Jones | | |
| | **For County Treasurer**<br>You may vote for **one** or leave it blank. | ◯ **Pat Jones** |
| **INSTRUCTIONS TO THE VOTER: Insert appropriate instructions from ARSD 5:02:06:01.02** | | |
| **For United States Senator**<br>You may vote for **one** or leave it blank. | ◯ **John Doe** | **For County Commissioner At Large**<br>You may vote for up to __ or leave it blank. |
| ◯ **John Doe** | ◯ **Jane Smith** | ◯ **John Doe** |
| ◯ **Jane Smith** | ◯ **Pat Jones** | ◯ **Jane Smith** |
| ◯ **Pat Jones** | **For County Auditor**<br>You may vote for **one** or leave it blank. | ◯ **Pat Jones** |
| **For United States Representative**<br>You may vote for **one** or leave it blank. | ◯ **John Doe** | ◯ **Jill Doe** |
| ◯ **John Doe** | ◯ **Jane Smith** | ◯ **Shannon McGee** |
| ◯ **Jane Smith** | ◯ **Pat Jones** | ◯ **Kim Olson** |
| ◯ **Pat Jones** | | |
| Go to top of next column | Go to top of next column | Turn Page |

| June __, ____ | _____ County, South Dakota | |
|---|---|---|
| **For Delegates to State Convention**<br>You may vote for up to __ or leave it blank. | **Heartland Consumers Power District** | **INSTRUCTIONS TO THE VOTER: Insert appropriate instructions from ARSD 5:02:06:01.02** |
| ◯ **John Doe** | For Subdivision No._____ Director, you may vote for **one** or leave it blank | **County Initiated Ordinance(s)** |
| | ◯ **John Doe** | The following initiated ordinance(s) (was/were) proposed by petition for submission to the voters. Th(is/ese) initiated ordinance(s) will not become effective unless approved by majority vote. |
| ◯ **Jane Smith** | | **Initiated Measure 1** |
| | ◯ **Jane Smith** | **Title:** |
| ◯ **Pat Jones** | | |
| | **_____ School District** | **States Attorney Explanation:** |
| ◯ **Jill Doe** | **For School Board Member, ___ year term**<br>You may vote for up to __ or leave it blank. | |
| ◯ **Shannon McGee** | ◯ **John Doe** | ◯ **Yes** |
| | | ◯ **No** |
| ◯ **Kim Olson** | ◯ **Jane Smith** | **County Referred Ordinance(s)** |
| | | The following ordinance(s) (was/were) adopted by the County Commission and referred to the voters by petition. Th(is/ese) ordinance(s) will not become effective unless approved by majority vote. |
| **For Precinct Committeeman**<br>You may vote for **one** or leave it blank. | ◯ **Pat Jones** | **Referred Law 2** |
| | ◯ **Jill Doe** | **Title:** |
| ◯ **John Doe** | | **States Attorney:** |
| | ◯ **Shannon McGee** | |
| ◯ **Jim Smith** | | ◯ **Yes** |
| | ◯ **Kim Olson** | |
| ◯ **Pat Jones** | | ◯ **No** |
| | **City of _____** | |
| **For Precinct Committeewoman**<br>You may vote for **one** or leave it blank. | **For Mayor**<br>You may vote for **one** or leave it blank. | **Municipal Initiated Ordinance(s)** |
| | | (was/were) proposed by petition for |
| ◯ **Joleen Doe** | ◯ **John Doe** | **Initiated Measure 1** |
| | | **Title:** |
| ◯ **Jane Smith** | ◯ **Jim Smith** | |
| | | **City Attorney Explanation:** |
| ◯ **Patricia Jones** | ◯ **Pat Jones** | |
| | | ◯ **Yes** |
| NONPOLITICAL BALLOT | **For City Commission, ___ year term**<br>You may vote for up to __ or leave it blank. | |
| | | ◯ **No** |
| **Judge of the Circuit Court** | ◯ **John Doe** | **Municipal Referred Ordinance(s)** |
| For _____ Circuit, Position ___, you may vote for **one** or leave it blank | ◯ **Jane Smith** | The following ordinance(s) (was/were) adopted by the City Council and referred to the voters by petition. Th(is/ese) ordinance(s) will not become effective unless approved by majority vote. |
| | | **Referred Law 2** |
| ◯ **John Doe** | ◯ **Pat Jones** | **Title:** |
| ◯ **Jane Smith** | ◯ **Jill Doe** | **City Attorney Explanation:** |
| **Water Development District** | ◯ **Shannon McGee** | ◯ **Yes** |
| For _____ Water Development District Director, Area _____, you may vote for **one** or leave it blank | | |
| | ◯ **Kim Olson** | ◯ **No** |
| ◯ **John Doe** | | |
| ◯ **Jane Smith** | | |
| **Go to top of next column** | **Go to top of next column** | **Turn Page** |

Printing note: For county commissioners at large or delegates to state convention, use the correct number designations for the number of candidates to be elected. For state representative, use the correct "vote for" phrase for the number to be elected.

Source: 2 SDR 46, effective December 30, 1975; 4 SDR 85, effective June 14, 1978; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 31, effective October 1, 1981; 10 SDR 27, effective September 26, 1983; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 23 SDR 115, effective January 22, 1997; 23 SDR 236, effective July 17, 1997; 25 SDR 8, effective August 3, 1998; 27 SDR 146, effective July 9, 2001; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 32 SDR 225, effective July 3, 2006; 35 SDR 48, effective September 8, 2008; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-6-14, 12-16-2.1.

**5:02:06:10.01. Presidential preference primary** Repealed.

**5:02:06:10.02. Presidential primary.** Repealed.

**5:02:06:11. Primary ballot for highway board members** Repealed.

**5:02:06:12. Municipal election.**

The municipal election ballot must be white and must be in the following form:

OFFICIAL MUNICIPAL ELECTION BALLOT
_____ , SOUTH DAKOTA
(Election Date)

To vote use a cross (X) or check mark (✓) in the square in front of the name. DO NOT cast more votes than are allowed in each race.

For Mayor, you may vote for <u>one</u> or leave it blank.

☐ John Doe
☐ Richard Roe

For (City Commission, Alderman, Trustee), _____ year term, you may vote for up to _____ or leave it blank

☐ John Doe
☐ Richard Roe
☐ John Smith

For (City Commission, Alderman, Trustee), _____ year term, you may vote for one or leave it blank.

☐ John Doe
☐ Richard Roe

Source: 2 SDR 46, effective December 30, 1975; 4 SDR 26, effective October 27, 1977; 14 SDR 19, effective August 9, 1987; 25 SDR 8, effective August 3, 1998; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(2).

Law Implemented: SDCL 9-13-21.

**5:02:06:13. Municipal questions election.**

The municipal questions ballot must be white and must be in the following form:

OFFICIAL MUNICIPAL ELECTION BALLOT
_____, SOUTH DAKOTA
(Election Date)

The following (initiated measure or referred ordinance or referred resolution) was proposed by petition for submission to the voters. This (initiated measure or referred ordinance or referred resolution) will not become effective unless approved by majority vote.

Title: (HERE LIST TITLE OF INITIATIVE OR REFERENDUM TO BE VOTED ON)

City Attorney Explanation: (HERE LIST CITY ATTORNEY'S EXPLANATION)

To vote use a cross (X) or check mark (✓) in the square in front of “Yes” or “No”.

☐ Yes A vote “Yes” will (change city ordinance)(adopt the ordinance)(adopt the resolution).
☐ No A vote “No” will (leave the city ordinance as it is)(not adopt the ordinance)(not adopt the resolution).

Source: 4 SDR 26, effective October 27, 1977; 14 SDR 19, effective August 9, 1987; 16 DR 20, effective August 10, 1989; 20 SDR 4, effective July 19, 1993; 28 SDR 99, effective January 17, 2002; 32 SDR 225, effective July 3, 2006; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 9-20-13.

**5:02:06:14. Municipal bond election.**

The municipal bond election ballot shall be white and shall be in the following form:

OFFICIAL BALLOT
BOND ELECTION
CITY OF _____ , SOUTH DAKOTA
_____ , 19 ____

Shall the City of _____ South Dakota, issue bonds in an amount not exceeding $ _____ for the purpose of (State the purpose for which the bonds will be issued and other information as the governing body may determine)

INSTRUCTIONS TO VOTERS: Place a cross (X) or check mark (✓) in the square preceding "Yes" or "No." A vote "yes" is in favor of issuing the bonds and a vote "no" is against the issuing of bonds.

☐ YES
Shall the above proposition be approved and the bonds issued?
☐ NO

Source: 4 SDR 26, effective October 27, 1977; 14 SDR 19, effective August 9, 1987.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 6-8B-5.

**5:02:06:15. School board election.**

The school board election ballot must be white and must be in one of the following forms:

OFFICIAL SCHOOL BOARD ELECTION BALLOT
_____ SCHOOL DISTRICT NO. _____ , SOUTH DAKOTA
(Election Date)

To vote use a cross (X) or check mark (✓) in the square in front of the name. DO NOT cast more votes than are allowed in each race.

For School Board Member _____ year term, you may vote for up to ____ or leave it blank.

☐ John Doe
☐ Richard Roe
☐ John Smith

Source: 4 SDR 26, effective October 27, 1977; 14 SDR 19, effective August 9, 1987; 22 SDR 95, effective January 18, 1996; 25 SDR 8, effective August 3, 1998; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 13-7-13.

**5:02:06:16. Ballot for increasing or decreasing number of school board members.**

The ballot for increasing or decreasing the number of school board members shall be white and shall be in the following form:

OFFICIAL BALLOT
_____ SCHOOL DISTRICT NO. ____
_____ , South Dakota
_____ , ____

The following question is brought before the voters for their acceptance or rejection. To vote use a cross (X) or check mark (✓) in the square next to “For” or “Against”.

☐ For (increasing, decreasing) the number of school board members from ___ to ___

☐ Against (increasing, decreasing) the number of school board members from __ to __

Source: 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989; 31 SDR 35, effective September 23, 2004.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 13-8-3.

**5:02:06:17. Ballot for statewide secondary election.**

The ballot for a statewide secondary election must have a blue indicator for the Democratic party and white for the Republican party and must be in the following form if applicable:

_____ PARTY
OFFICIAL SECONDARY ELECTION BALLOT
_____ COUNTY, SOUTH DAKOTA

June _____ , ____

To vote use a cross (X) or check mark (✓) in the square in front of the name. DO NOT cast more votes than are allowed in each race.

For United States Senator, you may vote for one or leave it blank
☐ _____
☐ _____

For United States Representative, you may vote for one or leave it blank
☐ _____
☐ _____

For Governor, you may vote for one or leave it blank
☐ _____
☐ _____

Source: 12 SDR 43, effective September 23, 1985; 25 SDR 8, effective August 3, 1998; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 32 SDR 225, effective July 3, 2006.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 12-6-51.1.

**5:02:06:18. Colors of ballots for combined elections.**

When more than one ballot is voted in municipal, school district, or combined elections, white shall be used for one of the ballots and contrasting colors may be used for other ballots.

Source: 12 SDR 43, effective September 23, 1985; 26SDR168, effective June 25, 2000.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 9-13-1.1, 13-7-10.1.

**5:02:06:19. Nonpolitical consumers power district election.**

The nonpolitical consumers power district election ballot must be green and must be in the following form:

OFFICIAL NONPOLITICAL CONSUMERS POWER DISTRICT BALLOT
_____ County, South Dakota
(Election Date)

To vote use a cross (X) or check mark (✓) in the square in front of the name. DO NOT cast more votes than are allowed in each race.

For Director, District _____ , _____
Consumers Power District, you may vote for one or leave it blank:

☐ George Watt
☐ Bill Ohm

Source: 16 SDR 20, effective August 10, 1989; 25 SDR 8, effective August 3, 1998; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 49-36-1, 49-36-1.8.

**5:02:06:20. Tax levy opt-out ballot.**

The tax levy opt-out ballot must be white and in the following form:

OFFICIAL TAX LEVY OPT-OUT ELECTION BALLOT
_____, SOUTH DAKOTA
(Election Date)

The following tax levy opt-out was passed by the governing body and submitted to the voters. The tax levy opt-out will not become effective unless approved by majority vote.

(HERE LIST THE AMOUNT AND TERMS OF THE INCREASED TAX LEVY)

To vote use a cross (X) or check mark (✓) in the square in front of "Yes" or "No".

☐ Yes A vote "Yes" will increase the tax levy by the amount of the opt-out.

☐ No A vote "No" will leave the tax levy as it is without the amount of the opt-out.

Source: 32 SDR 225, effective July 3, 2006.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 10-12-43, 10-13-36.

**5:02:06:21. Special district formation ballot.**

The special district formation ballot must be white and must be in the following form:

OFFICIAL BALLOT
FORMATION OF _____ DISTRICT
(Election Date)

The following question was proposed by (petition) (the county commission) for submission to the voters. This district formation will not become effective unless approved by (majority vote) (sixty percent of votes cast).

Shall the _____ District be formed?

State's Attorney Explanation: (HERE LIST STATE'S ATTORNEY'S EXPLANATION)

To vote use a cross (X) or check mark (✓) in the square in front of "Yes" or "No".

☐ Yes A vote "Yes" will form the _____ District.
☐ No A vote "No" will not form the _____ District.

Source: 35 SDR 306, effective July 1, 2009; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 6-16-5, 6-16-5.1, 46A-18-20.

**5:02:06:22. School district reorganization ballot.**

The school district reorganization ballot must be white and must be in the following form:

OFFICIAL SCHOOL DISTRICT REORGANIZATION BALLOT
_____ SCHOOL DISTRICT NO.____, SOUTH DAKOTA
(Election Date)

The following question was brought before the voters for their acceptance or rejection.

Shall the _____School District No. ___ dissolve and create a new district?

Check with a cross (X) or check mark (✓) in the square desired.

☐ For proposed school district reorganization plan.
☐ Against proposed school district reorganization plan.

Source: 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 13-6-43.

**5:02:06:23. Sanitary district election ballot.**

The sanitary district election ballot must be white and must be in the following form:

OFFICIAL SANITARY DISTRICT ELECTION BALLOT
_____SANITARY DISTRICT , SOUTH DAKOTA
(Election Date)

To vote use a cross (X) or check mark (✓) in the square in front of the name. DO NOT cast more votes than are allowed in each race.

For District Trustee, you may vote for <u>one</u> or leave it blank.

☐ John Doe
☐ Richard Roe

For District Trustee, you may vote for up to _____ or leave it blank

☐ John Doe
☐ Richard Roe
☐ John Smith

Source: 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(2).
Law Implemented: SDCL 34A-5-20.

## CHAPTER 5:02:07

## MISCELLANEOUS FORMS

Sec.

5:02:07:01. Precinct by precinct official returns.
5:02:07:02. Transferred to 5:02:05:00.
5:02:07:03. Transferred to 5:02:03:00.
5:02:07:04. Certificate of election returns - School districts.
5:02:07:05. Candidate's request to withdraw nomination.
5:02:07:06. Certificate of nomination to fill vacancy.

**5:02:07:01. Precinct by precinct official returns.**

The precinct-by-precinct abstract of official returns shall consist of a copy of the official canvass of votes by the county canvassing board, certified by the county auditor, for the primary and general elections.

Source: 2 SDR 5, effective July 30, 1975; 5 SDR 31, effective November 1, 1978; 8 SDR 24, effective September 16, 1981.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-37, 12-20-38.1.

**5:02:07:02. Transferred to 5:02:05:00.**

**5:02:07:03. Transferred to 5:02:03:00.**

**5:02:07:04. Certificate of election returns - School districts**

Upon completion of the canvass by the school board and the issuing of certificates of election, the business manager shall certify the election results to the county auditor of the counties in which the school district is located. The certificate shall be in the following form:

CERTIFICATE OF ELECTION RETURNS
_____ SCHOOL DISTRICT NO. _____

This is to certify that the results of the School District Election held on the _____ day of _____ , 19 _____ , were as follows:

(Here the business manager shall list the votes tallied for each office, candidate and question.)

_____
Business Manager

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 13-7-18.

**5:02:07:05. Candidate's request to withdraw nomination**

The candidate's request to withdraw nomination must be in the following form:

CANDIDATE'S REQUEST TO WITHDRAW NOMINATION

I, _____ , candidate for the office of _____ (list office, party and/or district number, if applicable), request that my nomination be withdrawn and that my name not appear on the ballot. I, under oath, verify that I have read and understand the contents of this request to withdraw my candidacy.

(Signed) _____

Subscribed and sworn to before me this _____ day of _____ , 19 ____ .

_____
Officer Administering Oath

Source: 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 23 SDR 115, effective January 22, 1997.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 9-13-5.1, 12-6-8.1, 12-6-55, 13-7-7.

### 5:02:07:06. Certificate of nomination to fill vacancy

The certificate of nomination to fill a vacancy created by the death or withdrawal of a candidate shall be signed by the county party central committee chairperson of each county in the district when the nomination is for joint legislative districts. For a statewide or congressional district nomination, the certificate shall be signed by the state party central committee chairperson. The certificate shall be in the following form:

CERTIFICATE OF NOMINATION TO FILL VACANCY

I, (WE), THE UNDERSIGNED _____ party (county) (state) central committee chairperson(s), hereby certify that in accordance with the laws of South Dakota _____ of _____ County, whose mailing address is _____ and whose principal residence address is _____, was nominated to the office of _____ (list the district number, if applicable) in order to fill the vacancy created by the (death) (withdrawal) of _____ .

(Signed) _____
Chairperson
(State) ( _____ County) Central Committee

Subscribed and sworn to before me this _____ day of _____ , 20___.

(Seal) _____
Officer Administering Oath

I, _____ (print candidate name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office of _____, that I am registered to vote as a member of the _____ Party, and that if I am a legislative candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Candidate Signature) _____

Sworn to before me this ____ day of _____, 20___.

(Seal) _____
Signature of Officer Administering Oath

My Commission Expires _____ _____
Title of Officer Administering Oath

Source: 6 SDR 25, effective September 24, 1979; 29 SDR 113, effective January 30, 2003; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 12-6-56, 12-6-58, 12-8-6.

## Chapter 5:02:08

## Petitions

Sec.
5:02:08:00. Guidelines for acceptance of petitions.
5:02:08:00.01. Requirements for counting signatures on petitions.
5:02:08:00.02. Sections of petition.
5:02:08:00.03. Form of petition.
5:02:08:00.04. Validity of petition signature when signer has signed more petitions than offices to be nominated.

5:02:08:00.05. Random sampling method for constitutional amendment, statutory initiative and referendum petitions.
5:02:08:01. Form of nominating petition - Partisan election.
5:02:08:02. Form of petition for circuit court judge - Nonpartisan election.
5:02:08:03 and 5:02:08:04. Repealed.
5:02:08:05. Certificate of nomination for independent candidate.
5:02:08:05.01. Independent candidate declaration of candidacy and certification of running mate.
5:02:08:06. Form of declaration for new political party.
5:02:08:07. Form of initiative petition.
5:02:08:07.01. Affidavit to be filed with completed initiative, referendum, or initiated constitutional amendment petition.
5:02:08:08. Form of referendum petition.
5:02:08:09. Form of initiated constitutional amendment petition or initiated petition for repeal of constitutional provision.
5:02:08:10. Repealed.
5:02:08:11. Nominating petition for school board member.
5:02:08:12. Reserved.
5:02:08:13. Nominating petition for municipal election.
5:02:08:14. Repealed.
5:02:08:15. Municipal initiative petition.
5:02:08:16. Municipal referendum petition.
5:02:08:17. Municipal petition for recall.
5:02:08:18. County initiative petition.
5:02:08:19. County referendum petition.
5:02:08:20. Certificate of nomination for independent presidential electors.
5:02:08:21. Form of petition to increase or decrease number of county commissioners.
5:02:08:22. Form of petition to increase or decrease number of members of school board.
5:02:08:23. Form of petition for change in municipal government.
5:02:08:24. Form of petition for water development district director.
5:02:08:25. Form of petition for irrigation district director by division.
5:02:08:26. Form of petition for irrigation district director at large.
5:02:08:27. Form of petition for water project district director by division.
5:02:08:28. Form of petition for water project district director at large.
5:02:08:29. Form of petition for school district reorganization through dissolution.
5:02:08:30. Form of petition for multiple school district reorganization to create a new district.
5:02:08:31. Form of petition for reconsideration of rejected school district reorganization plan.
5:02:08:32. Form of petition for combining county offices.
5:02:08:33. Form of petition for combining a county office with the same office in other counties.
5:02:08:34. Form of nominating petition for township election.
5:02:08:35. Form of nominating petition for special district trustee.
5:02:08:36. Form of petition for taxpayer of real property conservation district supervisor -- Nonpartisan election.
5:02:08:37. Form of petition for urban area conservation district supervisor -- Nonpartisan election.
5:02:08:38. Form of petition for rural land owner or occupier conservation district supervisor -- Nonpartisan election.
5:02:08:39. Form of petition for organization of a county road, ambulance, rural fire protection, sanitary, watershed, or water project district.
5:02:08:40. Form of petition for a resolution of cooperation or consolidation.
5:02:08:41. Form of petition for referring a tax levy opt-out.

5:02:08:42. Form of petition for consumers power district director.
5:02:08:43. Form of petition for establishing or eliminating school board representation areas.
5:02:08:44. Form of petition for referring the discontinuance of an attendance center.
5:02:08:45. Form for precinct committeeman or committeewoman.

**5:02:08:00. Guidelines for acceptance of petitions.**

When a petition is presented for filing, the person or governing board authorized to accept the petition for filing shall determine if it meets the following requirements for acceptance:

(1) The petition is in the form required by this chapter;

(2) The petition contains the minimum number of valid signatures, counted according to 5:02:08:00.01. One or more invalid signatures on a petition section do not disallow other valid signatures on the section;

(3) Each section of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration. Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths;

(4) The declaration of candidacy contains the original signature of the candidate. Additional sections may have an original or photocopied signature of the candidate;

(5) If a petition is for a ballot question to be voted on statewide, the signatures were obtained after a copy of the text of the petition was filed with the secretary of state;

(6) The governing board or person authorized by statute to accept the petition shall, if requested, allow a petition circulator the opportunity to add missing information on the signature lines or circulator's verification on his or her petition provided the filing deadline has not passed; and

(7) Following the presentation of the petition for filing, names may not be removed from the petition.

Except for petitions to nominate candidates for school boards, the person who is authorized to accept petitions for filing need not check for voter registration of the signers. Petitions containing signatures in excess of the minimum number may be filed, but the excess signatures will be disregarded.

Source: 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 28 SDR 99, effective January 17, 2002; 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(6).
Law Implemented: SDCL 2-1-2, 2-1-2.1, 2-1-4, 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-8, 13-7-6.
Cross-Reference Sections of petition, 5:02:08:00.02.

**5:02:08:00.01. Requirements for counting signatures on petitions.**

Requirements for counting signatures on a petition sheet are as follows:

(1) No signature on a petition sheet may be counted if one of the following conditions is present:

(a) The form of the petition does not meet the requirements of this chapter;

(b) The circulator's verification is not completed or is improperly completed, according to subdivision 5:02:08:00(3) unless the missing information is completed elsewhere on the petition sheet. A completed circulator's verification

must include the printed name of the circulator, the circulator's residence address as provided in subdivision 5:02:08:00.01(2)(c), and complete date; or
(c) The declaration of candidacy has not been completed on or after the first date authorized by statute to circulate the petition, and signed by the candidate and the signature witnessed by an official empowered to administer oaths in South Dakota; or
(d) The circulator's verification was signed by more than one circulator; and

(2) An individual signature on a petition sheet may not be counted if one of the following conditions is present:
(a) It was signed prior to the signing of the candidate's declaration of candidacy or, if for a ballot question, it was signed before a copy of the text was filed with the secretary of state;
(b) It was signed after the circulator completed the verification;
(c) The residence address does not include a street and house number or a rural route and box number and the town. If the signer is a resident of a second or third class municipality, a post office box number may be used. If the signer does not have a residence address or post office box number, a description of the residence location must be provided. If the signer is a resident of a building with a publicly known name, the building name may be used;
(d) The date of signing, including month and day, is not indicated;
(e) The signer's name is not printed and legible; or
(f) The signer's county of voter registration is not provided.

Source: 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 26SDR168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(6).
Law Implemented: SDCL 2-1-2, 2-1-2.1, 2-1-4, 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-8, 13-7-6.

**5:02:08:00.02. Sections of petition**

A petition may contain more than one section. Each sheet is considered a section of a petition containing more than one sheet of paper.

Source: 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-1-3(14).
Cross-Reference Guidelines for acceptance of petitions, 5:02:08:00(3).

**5:02:08:00.03. Form of petition**

Each type of petition must contain the applicable heading as prescribed in this chapter and the following instructions to signers, signature blanks, and verification unless otherwise prescribed for a specific petition:

INSTRUCTIONS TO SIGNERS:
1. Signers of this petition must individually sign their names in the form in which they are registered to vote or as they usually sign their names.
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. If the signer is a resident of a second or third class municipality, a post office box may be used for the residence address.
3. Before the petition is filed, each signer or the circulator must print the name of the signer in the space provided and add the county of voter registration.
4. Abbreviations of common usage may be used. Ditto marks may not be used.

5. Failure to provide all information requested may invalidate the signature.

| NAME | RESIDENCE | DATE/COUNTY |
|---|---|---|
| SIGN<br>1 ----------<br>PRINT | STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER<br>----------<br>CITY OR TOWN | DATE OF SIGNING<br>----------<br>COUNTY OF REGISTRATION |
| SIGN<br>2 ----------<br>PRINT | STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER<br>----------<br>CITY OR TOWN | DATE OF SIGNING<br>----------<br>COUNTY OF REGISTRATION |
| SIGN<br>3 ----------<br>PRINT | STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER<br>----------<br>CITY OR TOWN | DATE OF SIGNING<br>----------<br>COUNTY OF REGISTRATION |
| SIGN<br>4 ----------<br>PRINT | STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER<br>----------<br>CITY OR TOWN | DATE OF SIGNING<br>----------<br>COUNTY OF REGISTRATION |
| SIGN<br>5 ----------<br>PRINT | STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER<br>----------<br>CITY OR TOWN | DATE OF SIGNING<br>----------<br>COUNTY OF REGISTRATION |
| SIGN<br>6 ----------<br>PRINT | STREET AND NUMBER OR RURAL ROUTE AND BOX NUMBER<br>----------<br>CITY OR TOWN | DATE OF SIGNING<br>----------<br>COUNTY OF REGISTRATION |

VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section (bold) **must** (unbold) be completed following circulation and before filing.

_____

Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

_____
Signature of Circulator

Sworn to before me this _____ day of _____ , _____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Source: 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 19 SDR 12, effective August 5, 1992; 23 SDR 115, effective January 22, 1997; 26SDR168, effective June 25, 2000.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 12-1-3(14).

**5:02:08:00.04. Validity of petition signature when signer has signed more petitions than offices to be nominated.**

The first signature presented to the filing office which meets the requirements of SDCL 12-6-8 and §§5:02:08:00 and 5:02:08:00.01 is valid. The same signature which meets the requirements of SDCL 12-6-8 and §§5:02:08:00 and 5:02:08:00.01 on the next nominating petition presented to the filing office may also be valid if the person has not signed petitions exceeding the number of candidates required to be nominated for

the same office. Any subsequent signature by such person on a nominating petition presented to the filing office that exceeds the number of candidates required to be nominated for the same office is not valid, except as provided in SDCL 9-13-9.

Source: 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-6-8, 9-13-7, 9-13-9, 13-7-6.

**5:02:08:00.05. Methodology for conducting the random sample for an initiative petition, referred law petition, or initiated constitutional amendment petition.**

Upon receiving any initiative petition, referred law petition, or initiated constitutional amendment petition, the secretary of state shall use the following method for conducting the random sample:

(1) Each sheet within the petition shall be consecutively numbered;
(2) The number of eligible signature lines on a petition sheet is based on the highest numbered signature line on the petition sheet that contains information. If a signature line is empty or crossed out within the range of signature lines that contain information the signature line is included. If a signature line is empty or contains only abstract markings and is outside the range of signature lines that contain information the signature line is not included;
(3) A spreadsheet shall be created and shall list each petition sheet number from subdivision (1) and the number of eligible signature lines on each petition sheet as determined by subdivision (2);
(4) The sum of the eligible signature lines on each petition sheet is the total number of signatures received;
(5) The random sampling function (RAND) in the Microsoft Excel spreadsheet shall be used to identify five percent of the eligible signature lines in the petition;
(6) To determine the number of valid signatures in the five percent sample, each signature line identified in subdivision (5) shall be evaluated pursuant to §§ 5:02:08:00 and 5:02:08:00.01. In addition, no signature line may be counted unless the person is a registered voter in the county indicated on the signature line;
(7) The number of valid signatures determined in subdivision (6) is divided by the number of signature lines identified in subdivision (5). The resulting decimal is multiplied by the total number of eligible signatures received;
(8) If the product of subdivision (7) is equal to or greater than the required number of signatures needed to file the petition, the secretary of state shall certify the petition as filed;
(9) If the product of subdivision (7) is less than the required number of signatures needed to file the petition, the secretary of state shall certify the petition as not filed.

Source: 33 SDR 230, effective July 1, 2007.
General Authority: 2-1-16.
Law Implemented: 2-1-16.

**5:02:08:01. Form of nominating petition - Partisan election**

Nominating petitions for a partisan election must be in the following form:

NOMINATING PETITION FOR PARTISAN ELECTION
_____ Party
INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for

signatures.

WE, THE UNDERSIGNED qualified voters of _____ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the _____ Party, nominate _____ of _____ County, South Dakota, whose mailing address is _____ , _____ , SD _____ , and whose principal residence address is _____, _____, SD _____, as a candidate for the office of _____ at the primary election to be held June _____ , 20__ .

_____

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to vote as a member of the _____ Party, and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____

Sworn to before me this ____ day of _____ , 20__ .

(Seal) _____

Signature of Officer Administering Oath

My Commission Expires _____

_____

Title of Officer Administering Oath

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

Source: 2 SDR 5, effective July 30, 1975; 2 SDR 46, effective December 30, 1975; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 25 SDR 8, effective August 3, 1998; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 12-6-5, 12-6-8.

**5:02:08:02. Form of petition for circuit court judge - Nonpartisan election**

The nominating petition for circuit court judge shall be in the following form:

NOMINATING PETITION FOR CIRCUIT COURT JUDGE NONPARTISAN ELECTION

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of the _____ Judicial Circuit, State of South Dakota, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____ , SD _____ , as a candidate for the office of Judge of the Circuit Court, position ____ , in the (primary) (general) election to be held (June) (November) _____ , 19 ____ .

_____

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____
Sworn to before me this ____ day of _____ , 19 ____ .
(Seal)
_____
Signature of Officer Administering Oath
My Commission Expires _____
_____
Title of Officer Administering Oath

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

Source: 2 SDR 46, effective December 30, 1975; 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-6-5, 12-6-8, 12-9-4.

**5:02:08:03. Form of petition for Supreme Court justice - Nonpartisan election**
Repealed.

**5:02:08:04. Form of petition for highway board of unorganized county - Nonpartisan election** Repealed.

**5:02:08:05. Certificate of nomination for independent candidate**

The certificate of nomination for an independent candidate shall be in the following form:

CERTIFICATE OF NOMINATION FOR INDEPENDENT CANDIDATE

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of _____ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district or "state") of South Dakota, nominate _____ of _____ County, whose mailing address is _____ , SD _____ , and whose principal residence address is _____, _____, SD _____, as an Independent candidate for the office of _____ at the general election to be held November __ , 20__ .

_____

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If elected, I will qualify and serve in that office.
(Signed) _____
Sworn to before me this _____ day of _____ , 20__ .
(Seal)
_____
Signature of Officer Administering Oath
My Commission Expires _____
_____
Title of Officer Administering Oath

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

Source: 2 SDR 46, effective December 30, 1975; 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 12-6-5, 12-6-8, 12-7-1.

**5:02:08:05.01. Independent candidate declaration of candidacy and certification of running mate.**

The declaration of candidacy and certification of running mate for independent candidates for president and governor must be in the following form:

INDEPENDENT CANDIDATE FOR PRESIDENT OR GOVERNOR
DECLARATION OF CANDIDATE
AND
CERTIFICATION OF RUNNING MATE

I, _____ (name of candidate), under oath, declare that I am eligible to seek the office of _____ (insert President of the United States or Governor). I certify that I have named _____ as my _____ (insert Vice President or Lieutenant Governor) candidate.

(Candidate Signature) _____

Sworn to before me this ____ day of _____, 20___.

(Seal) _____
Signature of Officer Administering Oath
My Commission Expires _____ _____
Title of Officer Administering Oath

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office of _____ (insert Vice President or Lieutenant Governor), and agree to serve as a candidate for this office.

(Running Mate Signature) _____

Sworn to before me this ____ day of _____, 20___.

(Seal) _____
Signature of Officer Administering Oath
My Commission Expires _____ _____
Title of Officer Administering Oath

Source: 25 SDR 167, effective July 6, 1999; 29 SDR 113, effective January 30, 2003; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-7-1, 12-1-9(7).
Law Implemented: SDCL 12-7-1, 12-7-7.

**5:02:08:06. Form of declaration for new political party**

The declaration for new political party shall be in the following form:

DECLARATION FOR NEW POLITICAL PARTY

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, declare

the organization of the _____ Party which subscribes to the following statement of principles:

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

Source: 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 11 SDR 120, effective March 11, 1985; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-5-1.

**5:02:08:07. Form of initiative petition**

Prior to July 1, 2010, the initiative petition form shall follow the specifications provided in this section that were in effect on December 9, 2009.

The initiative petition shall be in the following form:

INITIATIVE PETITION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following proposed law be submitted to the voters of the state of South Dakota at the general election on November ___, _____ for their approval or rejection pursuant to the Constitution of the State of South Dakota.

Title:
Attorney General Explanation:
The text of the proposed law is as follows:
Be it enacted by the people of South Dakota.

(Insert the instructions to voters and signature blanks prescribed in § 5:02:08:00.03.)

VERIFICATION BY PERSON CIRCULATING PETITION
INSTRUCTIONS TO CIRCULATOR: This section (bold) **must** (unbold) be completed following circulation and before filing.

_____
Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

_____
Signature of Circulator

Sworn to before me this _____ day of _____ , _____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Source: 2 SDR 46, effective December 30, 1975; 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 26SDR168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007; 36 SDR 112, effective January 11, 2010.

General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 2-1-1, 2-1-6.2, 2-1-7, 2-1-10.

**5:02:08:07.01. Affidavit to be filed with completed initiative, referendum, or initiated constitutional amendment petition**

The affidavit to be filed with the completed petition for initiative, referendum, or initiated constitutional amendment shall be in the following form:

State of South Dakota )
) ss Affidavit of Completed Petition
County of _____ ___ )
I, under oath, state that the attached petition sheets constitute the entire petition to be filed and that to the best of my knowledge they contain a sufficient number of signatures to be certified to the ballot.

_____
Signature of Sponsor

_____
Print name and complete address of the sponsor
Sworn to before me this _____ day of _____ , 19 ____ .
(Seal)
_____
Signature of Officer Administering Oath
My Commission Expires:_____
_____
Title of Officer Administering Oath

Source: 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 2-1-6.2.

**5:02:08:08. Form of referendum petition**

Prior to July 1, 2010, the referendum petition form shall follow the specifications provided in this section that were in effect on December 9, 2009.

The petition of referendum shall be in the following form:

REFERENDUM PETITION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following law, as enacted by the Legislature of the state of South Dakota, be submitted to the voters of the state of South Dakota at the general election on November ___, ____ for their approval or rejection pursuant to the Constitution of the state of South Dakota.

(Here insert the title of law to be submitted and the effective date of the referred law.)

_____

(Insert the instructions to voters and signature blanks prescribed in § 5:02:08:00.03.)

VERIFICATION BY PERSON CIRCULATING PETITION
INSTRUCTIONS TO CIRCULATOR: This section (bold) **must** (unbold) be completed following circulation and before filing.

_____
Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

_____
Signature of Circulator

Sworn to before me this _____ day of _____ , _____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Source: 2 SDR 46, effective December 30, 1975; 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 26SDR168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 2-1-3, 2-1-6.2, 2-1-7, 2-1-10.

**5:02:08:09. Form of initiated constitutional amendment petition or initiated petition for repeal of constitutional provision**

Prior to July 1, 2010, the constitutional amendment petition form shall follow the specifications provided in this section that were in effect on December 9, 2009.

The petition for initiated constitutional amendment or repeal shall be in the following form:

INITIATED CONSTITUTIONAL AMENDMENT PETITION
or
INITIATED PETITION FOR REPEAL OF CONSTITUTIONAL PROVISION

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, petition that the following section or sections and article or articles of the South Dakota Constitution be (repealed) (amended) and that this proposal be submitted to the voters of the state of South Dakota at the general election on November ___, ____ for their approval or rejection.

Title:
Attorney General Explanation:
(Here identify the section or sections and article or articles proposed to be repealed or amended. State the exact text of the amendment.)

_____

(Insert the instructions to voters and signature blanks prescribed in § 5:02:08:00.03.)

VERIFICATION BY PERSON CIRCULATING PETITION
INSTRUCTIONS TO CIRCULATOR: This section (bold) **must** (unbold) be completed following circulation and before filing.

_____
Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

_____
Signature of Circulator

Sworn to before me this _____ day of _____ , _____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Source: 2 SDR 46, effective December 30, 1975; 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 26SDR168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(7).
Law Implemented: S.D. Constitution, art XXIII, § 1; SDCL 2-1-2.1, 2-1-6.2.

**5:02:08:10. Declaration of pledge by national convention delegates and alternates** Repealed.

**5:02:08:11. Nominating petition for school board member**

The nominating petition for school board member must be in the following form:

NOMINATING PETITION FOR SCHOOL BOARD MEMBER
_____ SCHOOL DISTRICT # _____

---

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED qualified voters of _____ school district number _____ , state of South Dakota, nominate _____ whose mailing address is _____ for a ____ -year term (in _____ representation area, if applicable) on the school board at the school board election to be held on the ____ day of _____, 20__ .

---

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I reside in _____ school district number ____, South Dakota; that I am a registered voter of the district; and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed)_____

Sworn to before me this _____ day of _____ , 20__ .
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

---

(Insert here the instructions to signers and verification by the circulator portions of the petition form as prescribed in §5:02:08:00.03.)

---

Source: 2 SDR 82, effective June 13, 1976; 6 SDR 25, effective September 24, 1979; 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989; 23 SDR 115, effective January 22, 1997; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-1-2, 13-7-6, 13-7-13.

**5:02:08:12. Reserved.**

**5:02:08:13. Nominating petition for municipal election**

The nominating petition for a municipal election must be in the following form:

NOMINATING PETITION FOR MUNICIPAL ELECTION

---

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED qualified voters of the municipality of _____ in the state of South Dakota, nominate _____ whose residence address is _____ , South Dakota, and whose mailing address is _____ , South Dakota, as a candidate for a ____ -year term for the office of _____ at the Municipal Election to be held on the ____ day of _____, _____ .

---

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot) under oath, declare that I reside and am registered to vote in the municipality of _____ and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office. If I am an alderman candidate, I declare that I reside and am registered to vote in Ward ____.

(Signed)_____

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

(Seal) _____

Signature of Officer Administering Oath

My Commission Expires _____

_____

Title of Officer Administering Oath

---

(Here insert instructions to voters and signature blanks prescribed in § 5:02:08:00.03.)

---

VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section (bold) **must** (unbold) be completed following circulation and before filing.

---

Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above nominating petition, that each signer personally signed this petition in my presence, that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration, that I attest the legality of the signatures and that each person signing this petition is a qualified voter of the municipality of _____.

_____
Signature of Circulator

Sworn to before me this ____ day of _____, ____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 12 SDR 43, effective September 23, 1985; 16 SDR 20, effective August 10, 1989; 25 SDR 8, effective August 3, 1998; 26SDR168, effective June 25, 2000; 29 SDR 177, effective July 2, 2003; 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 9-13-7, 9-13-11.

**5:02:08:14. Certificate of nomination for municipal election nominating more than one candidate** Repealed.

**5:02:08:15. Municipal initiative petition**

The municipal initiative petition must be in the following form:

MUNICIPAL INITIATIVE PETITION
IN THE MUNICIPALITY OF _____

WE, THE UNDERSIGNED qualified voters of the municipality of _____, the state of South Dakota, petition that the following (ordinance) (resolution) be submitted to the voters of that municipality for their approval or rejection pursuant to law.

The proposed (ordinance) (resolution) in proper form is as follows:

Here state verbatim the proposed (ordinance) (resolution).

_____

(Here insert instructions to voters and signature blanks prescribed in § 5:02:08:00.03.)

_____

VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section (bold) **must** (unbold) be completed following circulation and before filing.

_____

Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above initiative petition, that each signer personally signed this petition in my presence, that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration, that I attest the legality of the signatures and that each person signing this petition is a resident and qualified voter of the municipality of _____.

_____
Signature of Circulator

Sworn to before me this ____ day of _____, ____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____ _____
Title of Officer Administering Oath

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 25 SDR 8, effective August 3, 1998; 26SDR168, effective June 25, 2000.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 9-20-2, 9-20-9.

**5:02:08:16. Municipal referendum petition**

The municipal referendum petition must be in the following form:

MUNICIPAL REFERENDUM PETITION
IN THE MUNICIPALITY OF _____

WE, THE UNDERSIGNED qualified voters of the municipality of _____ , the state of South Dakota, petition that the following (ordinance) (resolution), as passed by the governing board of the municipality, be submitted to the voters for their approval or rejection pursuant to law.

(Here insert the title of the (ordinance) (resolution) and date of its passage. However, if only a portion of the (ordinance) (resolution) is intended to be covered by the petition, that portion shall be set out at length.)

_____

(Here insert the instructions to voters and signature blanks prescribed in § 5:02:08:00.03.)

_____

VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section (bold) **must** (unbold) be completed following circulation and before filing.

_____

Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above referendum petition, that each signer personally signed this petition in my presence, that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration, that I attest the legality of the signatures and that each person signing this petition is a resident and qualified voter of the municipality of _____.

_____
Signature of Circulator

Sworn to before me this ____ day of _____, ____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____ _____
Title of Officer Administering Oath

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 25 SDR 8, effective August 3, 1998; 26SDR168, effective June 25, 2000.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 9-20-7, 9-20-8, 9-20-9.

**5:02:08:17. Municipal petition for recall**

## *Petitions*

The municipal petition for recall must be in the following form:

PETITION FOR RECALL
IN THE MUNICIPALITY OF _____

WE, THE UNDERSIGNED qualified voters of the municipality of _____ , state of South Dakota, petition for a candidate election to be held for the purpose of recalling _____ from the office of _____ , based on the following grounds:

(Here list the grounds for recall.)

_____

(Here insert the instructions to signers and signature blanks prescribed in § 5:02:08:00.03.)

_____

VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section (bold) **must** (unbold) be completed following circulation and before filing.

_____

Print name of the circulator Residence Address City State

I, under oath, state that I circulated the above petition for recall, that each signer personally signed this petition in my presence, that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration, that I attest the legality of the signatures and that each person signing this petition is a qualified voter of the municipality of _____.

_____
Signature of Circulator

Sworn to before me this ____ day of _____, ____.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 25 SDR 8, effective August 3, 1998; 26 SDR 168, effective June 25, 2000; 27 SDR 146, effective July 9, 2001.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 9-13-30.

**5:02:08:18. County initiative petition**

The county initiative petition shall be in the following form:

COUNTY INITIATIVE PETITION

WE, THE UNDERSIGNED qualified voters of _____ County in the state of South Dakota, petition that the following (ordinance) (resolution) be submitted to the voters of that county for their approval or rejection pursuant to law.

The proposed (ordinance) (resolution) in proper form is as follows:

Here list verbatim the proposed (ordinance) (resolution).

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

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 7-18A-11, 7-18A-12.

**5:02:08:19. County referendum petition**

The county referendum petition shall be in the following form:

COUNTY REFERENDUM PETITION

WE, THE UNDERSIGNED qualified voters of _____ County in the state of South Dakota, petition that the following (ordinance) (resolution), as passed by the County Commissioners of that county, be submitted to the voters of the county for their approval or rejection pursuant to law.

(Here insert the title of the (ordinance) (resolution) and the date of its passage. However, if only a portion of the (ordinance) (resolution) is intended to be covered by the petition, that portion shall be set out at length.)

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

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 7-18A-15, 7-18A-17, 7-18A-18.

**5:02:08:20. Certificate of nomination for independent presidential electors**

The certificate of nomination for independent presidential electors shall be in the following form:

CERTIFICATE OF NOMINATION FOR INDEPENDENT PRESIDENTIAL ELECTORS

INSTRUCTIONS TO CANDIDATES: The heading of this petition and the declarations of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, nominate _____ of _____ County, whose mailing address is _____ ; _____ of _____ County, whose mailing address is _____ ; _____ of _____ County, whose mailing address is _____ , as independent candidates for the office of Presidential Electors for _____ and _____ at the General Election to be held November ____ , 20__ .

---

DECLARATION OF CANDIDATES

We, under oath, declare that we reside in _____ , _____ , and _____ Counties, respectively, and that we are or will be eligible to seek the offices for which we are candidates. If elected, we will qualify and serve in those offices.

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

Sworn to before me this ____ day of _____ , 20__ .
(Seal)

_____
Signature of Officer Administering Oaths

My Commission Expires _____

_____

Title of Officer Administering Oaths

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

Source: 6 SDR 25, effective September 24, 1979; 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-6-5, 12-6-8, 12-7-1, 12-7-7.

**5:02:08:21. Form of petition to increase or decrease number of county commissioners**

The petition to increase or decrease the number of county commissioners shall be in the following form:

PETITION FOR CHANGE IN NUMBER OF COUNTY COMMISSIONERS

WE, THE UNDERSIGNED qualified voters of _____ County, State of South Dakota, petition that the number of commissioners for this county be (increased to five) (decreased to three) and that the proposal be submitted to the voters of _____ County for their approval or rejection at the general election to be held on November __, _____ .

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

Source: 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989; 31 SDR 214, effective July 4, 2005.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 7-8-3.

**5:02:08:22. Form of petition to increase or decrease number of members of school board**

The petition to increase or decrease the number of school board members shall be in the following form:

PETITION FOR CHANGE IN NUMBER OF SCHOOL BOARD MEMBERS

WE, THE UNDERSIGNED qualified voters of _____ School District No. ____ , petition that the number of school board members be (increased, decreased) to (number of board members) and that the proposal be submitted to the voters of the _____ School District No. ____ for their approval or rejection pursuant to SDCL 13-8-3 and 13-8-4.

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

Source: 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 13-8-3, 13-8-4.

**5:02:08:23. Form of petition for change in municipal government**

The form of a petition for proposing a change in the type of municipal government or for increasing or decreasing the number of commissioners or trustees, or both, shall be as follows:

PETITION FOR ELECTION TO CHANGE MUNICIPAL GOVERNMENT

WE, THE UNDERSIGNED qualified voters of the municipality of _____, petition that the municipal government of _____ be changed as follows and that the proposal be submitted to the voters for their approval or rejection pursuant to SDCL 9-11-5:

(Here describe the new form of government or the increase or decrease in the number of commissioners or trustees, or both.)

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

Source: 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 9-11-5.

**5:02:08:24. Form of petition for water development district director**

The nominating petition for a director of a water development district shall be in the following form:

NOMINATING PETITION FOR WATER DEVELOPMENT DISTRICT DIRECTOR
NONPARTISAN ELECTION

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

_____

WE, THE UNDERSIGNED registered voters of _____ (insert the director area the candidate is to represent) of the _____ Water Development District, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____ , South Dakota, as a candidate for the office of director, representing _____ (insert the director area the candidate is to represent) of the _____ Water Development District for a ___ year term in the primary election to be held on June ____ , 20___ .

_____

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I am a resident and registered voter in the director area that I will represent and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____

Sworn to before me this _____ day of _____ , 20___ .

(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

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

Source: 10 SDR 27, effective September 26, 1983; 11 SDR 120, effective March 11, 1985; 16 SDR 20, effective August 10, 1989; 35 SDR 48, effective September 8, 2008; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 46A-3B-2, 46A-3B-4.

**5:02:08:25. Form of petition for irrigation district director by division**

The nominating petition for a director of an irrigation district by division shall be in the following form:

NOMINATING PETITION FOR IRRIGATION DISTRICT DIRECTOR BY DIVISION
NONPARTISAN ELECTION

Only owners of not less than thirty-five acres of land within the area to be represented by the candidate are eligible to sign this petition.

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED electors of Director Division _____ , of the _____ Irrigation District, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____ , South Dakota, as a candidate for the office of irrigation district director for Director Division _____ , of the _____ Irrigation District in the annual election to be held on October ____ , 19 ____ .

---

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the ballot), under oath, declare that I am an elector in the area that I will represent and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____

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

(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

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

Source: 11 SDR 120, effective March 11, 1985; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 46A-4-27.1, 46A-4-28.

**5:02:08:26. Form of petition for irrigation district director at large**

The nominating petition for a director at large of an irrigation district shall be in the following form:

NOMINATING PETITION FOR IRRIGATION DISTRICT DIRECTOR AT LARGE
NONPARTISAN ELECTION

Only owners of not less than thirty-five acres of land within the area to be represented by the candidate are eligible to sign this petition.

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED electors of the _____ Irrigation District, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____ , South Dakota, as a candidate for the office of irrigation district director at large of the _____ Irrigation District in the annual election to be held on October ____ , 19 ____ .

---

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the ballot), under oath, declare that I am an elector in the area that I will represent and that I am eligible

to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____

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

(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

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

Source: 11 SDR 120, effective March 11, 1985; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 46A-4-27.1, 46A-4-28.

**5:02:08:27. Form of petition for water project district director by division**

The nominating petition for a director of a water project district by division shall be in the following form:

NOMINATION PETITION FOR WATER PROJECT DISTRICT DIRECTOR BY DIVISION
NONPARTISAN ELECTION

Only registered voters or owners of real property, or both, within the area to be represented by the candidate are eligible to sign this petition. (SDCL 46A-18-5)

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED qualified voters of Director Division _____ , of the _____ Water Project District, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____ , South Dakota, as a candidate for the office of water project district director for Director Division _____ , of the _____ Water Project District in the annual election to be held on _____ , 19 ____ .

---

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the ballot), under oath, declare that I am a qualified voter as defined in SDCL 46A-18-5 in the area that I will represent and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____

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

(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

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

Source: 11 SDR 120, effective March 11, 1985; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 46A-18-25.

**5:02:08:28. Form of petition for water project district director at large**

The nominating petition for a director at large of a water project district shall be in the following form:

NOMINATING PETITION FOR WATER PROJECT DISTRICT DIRECTOR AT LARGE
NONPARTISAN ELECTION

Only registered voters or owners of real property, or both, within the area to be represented by the candidate are eligible to sign this petition. (SDCL 46A-18-5)

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED qualified voters of the _____ Water Project District, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____ , South Dakota, as a candidate for the office of water project district director at large of the _____ Water Project District in the annual election to be held on _____ , 19 ____ .

---

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the ballot), under oath, declare that I am a qualified voter as defined in SDCL 46A-18-5 in the District that I will represent and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____

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

(Seal) _____

Signature of Officer Administering Oath

My Commission Expires _____ _____

Title of Officer Administering Oath

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

Source: 11 SDR 120, effective March 11, 1985; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 46A-18-25.

**5:02:08:29. Form of petition for school district reorganization through dissolution**

The petition for school district reorganization through dissolution shall be in the following form:

PETITION FOR SCHOOL DISTRICT REORGANIZATION THROUGH DISSOLUTION

WE, THE UNDERSIGNED qualified voters of the _____ School District No. ____, petition that the school board of the _____ School District No. ____ develop a reorganization plan dissolving the school district by attaching to another district or districts pursuant to SDCL 13-6 and that an election be held on the plan.

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

Source: 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 13-6-10.

**5:02:08:30. Form of petition for multiple school district reorganization to create a new district**

The petition for multiple school district reorganization to create a new district shall be in the following form:

PETITION FOR MULTIPLE SCHOOL DISTRICT REORGANIZATION TO CREATE A NEW DISTRICT

A separate petition must be submitted to each school board involved. Each petition may be signed only by residents of that district.

WE, THE UNDERSIGNED qualified voters of the _____ School District No. ___ , petition that the school boards of the following school districts:
_____
_____
_____
develop a reorganization plan dissolving the school districts and creating a new district pursuant to SDCL 13-6 and that an election be held on the plan.

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

Source: 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 13-6-10.

**5:02:08:31. Form of petition for reconsideration of rejected school district reorganization plan**

The petition for reconsideration of a rejected school district reorganization plan shall be in the following form:

PETITION FOR RECONSIDERATION OF REJECTED SCHOOL DISTRICT REORGANIZATION PLAN

WE, THE UNDERSIGNED qualified voters of the _____ School District No. ____, petition the school board of the _____ School District No. ____ to hold an election to reconsider the school district reorganization plan that was rejected at the election held _____, 19_____ .

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

Source: 16 SDR 203, effective May 28, 1990.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 13-6-49.

**5:02:08:32. Form of petition for combining county offices**

The petition for combining county offices shall be in the following form:

PETITION FOR COMBINING COUNTY OFFICES

WE, THE UNDERSIGNED qualified voters of _____ County in the state of South Dakota, petition that the county offices of _____, _____, and _____ be combined, that one person be elected to and perform the duties of the combined offices, and that the proposed change be submitted to the voters of that county for their approval or rejection pursuant to law.

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

Source: 16 SDR 203, effective May 28, 1990.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 7-7-1.5.

**5:02:08:33. Form of petition for combining a county office with the same office in other counties**

The petition for combining a county office with the same office in other counties shall be in the following form:

PETITION FOR COMBINING A COUNTY OFFICE WITH THE SAME OFFICE IN OTHER COUNTIES

WE, THE UNDERSIGNED qualified voters of _____ County in the state of South Dakota, petition that the county office of _____ in _____ County be combined with the same county office in the (county) (counties) of _____ and that the proposed change be submitted to the voters of this county for their approval or rejection pursuant to law.

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

Source: 16 SDR 203, effective May 28, 1990.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 7-7-1.6.

**5:02:08:34. Form of nominating petition for township election**

The nominating petition for a township election must be in the following form:

NOMINATING PETITION FOR TOWNSHIP ELECTION

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED qualified voters of the township of _____ in _____ County, South Dakota, nominate _____ whose residence address is _____ , SD _____ , and whose business address is _____ , SD _____ , as a candidate for the office of _____ at the annual township meeting to be held on the _____ day of _____ , ____ .

---

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot) under oath, declare that I reside in the township of _____ in _____ County, South Dakota, and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____

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

(Seal) _____

Signature of Officer Administering Oath

My Commission Expires _____ _____

Title of Officer Administering Oath

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

Source: 16 SDR 203, effective May 28, 1990; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-1-9(7).

Law Implemented: SDCL 8-3-1.2.

**5:02:08:35. Form of nominating petition for special district trustee**

The petition for special district trustees must be in the following form:

NOMINATING PETITION FOR DISTRICT TRUSTEE

WE, THE UNDERSIGNED qualified voters of _____ District, _____ County, South Dakota, nominate _____ whose residence address is _____, SD _____ , and whose business address is _____ , SD _____ , as a candidate for the office of District Trustee of _____ District at the election to be held on the _____ day of _____ , ____ .

_____

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the ballot) under oath, declare that I am eligible for the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed) _____

Sworn to before me this _____ day of _____ , 20___ .

(Seal)

_____

Signature of Officer Administering Oath

My Commission Expires _____

_____

Title of Officer Administering Oath

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

Source: 16 SDR 203, effective May 28, 1990; 25 SDR 8, effective August 3, 1998; 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 6-16-8, 31-12A-17, 34A-5-21.

**5:02:08:36. Form of petition for taxpayer of real property conservation district supervisor -- Nonpartisan election.**

The nominating petition for taxpayer of real property conservation district supervisor must be in the following form:

NONPOLITICAL CONSERVATION DISTRICT PETITION
TAXPAYER OF REAL PROPERTY CONSERVATION DISTRICT SUPERVISOR

_____

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

_____

WE, THE UNDERSIGNED registered voters of _____ Conservation District in _____ County(ies), South Dakota, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____, _____, SD _____, as a candidate for the office of Conservation District Supervisor, Taxpayer of Real Property, for "a four" "the remaining two years of a four" (cross out incorrect option) year term, within the _____ Conservation District at the general election be held on November ___, ____.

_____

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I reside in _____ County, that I am a taxpayer of real property, and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve as Conservation District Supervisor.

(Signed)_____

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

_____

Signature of Officer Administering Oath

(Seal) _____

Title of Officer Administering Oath

My Commission Expires _____.

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

Source: 20 SDR 4, effective July 19, 1993; 27 SDR 146, effective July 9, 2001.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 38-8-39.

**5:02:08:37. Form of petition for urban area conservation district supervisor -- Nonpartisan election.**

The nominating petition for urban area conservation district supervisor must be in the following form:

NONPOLITICAL CONSERVATION DISTRICT PETITION
URBAN AREA CONSERVATION DISTRICT SUPERVISOR

---

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

---

WE, THE UNDERSIGNED registered voters of _____ Conservation District in _____ County(ies), South Dakota, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____, _____, SD _____, as a candidate for the office of Conservation District Supervisor, Urban Area, for "a four" "the remaining two years of a four" (cross out incorrect option) year term, within the _____ Conservation District at the general election be held on November ___, ____.

---

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I reside in _____ County, that I am a resident of an urban area, and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve as Conservation District Supervisor.

(Signed)_____

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

_____

(Seal) Signature of Officer Administering Oath

_____

Title of Officer Administering Oath

My Commission Expires _____.

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

Source: 20 SDR 4, effective July 19, 1993; 27 SDR 146, effective July 9, 2001.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 38-8-39.

**5:02:08:38. Form of petition for rural land owner or occupier conservation district supervisor -- Nonpartisan election.**

The nominating petition for rural land owner or occupier conservation district supervisor must be in the following form:

NONPOLITICAL CONSERVATION DISTRICT PETITION
RURAL LANDOWNER OR OCCUPIER CONSERVATION DISTRICT SUPERVISOR

_____

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

_____

WE, THE UNDERSIGNED registered voters of _____ Conservation District in _____ County(ies), South Dakota, nominate _____ of _____ County, State of South Dakota, whose mailing address is _____, _____, SD _____, as a candidate for the office of Conservation District Supervisor, Rural Landowner or Occupier, for "a four" "the remaining two years of a four" (cross out incorrect option) year term, within the _____ Conservation District at the general election be held on November ___, ____.

_____

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I reside in _____ County, that I am a rural landowner or occupier, and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve as Conservation District Supervisor.

(Signed)_____

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

_____

(Seal) Signature of Officer Administering Oath

_____

Title of Officer Administering Oath

My Commission Expires _____.

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

Source: 20 SDR 4, effective July 19, 1993; 27 SDR 146, effective July 9, 2001.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 38-8-39.

**5:02:08:39. Form of petition for organization of a county road, ambulance, rural fire protection, sanitary, watershed, or water project district.**

The organizational petition for formation of a county road, ambulance, rural fire protection, sanitary, watershed, or water project district must be in the following form:

WE, THE UNDERSIGNED are qualified voters in the area herein described. We petition that the question of forming the _____ (insert name and type of district) district be submitted for a vote of approval or rejection pursuant to law.

(Here insert the legal description of the area to be included in the proposed district.)

(1) Road districts insert:

(a) The need for road work in the territory described; and

(b) Request county commissioners to define boundaries for the district and make a determination that such district be created;

(2) Ambulance districts insert area in square miles to be included in district;

(3) Fire districts insert area in square miles to be included in district;

(4) Watershed districts insert:

(a) The need in the interest of the public health, safety and welfare for creation of a district to accomplish improvements in the watershed;

(b) Statement of the purposes of contemplated improvements;

(c) List of landowners and total acreage owned by each;

(d) Map of district and land ownership;

(e) Location of the official place of business of the district; and

(f) The number of managers; and

(5) Water project districts insert:

(a) The object and purpose of the district and the works proposed to be constructed with a description of the nature, location and method of operation;

(b) Location of the principal place of business of the district; and

(c) The number of board members.

---

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

Source: 25 SDR 8, effective August 3, 1998; 26SDR168, effective June 25, 2000; 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 6-16-8.
Law Implemented: SDCL 6-16-2, 6-16-8, 31-12A-3(1)(2)(3)(4), 34-11A-3, 34-31A-4, 46A-14-8(1)(2)(3)(4)(5)(6)(7), 46A-18-4(1)(2)(3)(4)(5).

**5:02:08:40. Form of petition for a resolution of cooperation or consolidation**

The form of a petition for proposing a resolution of cooperation by a local government entity or consolidation of local government entities shall be as follows:

PETITION FOR A RESOLUTION OF COOPERATION OR CONSOLIDATION

WE, THE UNDERSIGNED qualified voters of _____ (insert name of jurisdiction) petition for an election to be held to adopt or reject the following resolution of cooperation or consolidation.

(Name each local government entity to be involved in the cooperation or consolidation and describe each specific office, function or governmental unit to be cooperated in or combined.)

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

Source: 27 SDR 146, effective July 9, 2001.
General Authority: SDCL 6-17-5.
Law Implemented: SDCL 6-17-5.

**5:02:08:41. Form of petition for referring a tax levy opt-out.**

The petition for referring a tax levy opt-out must be in the following form:

_____(insert jurisdiction) EXCESS TAX LEVY REFERENDUM PETITION

WE, THE UNDERSIGNED qualified voters of _____ (insert jurisdiction) in the state of South Dakota, petition that the following decision regarding the imposition of an excess tax levy, as passed by the governing body, be submitted to the voters of the jurisdiction for the voters' approval or rejection pursuant to law.

(Here insert the governing body's decision regarding the imposition of an excess tax levy and the date of its passage.)

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

Source: 32 SDR 225, effective July 3, 2006.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 10-12-43, 10-13-36.

**5:02:08:42. Form of petition for consumers power district director**

The nominating petition for a director of a consumers power district shall be in the following form:

NONPARTISAN NOMINATING PETITION FOR CONSUMERS POWER DISTRICT DIRECTOR

---

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED registered voters of Subdivision No.____ (insert the subdivision the candidate is to represent) of the _____ Consumers Power District nominate _____ of _____ County, State of South Dakota, whose mailing address is _____ and whose residence address is _____ as a candidate for the office of director, representing Subdivision No.____ (insert the subdivision area the candidate is to represent) of the _____ Consumers Power District in the primary election to be held on June ___, _____.

---

**DECLARATION OF CANDIDATE**

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I own real property and reside in the area that I will represent and that I am eligible to seek the office for which I am a candidate. If nominated and elected, I will qualify and serve in that office.

(Signed)_____

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

_____

(Seal) Signature of Officer Administering Oath

My Commission Expires _____. _____

Title of Officer Administering Oath

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

Source: 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(7).

Law Implemented: SDCL 49-36-1.3.

**5:02:08:43. Form of petition for establishing or eliminating school board representation areas.**

The petition for establishing or eliminating school board representation areas shall be in the following form:

PETITION FOR (ESTABLISHING, ELIMINATING) SCHOOL BOARD REPRESENTATION AREAS

WE, THE UNDERSIGNED qualified voters of the _____ School District No. ____, petition that the question of (establishing, eliminating) school board representation areas be submitted to the voters of this school district for their approval or rejection pursuant to SDCL 13-8-3.

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

Source: 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 13-8-3.

**5:02:08:44. Form of petition for referring the discontinuance of an attendance center.**

The petition for referring the discontinuance of an attendance center shall be in the following form:

SCHOOL DISTRICT ATTENDANCE CENTER DISCONTINUANCE REFERENDUM PETITION

WE, THE UNDERSIGNED qualified voters of the _____ School District No. ____, petition that the following decision regarding the discontinuance of an attendance center, as passed by the school board of that district, be submitted to the voters of the district for their approval or rejection pursuant to law.

(Here insert the school board decision regarding the discontinuance of an attendance center and the date of its passage.)

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

Source: 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 13-23-3.

**5:02:08:45. Form for precinct committeeman or committeewoman.**

The statement for precinct committeeman or committeewoman shall be in the following form:

Precinct Committeeman or Committeewoman Statement

I, _____, of _____ County, declare myself a candidate for the position of _____ (insert party) Party Precinct _____ (insert committeeman or committeewoman) for Precinct No. _____. My mailing address is _____, _____, SD _____ and my residence address is _____, _____, SD _____ .

I understand that to be a Precinct Committeeman or Committeewoman, I must be a resident of the precinct, be registered as a member of the political party named above, and if elected, will qualify and serve in the office.

I certify all of the above information to be true.

Print Name _____
Date _____
Signature _____
Telephone Number _____

Source: 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(7).
Law Implemented: SDCL 12-5-4.

## Chapter 5:02:09

## Automatic Tabulating Equipment

Sec.
5:02:09:01 Repealed.
5:02:09:01.01 Notice of testing automatic tabulating equipment.
5:02:09:01.02 Testing of tabulating equipment.
5:02:09:01.03 Test of direct recording electronic voting machines.
5:02:09:02 Approval of automatic tabulating systems required before distribution.
5:02:09:02.01 Criteria for approving automatic tabulating systems.
5:02:09:02.02 Criteria for approving direct recording electronic voting machines.
5:02:09:02.03 Criteria for approving electronic ballot marking systems.
5:02:09:03 Number of voting booths.
5:02:09:04 Test of preaudited ballots.
5:02:09:04.01 and 5:02:09:04.02 Repealed.
5:02:09:04.03 Arrangements for and conduct of voting in precincts where automatic tabulating systems used.
5:02:09:04.04 Tabulation procedures.
5:02:09:04.05 Election day test of electronic ballot marking system.
5:02:09:05 Recount procedure.
5:02:09:06 and 5:02:09:08 Repealed.
5:02:09:09 Unnecessary items in the pollbooks.
5:02:09:10 Repealed.
5:02:09:11 Official and unofficial election results.
5:02:09:11.01 to 5:02:09:12 Repealed.
5:02:09:13 Envelope for official returns.
5:02:09:14 Oath by tabulation center employees.
5:02:09:15 Repealed.
5:02:09:16 Recapitulation sheet.
5:02:09:17 Examination of voting booths - Retest of voting devices on election day.
5:02:09:18 to 5:02:09:21 Repealed.
5:02:09:22 Counting imperfectly marked optical scan ballots.

**5:02:09:01. Notice of use of electronic voting systems** Repealed.

**5:02:09:01.01. Notice of testing automatic tabulating equipment.**

## *Automatic Tabulating Equipment*

The notice of testing the automatic tabulating equipment shall be in the following form:

Notice is hereby given that the automatic tabulating equipment will be tested to ascertain that it will correctly count the votes for all offices and measures that are to be cast at the _____ election held on the ____ day of _____, ____.

The test will be conducted on the ____ day of _____, ____, at _____ o'clock (a.m.) (p.m.) at the following location: _____.

Dated this ____ day of _____ , ____ .

_____
Person in charge of election

Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 27 SDR 146, effective July 9, 2001.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-17B-5.

**5:02:09:01.02. Test of tabulating equipment.**

The person in charge of the election shall conduct tests of the automatic tabulating equipment as required in SDCL 12-17B-5 and 12-17B-12. The tests shall be conducted by processing a preaudited group of ballots in a test deck marked to record a predetermined number of valid votes for each candidate and each measure. A tally sheet shall be created prior to the machine count to fully show how the sample of ballots is marked and what the machine vote totals must be to prove an errorless count. If more than one ballot is used in the election, a test deck shall be made for each ballot that is unique in any way. The test deck(s) shall include for each office and ballot question:

(1) One or more ballots with a vote for each candidate and each side of a ballot question;
(2) One or more ballots which have votes in excess of the number allowed by law for each office and question; and
(3) One or more ballots which contain an undervote.

At least twenty-five test ballots shall be included in the total of all test decks. Individual test decks for individual ballots shall be of sufficient size to prove the accuracy of the system. If absentee ballots are to be received folded, at least ten percent of the test ballots in any individual test deck shall be similarly folded. The person conducting the test of the tabulating equipment shall date and sign the printout, verifying that the results of the machine’s printed paper vote totals exactly match the tally sheet from which the sample of ballots was marked. The test deck(s), tally sheet, and signed printout must be secured and retained with the official ballots.

The test procedure shall include the processing of at least one ballot completely blank to verify that the machine is correctly configured according to SDCL 12-17B-13.1.

If more than one tabulating machine is to be used in the election, each machine shall be fully tested according to the ballot(s) which each machine will be used to count in the election.

In addition to these tests, any test deck may be processed any time before or after completion of the official count.

Source: 8 SDR 81, effective January 10, 1982; 21 SDR 77, effective October 24, 1994; 23 SDR 236, effective July 17, 1997; 29 SDR 113, effective January 30, 2003; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-17B-17(3).
Law Implemented: SDCL 12-17B-5, 12-17B-12.

**5:02:09:01.03. Test of direct recording electronic voting machines.**
The person in charge of the election shall conduct tests of the direct recording electronic voting machines as required in SDCL 12-17B-5 and 12-17B-12. The tests shall be conducted by processing a preaudited group of simulated ballots in a test deck marked to record a predetermined number of valid votes for each candidate and each measure. A tally sheet shall be created prior to the machine count to fully show how the sample of ballots is marked and what the machine vote totals must be to prove an errorless count. If more than one ballot is used in the election, a test deck shall be made for each ballot that is unique in any way. The test deck(s) shall include for each office and ballot question being voted on that machine:
(1) One or more ballots with a vote for each candidate and each side of a ballot question;
(2) One or more ballots which have votes in excess of the number allowed by law for each office and question; and
(3) One or more ballots which contain an undervote.
At least five simulated test ballots shall be counted during the test. The person conducting the test of the direct recording electronic voting machines shall date and sign the printout as verification that the test was completed and that an errorless count was received. The test deck and printout must be secured and retained.
In addition to these tests, the test deck may be processed any time before or after completion of the official count.

Source: 29 SDR 113, effective January 30, 2003.
General Authority: SDCL 12-17B-17.
Law Implemented: SDCL 12-17B-5, 12-17B-12.

**5:02:09:02. Approval of automatic tabulating systems required before distribution.**

Prior to distribution in South Dakota, a company or corporation dealing in automatic tabulating, direct recording electronic, or electronic ballot marking systems shall give written notice to the state board of elections and demonstrate that its system complies with SDCL 12-17B-2, and § 5:02:09:02.01, § 5:02:09:02.02, or § 5:02:09:02.03 and is certified as fulfilling the requirements of the Election Assistance Commission 2002 voting system standards by an independent test authority accredited by the Election Assistance Commission. If the state board of elections approves the system, it shall issue a certificate of approval.

Any changes or modifications in an approved automatic tabulating, direct recording electronic, or electronic ballot marking system may be certified by the state board of elections with or without the demonstration described in this section for initial approval. The modification for the already approved system must have been certified as fulfilling the requirements of the Election Assistance Commission voting system 2002 standards by an independent test authority accredited by the Election Assistance Commission or been certified to meet the national standard by another state. Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification.

Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 16 SDR 203, effective May 28, 1990; 21 SDR 77, effective October 24, 1994;22 SDR 95, effective January 18, 1996; 29 SDR 113, effective January 30, 2003; 32 SDR 109, effective December 26, 2005; 33 SDR 230, effective July 1, 2007; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-17B-17(1).
Law Implemented: SDCL 12-17B-2.

**5:02:09:02.01. Criteria for approving automatic tabulating systems.**

Before the state board of elections grants a certificate of approval, the following automatic tabulating equipment capabilities of an electronic voting system must be demonstrated to the board or its designee. The board may deny a certificate of approval for automatic tabulating equipment which as demonstrated does not fulfill the following requirements:

(1) It enables the voter to vote in absolute secrecy;
(2) It enables the voter to vote a ticket selected from all the candidates;
(3) It rejects all of a voter's votes for any office or on any measure if the voter has cast more votes for the office or the measure than the voter is entitled to;
(4) It accommodates all measures to be submitted to the voters in the form provided by law;
(5) It processes 3,000 ballots at a rate of 15 ballots a minute for a central counting unit;
(6) It processes 750 ballots at a rate of 10 ballots a minute for a precinct counting unit;
(7) It allows no more than one percent of ballots to be rejected by the machine because of ballot feeding errors during a demonstration; and
(8) It accurately counts every ballot for each position voted.

The ballots for testing must contain at least ten contests. The ballots for processing must be at least 90 percent fully voted with the remainder containing overvoted and undervoted ballots. At least 2 percent of the ballots to be tested must be folded in the same manner as absentee ballots.

Source: 16 SDR 20, effective August 10, 1989; 21 SDR 77, effective October 24, 1994; 23 SDR 236, effective July 17, 1997.
General Authority: SDCL 12-17B-17.
Law Implemented: SDCL 12-17B-2.

**5:02:09:02.02. Criteria for approving direct recording electronic voting machines.**

Before the State Board of Elections grants a certificate of approval, the following capabilities of the direct recording electronic voting machine must be demonstrated to the board or its designee. As used in this section the term, system, means direct recording electronic voting machine. The board may grant a certificate of approval for a system, if the system fulfills the following requirements:
(1) Enables the voter to vote in absolute secrecy;
(2) Presents the entire ballot to the voter in a series of sequential screens that include methods to ensure the voter sees all ballot options on all screens before completing the vote and allows the voter to review all ballot choices before casting a ballot;
(3) Prevents any voter from selecting more than the allowable number of candidates for any office to prevent overvoting, alerts the voter on the screen if the voter attempts to overvote, and provides information on how to correct the overvote;
(4) Accurately counts each vote for each position voted;.

(5) Is an electronic computer-controlled voting system that provides for direct recording and tabulating of votes cast;
(6) Has a battery back-up system that, at a minimum, allows voting to continue uninterrupted for two hours without external power;
(7) Along with any activating and vote recording devices and components, has a unique embedded internal serial number for audit purposes;
(8) Is designed to accommodate multiple ballot styles in each election precinct and have an option to handle multiple precincts;
(9) Has a real-time clock capable of recording and documenting the total time polls are open in a precinct and capable of documenting the opening and closing of polls;
(10) Complies with the disability voting requirements of the Help America Vote Act;
(11) For security purposes, along with each associated activating and recording device and component, employs a unique, electronically implanted election specific internal security code such that the absence of the security code prevents substitution of any unauthorized system or related component;
(12) Has a color touch-screen that is at least fifteen inches in diagonal measure;
(13) Has an option to accommodate a wheelchair voter without intervention of the poll worker other than a minor adjustment such as the angle of the display, and the voter must be able to vote in a face-first position so that privacy is maintained with the ballot surface adjusted to a vertical position;
(14) Has wheels so that the system may be easily rolled by one person on rough pavement and rolled through a standard thirty-inch door frame if the net weight of the system, or aggregate of voting device parts, is over twenty pounds;
(15) Has a smart card type device to activate the system for each individual voter. The poll worker shall be able to activate the card at the poll table with an activation device and hand the card to the voter to use on any open voting system. The card shall be rendered unusable by the voting system after the voter has cast a ballot and after a period of time has expired. There shall be a manual solution available in the event the smart card activation device, or the smart card reading unit on the machine, fails;
(16) Prints an alphanumeric printout of the contest, candidates, position numbers, and vote totals when the polls are open so that the poll workers may verify that the counters for each candidate are on zero. These printouts shall contain the system serial number and the counter total. The poll worker must be able to request as many copies as needed. The system shall include a feature to allow reports to be sent to a printer or to an Excel compatible file;
(17) The system central processing unit is designed so that no executable code may be launched from random access memory. If the operating system is open or widely used, it must be an embedded system;
(18) Provides an electronic, redundant storage of both the vote totals and the randomized individual ballot images. These randomized images must be able to be printed after the polls close;
(19) Allows a comparison of the multiple locations of totals and ballot images to detect any errors or discrepancies. In the event of a data discrepancy, an appropriate error message shall be displayed in a text format, in order to either correct the data error or prohibit voting from continuing;
(20) Has a programmable memory device that plugs into the system. This programmable memory device shall contain the ballot control information, the summary vote totals, maintenance log, operator log, and the randomized ballot images;

(21) Maintains all vote totals, counter totals, audit trail ballot images, and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery back-up power fail;
(22) Has a self-contained, internal back-up battery that powers all components of the system that are powered by alternating current power. In the event of a power outage in the precinct the self-contained, internal back-up battery power shall engage with no disruption of operation or loss of data. The system shall maintain all vote totals, counter totals, audit trail ballot images, and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery back-up fail;
(23) Has software that is able to run in a networked or stand –alone environment and support absentee in-person voting;
(24) Has as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;
(25) Has internal operating system software or firmware, that:
(a) Is specifically designed and engineered for the election application;
(b) Is contained within each touch-screen voting device;
(c) Is stored in a nonvolatile memory within each terminal;
(d) Includes internal quality checks such as purity or error detection and correction codes; and
(e) Include comprehensive diagnostics to ensure that failures do not go undetected;
(26) Has a mandatory pre-election testing of the ballot control logic and accuracy. The logic and accuracy test results must be stored into the memory of the main processor (central processing unit) and into the same programmable memory device that is used on election day for future reference. The test results must be stored by vote total summaries and by each individual ballot image randomly. The system must be capable of printing a zero-results printout prior to these tests and results printout after the test; and
(27) Stores tabulation of votes, ballot by ballot, in two or more memory locations on separate integrated circuit chips and shall be electronically compared throughout the election. Any differences between votes tabulated and votes stored in multiple storage locations shall be detected immediately and generate an error message defining required maintenance on the electronic voting system before the system continues to be used in the election.

Source: 29 SDR 113, effective January 30, 2003; 29 SDR 177, effective July 2, 2003.
General Authority: SDCL 12-17B-17.
Law Implemented: SDCL 12-17B-2.

**5:02:09:02.03. Criteria for approving electronic ballot marking systems.**

Before the State Board of Elections grants a certificate of approval, the following capabilities of the electronic ballot marking system must be demonstrated to the board or its designee. The board may grant a certificate of approval for a system, if the system fulfills the following requirements:
(1) Accurately mark 250 ballots with at least 10 races on each ballot with no ballot jams;
(2) If the system has the capability of marking a ballot on the back side, the races must be split between the front and back of the ballot;
(3) Enables the voter to vote in absolute secrecy;

(4) Presents the entire ballot to the voter in a series of sequential screens that include methods to ensure the voter sees all ballot options on all screens before completing the vote and allows the voter to review all ballot choices before casting a ballot;
(5) Prevents any voter from selecting more than the allowable number of candidates for any office to prevent overvoting, alerts the voter on the screen if the voter attempts to overvote, and provides information on how to correct the overvote;
(6) Alerts the voter to any undervote prior to marking the ballot;
(7) Accurately marks a paper ballot for each vote for each position voted;
(8) Is an electronic computer-controlled voting system that provides for marking of votes cast;
(9) Has a battery back-up system that, at a minimum, allows voting to continue uninterrupted for two hours without external power;
(10) Is designed to accommodate multiple ballot styles in each election precinct and have an option to handle multiple precincts;
(11) Has a real-time clock capable of recording and documenting the total time polls are open in a precinct and capable of documenting the opening and closing of polls;
(12) Complies with the disability voting requirements of the Help America Vote Act of 2002 as of January 1, 2005;
(13) Has a color touch-screen that is at least fifteen inches in diagonal measure;
(14) Has an option to accommodate a voter who uses a mobility device without intervention of the poll worker other than a minor adjustment such as the angle of the display, and the voter must be able to vote in a face-first position so that privacy is maintained with the ballot surface adjusted to a vertical position;
(15) Has wheels so that the system may be easily rolled by one person on rough pavement and rolled through a standard thirty-inch door frame if the net weight of the system, or aggregate of voting device parts, is over twenty pounds;
(16) Has a method to activate the system for each individual voter and which shall prevent any voter from voting more than once;
(17) Has internal operating system software or firmware, that:
(f) Is specifically designed and engineered for the election application;
(g) Is contained within each voting device;
(h) Is stored in a nonvolatile memory within each terminal;
(i) Includes internal quality checks such as purity or error detection and correction codes; and
(j) Include comprehensive diagnostics to ensure that failures do not go undetected; and
(18) Marks ballots that can be accurately counted as provided in ARSD 5:02:09:02.01 for each automatic tabulating system which will be counting ballots.

Source: 31 SDR 214, effective July 4, 2005.
General Authority: SDCL 12-17B-17(1).
Law Implemented: SDCL 12-17B-2.

**5:02:09:03. Number of voting booths**

In counties where automatic tabulating systems are used, the county auditor shall provide at least one voting booth for each 100 votes cast at the last comparable election.

Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994.

## *Automatic Tabulating Equipment*

General Authority: SDCL 12-17B-17.
Law Implemented: SDCL 12-17B-2.

**5:02:09:04. Test of preaudited ballots** Repealed.

**5:02:09:04.01. Instructions for voting** Repealed.

**5:02:09:04.02. Instructions for absentee voting** Repealed.

**5:02:09:04.03. Arrangements for and conduct of voting in precincts where automatic tabulating systems used**

The following procedures apply to the arrangements for and conduct of voting in precincts where automatic tabulating systems are used:

(1) The precinct officials shall prepare the voting place before the opening of the polls with all the voting booths, instructions to voters, other voting equipment, and supplies as provided by the person in charge of the election. These preparations must be made according to the instructions received at the election school held for precinct officials pursuant to SDCL 12-15-7. If an electronic ballot marking system is being used, it must be operational and tested as provided in § 5:02:09:04.05;
(2) The precinct official charged with the duty of issuing the ballot to the voter shall mark the ballot with the official ballot stamp in the location designated by the person in charge of the election;
(3) The official shall issue the ballot along with any other system equipment required for marking the ballot. If requested by the voter, the official shall issue clear instructions or demonstrations for marking the ballot with only the instrument provided and according to the instructions on the ballot and those posted throughout the voting place. The official shall specifically inform the voter that marking the ballot with any instrument other than the one issued could result in the ballot not being counted. All instructions must be given prior to the voter entering the voting booth, except a voter may receive instruction on operating an electronic ballot marking system while using the system;
(4) A precinct official, in the course of instructing a voter, may not show partiality to any political party or any side of a measure being voted on;
(5) Precinct officials shall discharge the duties of instruction with each political party alternating a turn so as to ensure a nonpartisan presentation;
(6) In precincts using optical scan ballots, the official shall instruct the voter to return the voted ballot in the privacy sleeve so that the official ballot stamp is visible by the official before the ballot is placed in the box. The precinct official shall place any ballot without the official ballot stamp in a separate marked envelope not to be counted and give the voter a new ballot;
(7) Upon completion of the voting on election night, the precinct officials shall complete the recap sheet prescribed in § 5:02:09:16. If the ballot count does not agree with the number of voters in the pollbook, the precinct officials shall compare the voters in the pollbook and the registration list and correct any mistakes;
(8) The precinct officials shall securely seal the ballot box pursuant to § 5:02:16:37;
(9) The voted ballots and all spoiled and unvoted ballots are to be transported pursuant to SDCL 12-17B-9 to the person in charge of the election; and
(10) Precinct officials shall secure in the polling place the equipment and supplies that were issued for the purpose of voting or shall return the equipment and supplies to the person in charge of the election.

Source: 21 SDR 77, effective October 24, 1994; 23 SDR 236, effective July 17, 1997; 30 SDR 171, effective May 10, 2004; 32 SDR 225, effective July 3, 2006; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-17B-17(4).
Law Implemented: SDCL 12-17B-6, 12-17B-7, 12-17B-9.
Cross-References: Recapitulation sheet, 5:02:09:16.

**5:02:09:04.04. Tabulation procedures**

The procedures for receiving, preparing, and tabulating the ballots are as follows:

(1) The tabulation technicians shall compare the total number of ballots shown on the return printed by the equipment and the total number of ballots shown on the recap sheet from the precinct officials. If there is a discrepancy in the total number of ballots cast in any precinct, the tabulation technicians shall note the discrepancy on the recap sheet, the sheet shall be signed by a tabulation technician and notice given to the resolution board;
(2) If the total number of ballots exceed by five or more the number of names in the pollbook as found on the recap sheet, the ballots shall be examined by the resolution board for the official ballot stamp. Any unstamped ballots shall be removed and marked as “unstamped – not counted.” If the total number of ballots still exceeds the number of names in the pollbook, the ballots shall be placed in a box and one of the resolution board shall publicly draw from the box the number of ballots that is equal to the excess and place these in an envelope labeled “ballots drawn by resolution board to justify totals”. The remaining ballots shall then be counted by the tabulation equipment and the count shall be included with the other tabulations to constitute the compiled unofficial returns; and
(3) If a ballot is rejected by the automatic tabulating equipment, the resolution board shall review the ballot as follows:

(a) If the resolution board determines that the ballot is damaged or defective, a duplicate shall be made of the ballot. All duplicate ballots shall clearly be marked "duplicate," and shall bear a serial number which is also recorded on the original ballot. This ballot shall then be counted by the automatic tabulating equipment in lieu of the original ballot; and
(b) If the resolution board determines that the tabulating equipment is not reading any mark which is a vote according to §5:02:09:22, the board shall duplicate that ballot according to subdivision (3)(a) of this section.

If the resolution board cannot reach an agreement on the determination of any mark, the board shall duplicate that ballot according to subdivision (3)(a) without marking any oval in dispute.

If the resolution board cannot reach an agreement on the determination of all of the marks on any ballot, the board shall reject that ballot and label it, “no votes can be determined”.

Source: 21 SDR 77, effective October 24, 1994; 29 SDR 113, effective January 30, 2003; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-17B-17(4).

Law Implemented: SDCL 12-17B-13, 12-17B-14.

**5:02:09:04.05. Election day test of electronic ballot marking system.**

Prior to the opening of the polls, the precinct superintendent must test the electronic ballot marking system for proper operation using the following procedure:

(1) Use only the test ballots provided by the person in charge of the election which are labeled “TEST BALLOTS”;

(2) Mark at least two “TEST BALLOTS” using the electronic ballot marking system by selecting various candidates and ballot questions using the touchscreen, keypad, and headphones;

(3) You must successfully mark two “TEST BALLOTS” before allowing voters to use the electronic ballot marking system;

(4) If the test is not successfully completed, open the polls at 7:00 a.m. No voter may use the electronic ballot marking system until the test is successfully completed.

Source: 32 SDR 225, effective July 3, 2006
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-18-1.6.

**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 ARSD 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. A hand count may be conducted to verify the accuracy of the count by the automatic tabulating equipment. If any discrepancy is found, the discrepancy shall be resolved before the recount is concluded. If any vote cannot be accurately counted by the automatic tabulating equipment but can be hand counted, the hand count tally of that vote shall be added to the count by the automatic tabulating equipment;
(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.

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 21 SDR 77, effective October 24, 1994; 26SDR168, effective June 25, 2000 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 33 SDR 230, effective July 1, 2007; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-17B-7, 12-17B-17(4).
Law Implemented: SDCL 12-17B-7, 12-17B-16.

**5:02:09:06. Program requirements** Repealed.

**5:02:09:07. Slip for recording number of voters and discrepancies noted at time of counting - Primary election** Repealed.

**5:02:09:08. Slip for recording number of voters and discrepancies noted at time of counting - General election** Repealed.

**5:02:09:09. Unnecessary items in the pollbook.**

Electronic voting precincts do not need tally sheets, official vote count sheet, or the oath or certificate of the counting board in the pollbook.

Source: 5 SDR 31, effective November 1, 1978; 20 SDR 4, effective July 19, 1993.
General Authority: SDCL 12-1-9, 12-17B-17.
Law Implemented: SDCL 12-17B-13.

**5:02:09:10. Immediate unofficial returns** Repealed.

**5:02:09:11. Official and unofficial election results**

The unofficial returns shall include the date and name of election, identification of the jurisdiction, precinct, names of candidates, offices sought, political party affiliation, ballot issues, and votes counted.

The unofficial returns are considered certified as the "Official Returns" upon completion of the review performed by the canvassing board designated for the election of the voting jurisdiction and signing and sealed by the person in charge of the election.

Source: 5 SDR 31, effective November 1, 1978; 8 SDR 81, effective January 10, 1982; 21 SDR 77, effective October 24, 1994.
General Authority: SDCL 12-17B-17.
Law Implemented: SDCL 12-17B-13.

**5:02:09:11.01. Certification of the official returns** Repealed.

**5:02:09:11.02. Unofficial election returns** Repealed.

**5:02:09:12. Envelope for immediate unofficial return and pollbook** Repealed.

**5:02:09:13. Envelope for official returns**

The returns printed from the tabulating or accumulation equipment shall be sealed in a manila envelope clearly labeled "Final Unofficial Returns" and kept with the pollbooks until the meeting of the county canvassing board.

Source: 5 SDR 31, effective November 1, 1978; 8 SDR 81, effective January 10, 1982, 20 SDR 4, effective July 19, 1993; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9(4), 12-17B-17(2).
Law Implemented: SDCL 12-17B-13.

**5:02:09:14. Oath by tabulation center employees**

The oath that the tabulation center employees take and subscribe to shall be in the following form:

**OATH BY TABULATION CENTER EMPLOYEES**

I, _____, do solemnly swear that I will perform the duty of tabulating the ballots according to law and the best of my ability and that I will studiously endeavor to prevent fraud, deceit, and abuse in tabulating the ballots I am about to count.

(Signed) _____

Subscribed and sworn to before me this ____ day of _____ , 19____ .

_____

(Person in Charge of Election or Deputy)

Source: 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-17B-11.

**5:02:09:15. Colors of pages of ballot booklet** Repealed.

**5:02:09:16. Recapitulation sheet**

A recapitulation sheet containing the following information shall be filled out for each type of ballot.

RECAP SHEET: PRECINCT____ Type of ballot:_____
(date and name of election)

1. Official Ballots Received from Auditor _____ +
2. Additional Ballots Received During the Day _____ +
3. Absentee Ballots Received _____ +
4. Total Ballots Received (add lines 1, 2 and 3) =_____ (Line 4 Total)

5. Ballots Spoiled _____ +
6. Ballots Unvoted at End of the Day _____ +
7. Absentee Ballots not Opened _____ +
8. Total (add lines 5, 6 and 7) =_____ (Line 8 Total)

9. Ballots Voted (Line 4 minus Line 8) _____ (Line 9 Total)

10. Provisional Ballots Voted _____

11. Ballots To Be Counted (Line 9 minus Line 10) _____

12. Enter Number of Voters from Pollbook for this Type of Ballot _____

If Line 9 and Line 12 are not the same, compare the voters in the pollbook and the registration list and correct any mistakes.

Signed: _____
_____
_____
_____
_____
Precinct Officials

PLACE INSIDE BALLOT BOX OR TRANSFER CASE WITH VOTED BALLOTS

Discrepancies noted by resolution board: _____
(fill in only if there is a different total than above)

Signed _____
_____
_____
Resolution Board

Printer's note: In central count optical scan precincts, lines 10 and 11 may be completed by tabulation center employees. The printed form may be changed to reflect this option.

Source: 8 SDR 81, effective January 10, 1982; 12 SDR 43, effective September 23, 1985; 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 30 SDR 171, effective May 10, 2004; 31 SDR 35, effective September 23, 2004.
General Authority: SDCL 12-17B-17(2).
Law Implemented: SDCL 12-17B-9, 12-18-32.

**5:02:09:17. Examination of voting booths**

Before voting begins and periodically thereafter on election day, members of the election board shall examine all voting booths and remove campaign cards, political advertising, or other matter constituting an unauthorized attempt to influence voters.

Source: 8 SDR 81, effective January 10, 1982; 21 SDR 77, effective October 24, 1994; 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 12-17B-17(4).
Law Implemented: SDCL 12-18-1.3.

**5:02:09:18. Ballot comparison certification.** Repealed.

**5:02:09:19 Counting imperfectly marked punchcard ballots.** Repealed.

**5:02:09:20 Counting punchcard ballots with a hole next to an intact chad.** Repealed.

**5:02:09:21 Overvoted punchcard ballots.** Repealed.

**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, effective January 17, 2002; 32 SDR 109, effective December 26, 2005; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-1-9(4).

## Chapter 5:02:10

## Absentee Voting

Sec.

5:02:10:01. Application for absentee ballot.
5:02:10:01.01. Receipt for absentee ballot.
5:02:10:01.02. Guidelines for acceptance of facsimile absentee ballot applications from UOCAVA voters.
5:02:10:01.03. Combined absentee ballot application/return envelope.
5:02:10.01.04. Military and overseas voters absentee ballot application for electronic access.
5:02:10:02. Envelope for transmitting ballot application to superintendent of elections.
5:02:10:03. Envelope for sending ballots to voter.
5:02:10:04. Instructions to absentee voters.
5:02:10:05. Official return envelope for ballots used in voting.
5:02:10:06. Official record of absentee ballots delivered to voters.
5:02:10:07. Repealed.
5:02:10:08. Envelopes for use with voting service and overseas ballots.

**5:02:10:01. Application for absentee ballot.**

The application for an absentee ballot must be in the following form:

APPLICATION FOR ABSENTEE BALLOT
_____ COUNTY, SOUTH DAKOTA

You may apply for an absentee ballot before 3:00pm on election day for any or all primary, general, or special elections conducted by your county in this calendar year with one request. However, you must make a separate request for municipal elections and another for school elections. Additional information on absentee voting is available at www.sdsos.gov.

Check the election(s) for which you are requesting an absentee ballot:

☐ Primary If you are registered as an independent and are requesting a primary ballot, you may have a choice of ballots. Please check one of the following: ☐Non-political ballot or ☐Democratic Party ballot

☐ General

☐ Municipal

☐ School

☐ Special _____ (specify jurisdiction)

☐ If any other election is conducted by this jurisdiction this calendar year, I request an absentee ballot for that election.

If request is for a municipal or school election:

I have lived in that jurisdiction at least 30 days in the last year. Yes ☐ No ☐

I am a full-time postsecondary student who resided in that jurisdiction immediately prior to leaving for postsecondary education. Yes ☐ No ☐

I am on active duty military and my home of record is in that jurisdiction. Yes ☐ No ☐

Are you in the Military or Uniformed Services, a Spouse or Dependent of the same, or an Overseas Citizen? Yes ☐ No ☐

Are you currently living in the United States? Yes ☐ No ☐

My printed name as it appears on the voter registration list is: _____

My voter registration residence address is: _____
Address City

Mail my ballot to the following address_____
Street Address or PO Box City State Zip

Daytime phone number: _____

NOTE: The voter's signature must be witnessed by a notary public or other officer authorized to administer an oath. If the signature is not witnessed, this application must be accompanied by a copy of the voter's valid ID. If you are living outside the United States, these requirements do not apply.

An acceptable ID is: ● A South Dakota driver's license or non-driver ID card ● A passport or other picture ID issued by the United States government ● A tribal photo ID ● A current student photo ID issued by a South Dakota high school or postsecondary education institution

I hereby verify that I am the person named above and these statements made by me on this application are true and correct.

_____
Voter Signature

Sworn to before me this day of _____ , 20 __.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires_____ _____

Title of Officer Administering Oath

---

**AUTHORIZED MESSENGER REQUEST ONLY:**

I authorize _____ to serve as my authorized messenger to pick up my absentee ballot. I further certify under penalty of law that I am confined because of sickness or disability and for this reason alone am unable to vote at my polling place on Election Day.

_____
Signature of voter

THE AUTHORIZED MESSENGER MUST COMPLETE THE FOLLOWING:
Name:_____ Phone: _____
Address: _____
Are you serving as an authorized messenger for any other voter? Yes ☐ No ☐
I acknowledge receipt of the ballot for the above named voter on _____at ___m.
Date Time

Date Ballot Returned: _____ _____
Signature of Authorized Messenger

Source: 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 23 SDR 115, effective January 22, 1997; 23 SDR 236, effective July 17, 1997; 25 SDR 8, effective August 3, 1998; 25 SDR 167, effective July 6, 1999; 29 SDR 177, effective July 2, 2003; 32 SDR 109, effective December 26, 2005; 32 SDR 225, effective July 3, 2006; 36 SDR 112, effective January 11, 2010; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(4), 12-19-2.
Law Implemented: SDCL 9-13-4.1, 12-18-6.1, 12-19-2, 12-19-2.1, 12-19-2.2, 13-7-4.2.

**5:02:10:01.01. Receipt for absentee ballot.**

When anyone returns a voted ballot in person, the auditor's receipt for that absentee ballot shall be in the following form:

RECEIPT FOR ABSENTEE BALLOT

I acknowledge receipt of the absentee ballot voted by _____ whose voting precinct is _____ and whose permanent residence is _____ . I received this absentee ballot from _____ .
Signed on this ____ day of _____ , 19 ____ .
_____ (Signature)
Person in Charge of the Election

Source: 6 SDR 25, effective September 24, 1979; 10 SDR 27, effective September 26, 1983.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-19-9.

**5:02:10:01.02 Guidelines for acceptance of facsimile absentee ballot applications from UOCAVA voters.**

The person in charge of the election shall upon request make a fax number or email address available to Uniform and Overseas Citizens Absentee Voting Act (UOCAVA)

voters for the purpose of sending a facsimile or emailed image of their signed absentee ballot application or request.

The facsimile or emailed image must be legible. If the facsimile or emailed image is from a UOCAVA voter located in the United States, the application or request must have a legible notary seal or copy of the voter's identification card as required by SDCL 12-19-2.

If the application or request is not legible, the person in charge of the election shall attempt to notify the voter as soon as possible by telephone or email if such contact information is provided.

Source: 31 SDR 214, effective July 4, 2005.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-19-2.3.

**5:02:10:01.03. Combined absentee ballot application/return envelope.**

The application for an in-office absentee ballot shall be printed in the following form on an envelope used for sealing the voted ballot:

APPLICATION FOR IN-OFFICE ABSENTEE BALLOT
_____ COUNTY, SOUTH DAKOTA

My printed name as it appears on the voter registration list is: _____

My voter registration residence address is: _____
(address) (city)

Check the election for which you are requesting an absentee ballot:

☐ Primary If you are registered as an independent and are requesting a primary ballot, you may have a choice of ballots. Please check one of the following: ☐Non-political ballot or ☐Democratic Party ballot

☐ General
☐ Municipal
☐ School
☐ Special _____ (specify jurisdiction)

If request is for a municipal or school election:
I have lived in that jurisdiction at least 30 days in the last year. Yes ☐ No ☐
I am a full-time postsecondary student who resided in that jurisdiction immediately prior to leaving for postsecondary education. Yes ☐ No ☐
I am on active duty military and my home of record is in that jurisdiction. Yes ☐ No ☐

I, under penalty of impersonating a registered voter (5 years imprisonment and $10,000 fine), state that I am the person named above, these statements made by me are true and correct, and that I will vote the ballot which will be enclosed in this envelope.

_____ _____
Voter Signature Date

**INSTRUCTIONS TO THE VOTER:**

- Mark your ballot privately.
- Do not fold your ballot.
- Place your ballot in this envelope and seal it securely.
- Return the envelope immediately to the person in charge of the election.

**Auditor Office Use Only:**
Voter Precinct: _____
Type of ID: _____

Printers Note: When this form is printed for primary, general, or other county elections, reference to municipal and school elections may be omitted. The instruction to "not fold your ballot" may be changed if the ballot is to be folded.

Source: 32 SDR 225, effective July 3, 2006; 33 SDR 230, effective July 1, 2007; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(8), 12-19-2.5.
Law Implemented: SDCL 12-19-2, 12-19-2.1, 12-19-9.1, 12-19-2.5, 12-26-7, 22-6-1.

**5:02:10:01.04. Military and overseas voters absentee ballot application for electronic access.**

The application for electronic access to an absentee ballot by a military or overseas voter must be in the following form:

**MILITARY AND OVERSEAS VOTERS ABSENTEE BALLOT APPLICATION**

**_____ COUNTY, SOUTH DAKOTA**

**REQUEST FOR ELECTRONIC ACCESS**

As a military or overseas voter, you may apply for electronic access to your absentee ballot before 3:00 p.m. on Election Day for any or all primary, general, or special elections conducted by your county in this calendar year with one request. Additional information on absentee voting is available at www.sdsos.gov.

Check the election(s) for which you are requesting an absentee ballot:

☐ Primary If you are registered as an independent and are requesting a primary ballot, you may have a choice of ballots. Please check one of the following: ☐ Non-Political ballot or ☐ Democratic Party ballot
☐ General
☐ Special
☐ If any other election is conducted by this jurisdiction (specify jurisdiction _____) this calendar year, I request an absentee ballot for that election.

Are you in the Military or Uniformed Services, a Spouse or Dependent of the same, or an Overseas Citizen? Yes ☐ No ☐
(If you answer "No", do not proceed with the Military and Overseas Voters Absentee Ballot Application. Complete the Application for Absentee Ballot.)
Are you currently living in the United States? Yes ☐ No ☐

My printed name as it appears on the voter registration list is: _____

My voter registration residence address is: _____
Address City

If you want your ballot sent electronically instead of first class mail, provide your email address:
_____.

Please provide your mailing address. Should electronic delivery of your absentee ballot not be possible because the email address is returned undeliverable, your ballot will forwarded by first class mail.

_____

Street Address or PO Box City State Zip Country

Contact phone number: _____

NOTE: As a military or overseas voter, you may submit your signed application for absentee ballot by fax or email. County Auditor contact information is available at www.sdsos.gov. A new absentee ballot application must be submitted for each calendar year, with the elections for which an absentee ballot is requested being indicated.

Stateside military voters are **required** to submit a photocopy of their ID (listed below) with their absentee ballot application. The ID requirement is waived only for overseas voters, which includes overseas military and overseas citizens. Should notarization of the stateside military voter's signature be easier to obtain than a photocopy of the ID, a notarized absentee ballot application may be submitted. The notarization on the absentee ballot application can be administered by any commissioned officer in the military service of the United States, as per SDCL 18-3-2.

An acceptable ID is: ● A South Dakota driver's license or non-driver ID card ● A passport or other picture ID issued by the United States government ● A tribal photo ID ● A current student photo ID issued by a South Dakota high school or postsecondary education institution

I hereby verify that I am the person named above and these statements made by me on this application are true and correct.

_____
Voter Signature

Sworn to before me this day of _____ , 20 __.
(Seal)

_____
Signature of Officer Administering Oath

My Commission Expires_____

_____
Title of Officer Administering Oath

Date Ballot Returned:

Source: 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(4), 12-19-2.
Law Implemented: SDCL 12-18-6.1, 12-19-2, 12-19-2.1, 12-19-2.2.

**5:02:10:02. Envelope for transmitting ballot application to superintendent of elections.**

The signed application for official ballots may be sent in an envelope which conforms to the following specifications:

(1) The envelope is the minimum practicable size and weight;

(2) The words, "This Envelope must be sent by Registered Mail, Certified Mail or Personal Delivery," are printed in the upper right corner of the face of the envelope;

(3) The return address of the person in charge of the election is printed in the upper left corner of the face of the envelope;

(4) The words, "This envelope contains the application for the Official Ballot of _____ and the signature on the voter's application should be compared with

the signature on the voter's statement which appears on the back of the return envelope," are printed in the lower left corner of the face of the envelope; and

(5) The words, "To _____ , Superintendent of the Election Board of _____ Precinct, _____ , South Dakota," are printed in the center of the face of the envelope.

Source: 2 SDR 46, effective December 30, 1975; 19 SDR 12, effective August 5, 1992.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-19-2.

**5:02:10:03. Envelope for sending ballots to voter.**

Prior to January 1, 2011, the envelope for sending ballots to voter may follow the specifications provided in this section that were effect on May 7, 2009.

All ballots mailed to any absentee voter shall be enclosed in an envelope securely sealed and addressed to the absentee voter as indicated on the application for ballots. The envelope shall conform to the following specifications:

(1) It shall be of minimum practicable size and weight;

(2) Across the face of the envelope shall be printed the words "OFFICIAL ABSENTEE VOTING MATERIAL – FIRST CLASS MAIL";

(3) In the upper left corner of the face of the envelope shall be printed the return address of the person in charge of the election; and

(4) Between the return address and the postage shall be printed the "medium use" official election mail logo as prescribed by the U.S. Postal Service. There must be a minimum one-quarter inch clear area around the entire logo.

Source: 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 28 SDR 99, effective January 17, 2002; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(8).
Law Implemented: SDCL 12-19-3.

**5:02:10:04. Instructions to absentee voters.**

All ballots mailed or delivered to absentee voters shall include instructions that read as follows:

TO THE VOTER:

- Mark your ballot privately.
- (insert a statement regarding whether and how many times the ballot should be folded)
- Place your ballot in the return envelope and seal it securely.
- Complete the statement on the back of the return envelope and (bold) **SIGN IT** (unbold).
- Mail the ballot, deliver it in person, or have someone deliver it for you to the person in charge of the election. (bold) **Do not return absentee ballot to your polling place.** (unbold)
- The ballot must be received by the person in charge of the election (in time to transmit it to your precinct polling place)(by 7:00 p.m.) on election day.
- Additional information on absentee voting is available at www.sdsos.gov.

Printers Note: Use correct return time designation in sixth bullet point.

Source: 2 SDR 46, effective December 30, 1975; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23,

1985; 19 SDR 12, effective August 5, 1992; 31 SDR 35, effective September 23, 2004; 32 SDR 225, effective July 3, 2006; 35 SDR 306, effective July 1, 2009; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(9).
Law Implemented: SDCL 12-19-4, 12-19-5, 12-19-41.

**5:02:10:05. Official return envelope for ballots used in voting.**

Prior to January 1, 2011, the envelope for sending ballots to voter may follow the specifications provided in this section that were effect on May 7, 2009.

The official return envelope for the absentee voter's ballot shall conform to the following specifications except as provided in § 5:02:10:08:

(1) It is the minimum practicable size and weight utilizing a white security or heavy manila envelope;

(2) Blank lines for the return address of the voter are printed in the upper left corner of the face of the envelope;

(3) The words, "OFFICIAL BALLOT TO BE VOTED AT _____ Precinct in _____ County, S.D., at the _____ Election." may be printed in the lower left corner of the face of the envelope;

(4) Between the return address and the postage shall be printed the "medium use" official election mail logo as prescribed by the U.S. Postal Service. There must be a minimum one-quarter inch clear area around the entire logo;

(5) The words, "Place Stamp Here" are printed inside a box in the upper right corner;

(6) The return envelope is addressed to the person in charge of the local election in which the home precinct of the absentee voter is situated;

(7) The return envelope has the following statement printed on its reverse:

STATEMENT OF ABSENTEE VOTER

I, _____, under penalty of impersonating a registered voter (5 years imprisonment and $10,000 fine), state that I am a registered voter in the county, and state named on the front of this envelope, and that I have voted the enclosed ballot.

_____
(bold) **Signature of Voter** (unbold)

and

(8) The words, "Must be received by the person in charge of the election by Election Day or the ballot will not be counted." are printed above or below the Statement of Absentee Voter.

Source: 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23, 1985; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 28 SDR 99, effective January 17, 2002; 29 SDR 113, effective January 30, 2003; 33 SDR 230, effective July 1, 2007; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(8).
Law Implemented: SDCL 12-19-4, 12-26-7, 22-6-1.

**5:02:10:06. Official record of absentee ballots delivered to voters.**

The official record of absentee ballots delivered to voters shall be in card file, computer file linked to the master voter registration file and contain the following information:

(1) Date of election and party designation if primary ballot;
(2) Name of applicant;
(3) Current mailing address of applicant;
(4) Voting precinct;
(5) Regular or UOCAVA voter;
(6) Date mailed to applicant, given to authorized messenger or voted in office;
(7) Name of authorized messenger;
(8) Date returned
(9) Date application received;
(10) Email address if electronic transmission requested by UOCAVA voter;
(11) Voter registration address.

Source: 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979; transferred from 5:02:05:16, 12 SDR 43, effective September 23, 1985; 32 SDR 109, effective December 26, 2005; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-19-2, 12-19-2.1, 12-19-2.2, 12-19-2.3, 12-19-2.5.

**5:02:10:07. Instructions for voting service and overseas ballots.** Repealed.

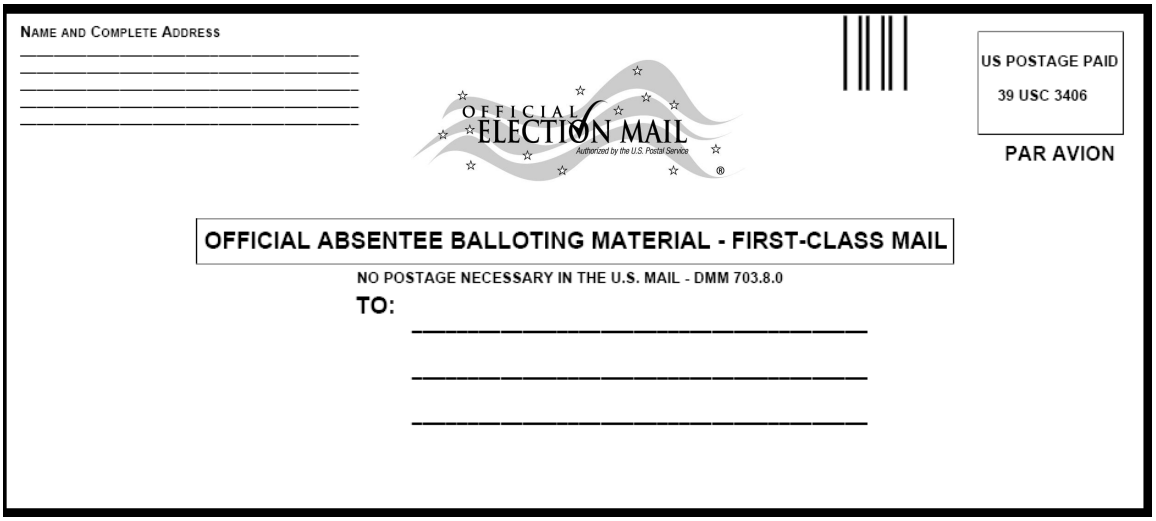
**5:02:10:08. Envelopes for use with voting service and overseas ballots.**

Prior to January 1, 2011, the envelope for sending ballots to voter may follow the specifications provided in this section that were effect on May 7, 2009.

The envelopes used in connection with voting service and overseas ballots must be printed in black ink and must meet the following federal guidelines:

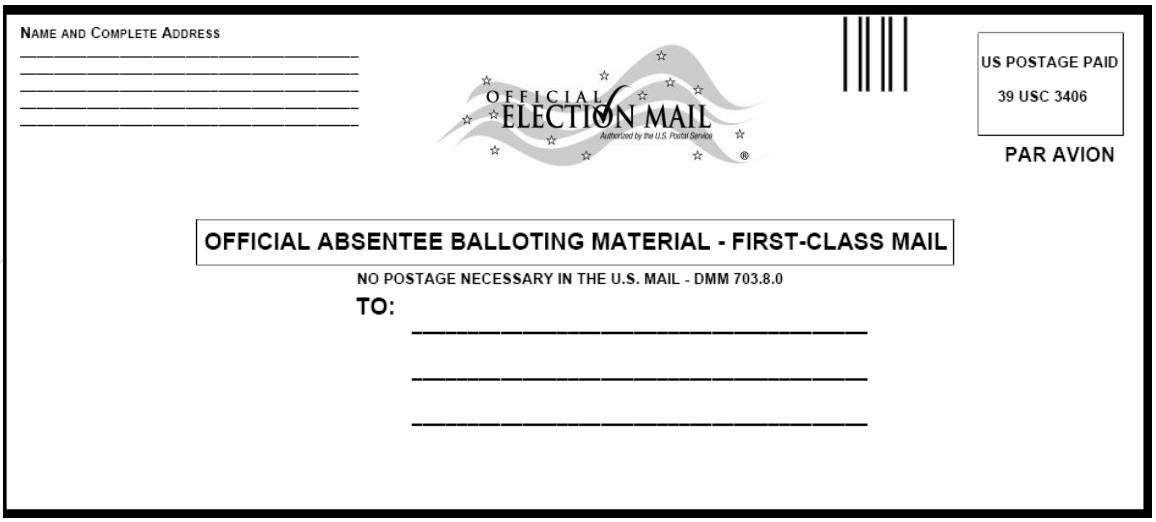
BALLOT TRANSMISSION ENVELOPE

Max
Height 6 1/8 inches
Length 11 ½ inches
Min
Height 3 ½ inches
Length 5 ½ inches
Use Black Ink



BALLOT RETURN ENVELOPE
If mailed in non U.S. Postal System – Voter must pay postage

Max
Height 6 1/8 inches
Length 11 ½ inches
Min
Height 3 ½ inches
Length 5 ½ inches
Use Black Ink




The ballot return envelope must be a white security envelope or heavy manila envelope. The following must be printed on the reverse of the return envelope to the county auditor:

I,_____, under penalty of impersonating a registered voter (five years imprisonment and $10,000 fine), state that I am a registered voter, that my voting residence is _____, and that I have voted the enclosed ballot.

_____
Signature of Voter

Source: 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; transferred from 5:02:05:18, 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 20 SDR 4, effective July 19, 1993; 21 SDR 77, effective October 24. 1994; 25 SDR 8, effective August 3, 1998; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 33 SDR 230, effective July 1, 2007; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(8).
Law Implemented: SDCL 12-19-3, 12-19-4, 12-19-5, 12-26-7, 22-6-1.

## Chapter 5:02:11

# Voting Rights Act

Sec.
5:02:11:01. Purpose.
5:02:11:02. Counties covered.
5:02:11:03. Language minority defined.
5:02:11:04. Exemption procedure.
5:02:11:05. Interpreter assistance.

## 5:02:11:01. Purpose

The purpose of this chapter is to implement SDCL 12-3-6 to 12-3-13 and the Voting Rights Act Amendments of 1975, PL 94-73.

Source: 2 SDR 82, effective June 13, 1976; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-3-13.
Law Implemented: SDCL 12-3-6 to 12-3-13.

## 5:02:11:02. Counties covered

If the proper federal authorities add any counties, these rules shall apply without amendments. If the proper federal authorities remove counties from coverage, such counties need not comply.

Source: 2 SDR 82, effective June 13, 1976; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-3-13.
Law Implemented: SDCL 12-3-6 to 12-3-13.

## 5:02:11:03. Language minority defined

Language minority means persons who are American Indian, Asian American, Alaskan natives or of Spanish heritage.

Source: 2 SDR 82, effective June 13, 1976; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-3-13.
Law Implemented: SDCL 12-3-6 to 12-3-13.

## 5:02:11:04. Exemption procedure

Pursuant to SDCL 12-3-6 to 12-3-13, inclusive, the county auditor and state's attorney of a county determined to be covered by the Voting Rights Act Amendments of 1975 may proceed as follows in order to be exempt:

(1) Certify that the most recent census figures show a precinct has less than five per cent Indian adult population;

(2) Certify that a precinct's illiteracy rate is below the national average.

These facts may be shown by actual count. The facts shall be certified to the secretary of state by affidavit of the county auditor and state's attorney.

Source: 2 SDR 82, effective June 13, 1976; 10 SDR 27, effective September 26, 1983; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-3-13.
Law Implemented: SDCL 12-3-6 to 12-3-13.

## 5:02:11:05. Interpreter assistance

The county auditor shall appoint one interpreter for each precinct. This officially appointed interpreter shall subscribe to an oath which shall be in the same form as

election precinct board members. Each political party or independent candidate or group proposing or opposing a measure may have interpreters present.

Source: 2 SDR 82, effective June 13, 1976; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-3-13.
Law Implemented: SDCL 12-3-6 to 12-3-13.

## Chapter 5:02:12

## Interpretive Rules

Sec.
5:02:12:01. Poll watchers - Primary election.
5:02:12:02. Poll watchers - General election.
5:02:12:03. Additional poll watchers permitted.

### 5:02:12:01. Poll watchers - Primary election

At least one poll watcher for each candidate, one poll watcher for each slate of national convention delegates and alternates, and one poll watcher for each side of any ballot issue to be voted on may be present at each polling place for primary elections.

Source: 2 SDR 82, effective June 13, 1976; 6 SDR 123, effective July 2, 1980; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-18-8.1.
Law Implemented: SDCL 12-18-8.1.

### 5:02:12:02. Poll watchers - General election

At least one poll watcher for each political party, one poll watcher for each independent candidate, one poll watcher for each slate of presidential electors, and one poll watcher for each side of any ballot issue to be voted on may be present at each polling place for general elections.

Source: 2 SDR 82, effective June 13, 1976; 6 SDR 123, effective July 2, 1980; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-18-8.1.
Law Implemented: SDCL 12-18-8.1.

### 5:02:12:03. Additional poll watchers permitted

If there is adequate space at the polling place, this chapter does not preclude increasing the number of poll watchers.

Source: 2 SDR 82, effective June 13, 1976; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-18-8.1.
Law Implemented: SDCL 12-18-8.1.

## Chapter 5:02:13 - Reserved

## Chapter 5:02:14

# Absentee Ballot Precincts

Sec.
5:02:14:01. Official stamp.
5:02:14:02. Ballot wrappers.
5:02:14:03. Pollbooks.
5:02:14:04. Tally sheets.
5:02:14:05. Ballot boxes.

## 5:02:14:01. Official stamp

The form of the official stamp shall read as follows:

OFFICIAL BALLOT
ABSENTEE BALLOT PRECINCT
_____ COUNTY
(Date of Election)

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-30.

## 5:02:14:02. Ballot wrappers

Ballot wrappers in the absentee ballot precinct shall read as follows:

Absentee Ballot Precinct Wrapper for _____ Precinct of _____ County, State of South Dakota, _____ Election, _____ day of _____ , 19 _____ ; Contains _____ Ballots.

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-19-47.

## 5:02:14:03. Pollbooks

Pollbooks for absentee ballot precincts may be in loose leaf form and in the general form and number as pollbooks in regular precincts except there shall be sufficient space in the pollbook for each election precinct which will be canvassed in the absentee ballot precinct.

Source: 3 SDR 69, effective April 10, 1977.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-19-50.

## 5:02:14:04. Tally sheets

The tally sheets for absentee ballot precincts shall be in the same form as tally sheets in regular precincts except there shall be provided enough space for all precincts which will be canvassed.

Source: 3 SDR 69, effective April 10, 1977.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-19-50.

## 5:02:14:05. Ballot boxes

One or more ballot boxes may be used in the absentee ballot precinct. Ballot boxes shall be constructed in the same manner as ballot boxes in regular precincts and the seals shall also be the same. After each precinct's ballots have been canvassed and the wrappers attached, all such ballots shall be sealed in the ballot boxes in the same manner as in regular precincts.

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-19-47.

## Chapter 5:02:15

## Certificates of Election, Nomination

Sec.

5:02:15:01. County candidates not on ballot.
5:02:15:02. County candidates on ballot.
5:02:15:03. Repealed.
5:02:15:04. State legislative candidates on ballot.
5:02:15:05. Statewide offices.
5:02:15:06. Circuit court judge.
5:02:15:07. Supreme Court justice.
5:02:15:08. Municipal candidate not on the ballot.
5:02:15:09. Municipal candidate on the ballot.
5:02:15:10. School board candidate not on the ballot.
5:02:15:11. School board candidate on the ballot.
5:02:15:12. Precinct committeeman, committeewoman, state delegate, or alternate not on the ballot.
5:02:15:13. Precinct committeeman, committeewoman, state delegate, or alternate on the ballot.
5:02:15:14. Certificate of nomination at county primary election.
5:02:15:15. Certificate of nomination at county primary election without opposition.
5:02:15:16. Certificate of nomination for legislative candidate with no primary opposition.

### 5:02:15:01. County candidates not on ballot

The certificate of election for county candidates not appearing on the general election ballot shall be in the following form:

UNITED STATES OF AMERICA
STATE OF SOUTH DAKOTA
COUNTY OF _____
CERTIFICATE OF ELECTION

THIS IS TO CERTIFY THAT
_____
was duly nominated and having no opposition at the General Election is hereby declared elected to the office of _____ for _____ County for the term of _____ years, beginning _____ .
IN WITNESS WHEREOF I have hereunto set my hand and seal this ____ day of _____ , 19 ____ .

_____
SEAL COUNTY AUDITOR

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979.

General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-16-1.1.

**5:02:15:02. County candidates on ballot**

The certificate of election for county candidates appearing on the general election ballot shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF _____
CERTIFICATE OF ELECTION

THIS IS TO CERTIFY that on the ____ day of November, 19__, at a general election, _____ was elected by the qualified voters of _____ County of the State of South Dakota to the office of _____ for the term of ____ years, beginning _____ .
IN WITNESS WHEREOF I have hereunto set my hand and seal this ____ day of November, 19 ____ .

_____
SEAL COUNTY AUDITOR

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 19 SDR 12, effective August 5, 1992.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-40.

**5:02:15:03. State legislative candidates not on ballot** Repealed.

**5:02:15:04. State legislative candidates on ballot**

The certificate of election for state legislative candidates appearing on the general election ballot shall be in the following form:

UNITED STATES OF AMERICA STATE OF SOUTH DAKOTA CERTIFICATE OF ELECTION

THIS IS TO CERTIFY that on the _____ day of November, 19 ____ , at a general election held throughout the State, _____ was duly elected by the qualified voters of the _____ Legislative District of the State of South Dakota to the office of State Senator (Representative) for the term of two years, beginning the ____ day of January, 19 ____ .
IN WITNESS WHEREOF, We have hereunto set our hands and caused the Seal of the State to be affixed at Pierre, the Capital, this ____ day of _____, 19___.

_____
Governor
Attested by:
(SEAL) _____
Secretary of State

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-49.

**5:02:15:05. Statewide offices**

The certificate of election for statewide offices shall be in the following form:

THIS IS TO CERTIFY that on the ____ day of November, 19__, at a general election,
_____
was elected by the qualified voters of the State of South Dakota to the office of
_____ for the term of ___ years, beginning on the ____ day of January, 19 ___.
IN WITNESS we have signed this certificate and affixed the Seal of the State
at Pierre, the capital, this ____ day of _____ , 19 ____ .

_____
Governor
Attested by:

_____
Secretary of State

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-49.

**5:02:15:06. Circuit court judge**

The certificate of election for circuit court judge shall be in the following form:

THIS IS TO CERTIFY that on the _____ day of November, 19 _____ , at
a general election held throughout the State,
_____
was duly elected by the qualified voters of the _____ Judicial Circuit of the
State of South Dakota to the office of Circuit Court Judge for the term of eight years,
beginning on the _____ day of January, 19 _____ .
IN WITNESS WHEREOF, We have hereunto set our hands and caused the Seal of the
State to be affixed at Pierre, the Capital, this ____ day of _____, 19_____ .

_____
Governor
Attested by:
(SEAL) _____
Secretary of State

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-49.

**5:02:15:07. Supreme Court justice**

The certificate of retention for Supreme Court justice shall be in the following form:

THIS IS TO CERTIFY that on the ____ day of November, 19__, at a general election,
_____
was retained by the qualified voters of the State of South Dakota in the office of
Supreme Court Justice for the term of eight years beginning on the _____ day of
January, 19 __.
IN WITNESS WHEREOF, We have hereunto set our hands and caused the Seal of the
State to be affixed at Pierre, the Capital, this ____ day of _____, 19____.

_____
Governor
Attested by:

_____
Secretary of State

Source: 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 10 SDR 27, effective September 26, 1983; 14 SDR 19, effective August 9, 1987.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-49.

**5:02:15:08. Municipal candidate not on the ballot**

The certificate of election for a municipal candidate not on the ballot shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF _____
MUNICIPALITY OF _____
CERTIFICATE OF ELECTION

THIS IS TO CERTIFY THAT
_____
was duly nominated and having no opposition at the Municipal Election is hereby declared elected to the office of _____ for a term of ___ years, beginning _____ .
Dated at _____ , South Dakota, this ____ day of _____, 19____.
_____
(Clerk, Auditor or Finance Officer)

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 9-13-5.

**5:02:15:09. Municipal candidate on the ballot**

The certificate of election for a municipal candidate on the ballot shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF _____
MUNICIPALITY OF _____
CERTIFICATE OF ELECTION
THIS IS TO CERTIFY that on the _____ day of _____ , 19 ____ , at the municipal election held throughout the city of _____
_____
was duly elected by the qualified voters of the city of _____ to the office of _____ for a term of _____ year(s) beginning _____ .
Dated at _____ , South Dakota, this ____ day of _____ , 19 ____.
_____
(Clerk, Auditor or Finance Officer)

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 9-13-28.

**5:02:15:10. School board candidate not on the ballot**

The certificate of election for a school board candidate not on the ballot shall be in the following form:

STATE OF SOUTH DAKOTA
_____ SCHOOL DISTRICT NO. ____
CERTIFICATE OF ELECTION

THIS IS TO CERTIFY THAT

_____
was duly nominated and having no opposition at the School Board Election is hereby declared elected to the School Board of _____ School District No. ____ for a term of ____ year(s), beginning _____.
Dated at _____, South Dakota, this ____ day of _____, 19____.

_____
Business Manager

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 13-7-9.

**5:02:15:11. School board candidate on the ballot**

The certificate of election for a school board candidate on the ballot shall be as follows:

STATE OF SOUTH DAKOTA
_____ SCHOOL DISTRICT NO. ____
CERTIFICATE OF ELECTION
THIS IS TO CERTIFY that on the ____ day of _____, 19 ____, at the school district election held throughout the _____ School District No. ____
_____
was duly elected by the qualified voters of the district to the School Board for a term of _____ year(s) beginning _____ .
Dated at _____, South Dakota, this _____ day of _____, 19___.

_____
Business Manager

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 13-7-18.

**5:02:15:12. Precinct committeeman, committeewoman, state delegate, or alternate not on the ballot**

The certificate of election for a precinct committeeman, committeewoman, state delegate, or alternate not on the ballot shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF_____
CERTIFICATE OF ELECTION

THIS IS TO CERTIFY THAT

_____
having no opposition at the primary election is hereby declared elected by the _____ political party to the office of _____ .
IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the County of _____ to be affixed at _____ , the county seat, on behalf of the _____ County canvassing board, this _____ day of _____ , 19 ____.

SEAL _____
County Auditor

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-5-2, 12-6-9.

**5:02:15:13. Precinct committeeman, committeewoman, state delegate, or alternate on the ballot**

The certificate of election for a precinct committeeman, committeewoman, state delegate, or alternate on the ballot shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF _____
CERTIFICATE OF ELECTION

THIS IS TO CERTIFY that on the ____ day of June, 19 ____ , at the primary election held throughout the county

_____

was duly elected by the _____ political party to the office of _____.
IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the County of _____ to be affixed at _____ , the county seat, on behalf of the _____ County canvassing board, this _____ day of _____ , 19 ____ .

SEAL _____
County Auditor

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-8-1.

**5:02:15:14. Certificate of nomination at county primary election**

The certificate of nomination at the county primary election shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF _____
CERTIFICATE OF NOMINATION

THIS IS TO CERTIFY that on the ____ day of June, 19 ____ , at a primary election held throughout the county,

_____

was duly chosen by the qualified voters as the nominee of the _____ party for the office of _____ .
IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the County of _____ to be affixed at _____ , the county seat, on behalf of the _____ County canvassing board, this ____ day of _____, 19___.

SEAL _____
County Auditor

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-8-1.

**5:02:15:15. Certificate of nomination at county primary election without opposition**

The certificate of nomination at the county primary election for a candidate without opposition shall be in the following form:

STATE OF SOUTH DAKOTA
COUNTY OF _____
CERTIFICATE OF NOMINATION

THIS IS TO CERTIFY THAT
_____
having no opposition at the primary election is hereby nominated by the _____ Party for the office of _____ .
IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____ , 19 ____ .
(SEAL)
_____
County Auditor

Source: 8 SDR 24, effective September 16, 1981.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-6-9.

**5:02:15:16. Certificate of nomination for legislative candidate with no primary opposition**

The certificate of nomination for a legislative candidate with no primary opposition shall be in the following form:

UNITED STATES OF AMERICA
STATE OF SOUTH DAKOTA
CERTIFICATE OF NOMINATION

THIS IS TO CERTIFY THAT
_____
having no opposition at the primary election is hereby nominated by the _____ Party to the office of _____ .
IN WITNESS WHEREOF, We have hereunto set our hands and caused the Seal of the State to be affixed at Pierre, the Capital, this ____ day of _____, 19___.

_____
Governor
Attested by:

_____
Secretary of State

Source: 11 SDR 120, effective March 11, 1985.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-49.

## Chapter 5:02:16

## Counting and Canvassing of Ballots

Sec.
5:02:16:00 Definitions.

## *Counting and Canvassing of Ballots*


5:02:16:01 Delivery of supplies to counting board - Signing of certificate.
5:02:16:02 Signing of oaths.
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5:02:16:18 to 5:02:16:20 Repealed.
5:02:16:21 Voter's intent to be determined.
5:02:16:22 Repealed.
5:02:16:22.01 Use of prior court decision.
5:02:16:23 to 5:02:16:24 Repealed.
5:02:16:25 Unofficial returns of precinct vote.
5:02:16:26 Entry of precinct vote on unofficial return list.
5:02:16:27 to 5:02:16:30 Repealed.
5:02:16:31 Signing of certificates.
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5:02:16:33 Procedure for placing voted ballots in the ballot box.
5:02:16:34 Return of unvoted ballots.
5:02:16:34.01 Return of duplicate ballots of one voter not counted.
5:02:16:35 Ballots voted but not counted.
5:02:16:36 Recapitulation sheet.
5:02:16:37 Sealing of ballot box.
5:02:16:38 Repealed.
5:02:16:39 Form of the paper seal.
5:02:16:40 Return and sealing of the pollbook.
5:02:16:41 Pollbook envelope seal.
5:02:16:41.01 Return of duplicate tally sheet.
5:02:16:42 Return of election material.
5:02:16:43 Purpose of this chapter.
5:02:16:44 Provisional and uncounted absentee ballot return envelope.


### 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.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999; 26SDR168, effective June 25, 2000; 36 SDR 112, effective January 11, 2010.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-1, 12-15-14, 12-15-14.1.

**5:02:16:01. Delivery of supplies to counting board -- Signing of certificate.**

If a counting board has been appointed, the precinct election board shall immediately upon the close of the polls deliver the ballot boxes, registration books, pollbook, and other election supplies, including voided and unused ballots, to the counting board and sign the certificate required by 5:02:05:01.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-1, 12-15-14, 12-15-14.1.

**5:02:16:02. Signing of oaths.**

The counting board, before assuming its duties, shall execute the oath of office printed in the pollbook.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-1, 12-15-14, 12-15-14.1, 12-15-14.2.

**5:02:16:03. Public vote count.**

In the presence of all persons desiring to attend the vote counting, the precinct election board or counting board shall immediately proceed to publicly count the votes received at the polls and shall continue without adjournment until the count is completed. The precinct election board or counting board may not exclude or prohibit any member of the public from witnessing any portion of the vote counting, so long as that person's conduct is not disruptive.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-1, 12-15-14, 12-15-14.1, 12-26-22.

**5:02:16:04. Use of tally sheets.**

The precinct election board or the counting board shall use the tally sheets prescribed by 5:02:17:07 in the vote counting.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.

## *Counting and Canvassing of Ballots*

General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-1, 12-15-14, 12-15-14.1.

**5:02:16:05. Comparison of registration list and pollbook.**

The counting board shall begin the vote count by counting the ballots as prescribed in 5:02:16:06 to 5:02:16:08, inclusive. If the ballot count does not agree with the number of voters in the pollbook, a comparison of the voters in the pollbook and the registration list shall be made and any mistakes corrected. If a mistake is made otherwise, the board by majority vote shall decide.

Source: 4 SDR 26, effective October 27, 1977; 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-2.

**5:02:16:06. Opening ballot box**

The ballot box shall then be opened and the ballots taken out, sorted so that all ballots on certain candidacies and issues are separately identified, and counted by the members of the counting board unopened, except to ascertain if each ballot is single.

Source: 4 SDR 26, effective October 27, 1977; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-2.

**5:02:16:07. Folded ballots separated.**

If two or more ballots are found folded together presenting the appearance of a single ballot, the ballots shall be laid aside until the count of the ballots is completed. If, upon the comparison of the count of the pollbook and after considering the appearance of the ballots, a majority of the counting board is of the opinion that the folded ballots were voted by one voter, the ballots shall be stapled together and endorsed as "duplicate ballot of one voter not counted."

Source: 4 SDR 26, effective October 27, 1977; 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-2.

**5:02:16:08. Duplicate ballots.**

For the purpose of determining the proper number of ballots in the box, any ballots folded together determined to be duplicate ballots of one voter shall be counted as a single ballot. There are two types of duplicate ballots as follows:

(1) If a voter was given two or more identical ballots stuck together and voted only one of them, the voted ballot shall be counted. The election or counting board will find the duplicate ballots folded together in the ballot box with the ballot stamp on the back copy and the votes marked on the top copy; and

(2) If a voter was given two or more identical ballots stuck together and voted more than one of them, none of the voted ballots may be counted.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9, 12-20-52.

Law Implemented: SDCL 12-20-2.

**5:02:16:09. Drawing of excess ballots**

If the number of ballots in the ballot box shall be found to exceed in number the number of voters in the pollbook, as reconciled by 5:02:16:05 and 5:02:16:08, the ballots shall be replaced in the box, after any ballots folded together are stapled and endorsed, and one of the counting board members shall publicly draw from the ballot box, as many ballots, unopened, as shall be equal to the excess.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-3.

**5:02:16:09.01. Endorsing of excess ballots**

Any excess ballots drawn from the ballot box pursuant to 5:02:16:09 shall be endorsed "Excess Ballots Not Counted."

Source: 4 SDR 26, effective October 27, 1977.
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-3.

**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."

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-6.

**5:02:16:11. Separation of ballots.**

The counting board shall next proceed to further separate the ballots.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-5.

**5:02:16:12. Order of vote counting.**

The counting of votes for each candidate shall be in the same order as the candidates appear on the ballot.
Source: 4 SDR 26, effective October 27, 1977; 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-5.

**5:02:16:13. Scrutiny of ballots by judges** Repealed.

**5:02:16:14. Scrutiny of ballots by counting board.**

## *Counting and Canvassing of Ballots*

At least two precinct deputies of the counting board of opposite political parties shall scrutinize each ballot to determine the vote on that ballot. The precinct superintendent shall break any tie on a ballot.

Source: 4 SDR 26, effective October 27, 1977; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-5, 12-15-14, 12-15-14.1.

**5:02:16:15. Tally of ballots.**

As the vote is announced, one counting board member shall make the required mark on the tally sheet in the pollbook and another counting board member shall make the required mark on the duplicate tally sheet.

Source: 4 SDR 26, effective October 27, 1977; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-5.

**5:02:16:16. Voter's intent.** Repealed.

**5:02:16:17. Identifying marks.** Repealed.

**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 as votes.

Source: 26SDR168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9(4)
Law Implemented: SDCL 12-20-21.2.

**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.

Source: 28 SDR 99, effective January 17, 2002; 33 SDR 230, effective July 1, 2007.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-1-9(4).

**5:02:16:18. Marks to be construed as crosses or check marks** Repealed.

**5:02:16:19. Crossing out names** Repealed.

**5:02:16:20. Failure to touch box** Repealed.

**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.

Source: 4 SDR 26, effective October 27, 1977.
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-7.

**5:02:16:22. Abrogating of prior court decisions** Repealed.

**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.

Source: 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-52.

**5:02:16:23. Automated tabulating system ballot markings.** Repealed.

**5:02:16:24. Crossing party lines** Repealed.

**5:02:16:25. Unofficial returns of precinct vote.**

The election supplies provided to the counting board shall include a form for reporting the immediate unofficial returns of precinct vote, together with an envelope.

The form for reporting the immediate unofficial returns of precinct vote is as follows:

IMMEDIATE UNOFFICIAL RETURNS, _____PARTY

ELECTION HELD ON THE ___ DAY OF _____, ___, _____ PRECINCT

| TITLE OF OFFICE | NAME OF CANDIDATE | NUMBER OF VOTES |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

NUMBER OF PROVISIONAL BALLOTS: _____

The form of the envelope is as follows:

UNOFFICIAL RETURNS
TO: COUNTY AUDITOR

_____
SOUTH DAKOTA

IMMEDIATE
DO NOT PUT THIS IN BALLOT BOX

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-10.

**5:02:16:26. Entry of precinct vote on unofficial return list**

Upon the unofficial return as set forth in 5:02:16:25, the counting board shall enter the vote cast in that precinct for each office or question which appears on the official

ballot and shall enclose the unofficial returns in the envelope provided pursuant to 5:02:16:25. The precinct superintendent may designate a precinct deputy to deliver the unofficial election returns to the officer in charge of the election. The precinct deputy designated shall deliver to the officer in charge of the election the unofficial returns, separate from any other envelope or wrapper.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-11.

**5:02:16:27. Official return sheets for voting machine precincts** Repealed.

**5:02:16:28. Voting machine precinct printing and photographing of returns** Repealed.

**5:02:16:29. Official returns for voting machine precincts** Repealed.

**5:02:16:30. Official count of voting machine precincts** Repealed.

**5:02:16:31. Signing of certificates.**

The precinct superintendent and precinct deputies of the precinct election board and counting board shall complete and sign the certificates following the list of voters in the pollbook, the tally sheets, and the official vote count sheets.

Source: 4 SDR 26, effective October 27, 1977; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-1.

**5:02:16:32. Deposit of counted ballots** Repealed.

**5:02:16:33. Procedure for placing voted ballots in the ballot box.**

After the count has been completed, the election board or counting board shall place the voted ballots in the ballot box keeping them separated in wrappers or envelopes and sealed as provided 5:02:16:34.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-20, 12-15-14, 12-15-14.1, 12-15-14.2.

**5:02:16:34. Return of unvoted ballots**

All spoiled and unused ballots shall be returned to the person in charge of the election in plain wrappers or envelopes with the words "spoiled ballots" or "unused ballots" added to each wrapper or envelope. Each wrapper or envelope shall be sealed by a ballot seal containing the following information:

BALLOT WRAPPER OR ENVELOPE SEAL _____ PRECINCT
NUMBER OF BALLOTS _____

DO NOT PLACE THESE SPOILED AND UNUSED BALLOTS IN THE BALLOT BOX

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 10 SDR 27, effective September 26, 1983.
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-17A-42.1, 12-18-24, 12-18-32, 12-20-20.

**5:02:16:34.01. Return of duplicate ballots of one voter not counted**

Each type of duplicate ballots, as identified in 5:02:16:08, shall be returned to the ballot box in a plain wrapper or envelope and sealed as provided in 5:02:16:34. Those ballots which are described in subdivision (1) of 5:02:16:08 shall have the following words added to the wrapper or envelope: "stapled duplicate ballots counted." Those which are described in subdivision (2) shall have the following words added to the wrapper or envelope: "stapled duplicate ballots not counted."

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-2, 12-20-20.

**5:02:16:35. Ballots voted but not counted**

Except as provided by 5:02:16:34.01, all ballots voted but not counted shall be returned to the ballot box in a plain wrapper or envelope and sealed as provided in 5:02:16:34 with the words "ballots voted but not counted" added to the wrapper or envelope.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-20.

**5:02:16:36. Recapitulation sheet**

A recapitulation sheet in the following form shall be filled out indicating the disposition of the ballots:

| | | |
|---|---|---|
| Ballots received from auditor | _____ | |
| Ballots received after polls open | _____ | |
| Absentee ballots received | _____ | |
| Total ballots received | | _____ |
| | | |
| Regular voted ballots | _____ | |
| Provisional ballots | _____ | |
| Unused ballots | _____ | |
| Spoiled ballots | _____ | |
| Total ballots returned | | _____ |

Total ballots received and total ballots returned should be the same number.

This recapitulation sheet, together with the spoiled and unused ballots, shall be returned to the person in charge of the election. It shall not be placed in the ballot box.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-17A-42.1, 12-18-32, 12-20-21.

**5:02:16:37. Sealing of ballot box**

Following the deposit of all voted ballots except those in § 5:02:16:34, the precinct or counting board shall seal the ballot box with a security seal for each place where box and clasp connect. The security seal shall be of a design that would readily show if the seal has been broken. A paper seal shall be used to cover any other slot or opening which is not covered and sealed with the security seal.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 25 SDR 167, effective July 6, 1999; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-17B-9, 12-20-20.

**5:02:16:38. Use of paper seals on ballot box.** Repealed.

**5:02:16:39. Form of the paper seal**

The paper seal used pursuant to § 5:02:09:04.03(8) and 5:02:16:38 shall be in the following form:

BALLOT BOX SEAL

SIGNATURES OF COUNTING BOARD _____
OR PRECINCT BOARD _____
_____
_____
_____
_____

Where ballots are counted by hand, upon returning ballots to the box after counting, the counting board shall sign these seals and affix the seals to the ballot box openings and upon all places where the box may be opened except where the openings are sealed with a metal seal. Where ballots are counted by machine, the precinct board shall sign these seals.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 25 SDR 167, effective July 6, 1999; 31 SDR 35, effective September 23, 2004.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-20.

**5:02:16:40. Return and sealing of pollbook.**

The pollbook shall be placed in a pollbook return envelope and the envelope sealed with the pollbook envelope seal prescribed in 5:02:16:41. The sealed envelope and its contents shall not be placed in the ballot box and shall be returned to the person in charge of the election.

The pollbook envelope must be in the following form:

POLLBOOK
_____PRECINCT

TO: COUNTY AUDITOR

_____
SOUTH DAKOTA
DO NOT PUT THIS IN BALLOT BOX

Source: 4 SDR 26, effective October 27, 1977; 5 SDR 31, effective November 1, 1978; 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-21.

**5:02:16:41. Pollbook envelope seal**

The pollbook envelope seal shall be in the following form:

POLLBOOK ENVELOPE SEAL _____ PRECINCT

Source: 4 SDR 26, effective October 27, 1977; 5 SDR 31, effective November 1, 1978.
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-21.

**5:02:16:41.01 Return of duplicate tally sheet**

The duplicate tally sheet and official vote count shall be placed in a duplicate tally sheet envelope. The sealed envelope and its contents shall not be placed in the ballot box and shall be returned to the person in charge of the election.

The duplicate tally sheet envelope must be in the following form:

DUPLICATE TALLY SHEET AND OFFICIAL VOTE COUNT
_____PRECINCT
TO: COUNTY AUDITOR
_____
SOUTH DAKOTA
DO NOT PUT THIS IN BALLOT BOX

Source: 20 SDR 4, effective July 19, 1993
General Authority: SDCL 12-1-9, 12-20-52.
Law Implemented: SDCL 12-20-21.

**5:02:16:42. Return of election material.**

The sealed ballot box together with the sealed pollbook, sealed duplicate tally sheet and official vote count, sealed provisional ballot return envelope, registration lists, and envelopes containing the unofficial returns and all supplies and returns required shall be returned by the precinct superintendent or a precinct deputy designated by the precinct superintendent to the officer in charge of the election immediately after completing the vote count. The person delivering the supplies may not deface, destroy, or remove any seals or the pollbook, duplicate tally sheet, and registration lists or otherwise tamper with them.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 167, effective July 6, 1999; 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-21.

**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.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 12-20-52.

**5:02:16:44 Provisional and uncounted absentee ballot return envelope**

When ballots are counted at the precinct, provisional ballot envelopes containing provisional ballots and envelopes containing uncounted absentee ballots shall be cumulatively placed in a provisional and uncounted absentee ballot return envelope and sealed. Do not place the sealed envelope and its contents in the ballot box. The sealed envelope shall be returned to the person in charge of the election.

The provisional and uncounted absentee ballot return envelope must be in the following form:

PROVISIONAL AND UNCOUNTED ABSENTEE BALLOT RETURN ENVELOPE
_____PRECINCT
TO: COUNTY AUDITOR
_____
SOUTH DAKOTA
DO NOT PUT THIS IN BALLOT BOX

Source: 30 SDR 171, effective May 10, 2004; 36 SDR 209, effective June 30, 2010.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-18-40, 12-20-2.1.

## Chapter 5:02:17

## Pollbooks and Tally Sheets

Sec.
5:02:17:01. Repealed.
5:02:17:02. Pollbook binding.
5:02:17:03. Contents of cover.
5:02:17:03.01. Envelope for the pollbook.
5:02:17:04 to 5:02:17:05. Repealed.
5:02:17:06. List of voters.
5:02:17:07. Tally sheets.
5:02:17:08. Official vote count.
5:02:17:09. Certification by precinct election board.
5:02:17:10. Certification by counting board.
5:02:17:11. Official canvass sheet - Municipalities, school districts, and other local jurisdictions.
5:02:17:12. Duties of official board of canvassers for local jurisdiction.
5:02:17:13. Certification of provisional ballot count.
5:02:17:14. Electronic pollbook security.

**5:02:17:01. Size of pollbook.** Repealed.

**5:02:17:02. Pollbook binding.**

The cover and sheets of the pollbook must be securely bound.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 25 SDR 8, effective August 3, 1998; 25 SDR 167, effective July 6, 1999.

General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-16-28.

**5:02:17:03. Contents of cover.**

The cover of the pollbook must be in the following form:

DO NOT PUT IN BALLOT BOX

_____ELECTION

POLLBOOK AND OFFICIAL VOTE COUNT WITH TALLY SHEETS

_____WARD_____PRECINCT

CITY
TOWN_____, _____COUNTY, SOUTH DAKOTA
TOWNSHIP

ELECTION HELD ON THE _____DAY OF _____, ___.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-16-28.

**5:02:17:03.01. Envelope for the pollbook**

The pollbook must be placed in the envelope prescribed by § 5:02:16:40.

Source: 5 SDR 31, effective November 1, 1978; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-1-9(4), 12-20-52.
Law Implemented: SDCL 12-20-21.

**5:02:17:04. Oath of precinct election board.** Repealed.

**5:02:17:05. Oath of counting board.** Repealed.

**5:02:17:06. List of voters**

The list of voters must consist of the following three columns:
(1) Column one must be NUMBER OF PERSONS VOTING;
(2) Column two must be NAME OF VOTER; and
(3) Column three must be TYPE OF BALLOTS (small column).

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-16-28.

**5:02:17:07. Tally sheets**

The tally sheets must be ruled by horizontal and perpendicular lines to form squares of suitable size to contain five tally marks each, four of which may be upright and the fifth crossing the others at an oblique angle. Each fifth perpendicular line in the ruling must be red, so that five squares for tally marks are contained between each two red lines. In a perpendicular column at the left margin of each tally sheet sufficient space

must be left to legibly print or write in ink the names of all candidates and all questions submitted to the electors at the election, in the same order as on the official ballots used in the election. At the extreme right margin of the tally sheet there must be a perpendicular column with sufficient space to label the column at the top of the tally sheet as follows: "Total Votes."

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 23 SDR 236, effective July 17, 1997; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-16-28, 12-16-34, 12-16-39.

**5:02:17:08. Official vote count.**

The official vote count must consist of the following four columns:

(1) Column one, TITLE OF OFFICE;
(2) Column two, NAME OF CANDIDATE;
(3) Column three, NUMBER OF VOTES RECEIVED IN FIGURES; and
(4) Column four, NUMBER OF VOTES RECEIVED (write number of votes in words).

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-16-28.

**5:02:17:09. Certification by precinct election board.**

The members of the precinct election board shall sign the following certification which is located in the pollbook following the list of voters:

We hereby certify that the above list is a true and correct list of the individuals voting at the election.

_____
_____
_____
_____
_____

If an electronic pollbook is used, the members of the precinct election board shall sign the following certification which is a separate form:

We hereby certify that the data entered into the electronic pollbook is a true and correct list of the individuals voting at the election.

_____
_____
_____
_____
_____

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 25 SDR 8, effective August 3, 1998; 25 SDR 167, effective July 6, 1999; 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-8-5, 12-16-28.

**5:02:17:10. Certification by counting board.**

The counting board shall sign the following certification which is located in the pollbook following the tally sheet and official vote count the pollbook and the duplicate tally sheet/official vote count:

We hereby certify that the tally sheet and official vote count contained herein are correct.

_____
_____
_____
_____
_____

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979; 20 SDR 4, effective July 19, 1993; 25 SDR 8, effective August 3, 1998.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-16-28, 12-20-28.

**5:02:17:11. Official canvass sheet - Municipalities, school districts, and other local jurisdictions**

The official canvass sheet used by the governing body of a municipality, school district, or other local jurisdiction to canvass an election shall be in the following form:

OFFICIAL CANVASS SHEET
Date of Election: _____
Type of Election: _____
Jurisdiction: _____

| OFFICE OR QUESTION | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Names of Candidates or "Yes" and "No" | | | | | | | | | | | | |
| Precincts | | | | | | | | | | | | |
| Precinct 1 | | | | | | | | | | | | |
| Precinct 2 | | | | | | | | | | | | |
| Precinct 3 | | | | | | | | | | | | |
| Precinct 4 | | | | | | | | | | | | |
| Precinct 5 | | | | | | | | | | | | |
| Precinct 6 | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | |

STATE OF SOUTH DAKOTA )
) SS
COUNTY OF _____ )
We, (list names) , appointed as the Board of Canvassers because of our positions on the governing board in the jurisdiction of _____ for the _____ election held on the _____ day of _____ , 19 ____ , hereby certify that the foregoing is a true abstract of the votes cast in the jurisdiction of _____ at the election as shown by the returns certified to the person in charge of the election.

_____
_____
_____
_____
_____

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

_____
Person in Charge of the Election

Source: 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
Law Implemented: SDCL 9-13-24, 13-7-18.

**5:02:17:12. Duties of official board of canvassers for local jurisdiction**

The duties of the official board of canvassers for a local jurisdiction are as follows:
(1) Open the returns from each precinct which are found in each poll book;
(2) Satisfy itself that the returns are genuine and not forged;
(3) Tabulate the returns from the precincts and the certification of provisional ballot count;
(4) Declare the result; and
(5) Make an abstract of the results of the votes cast for each of the candidates and each of the issues. The abstract must be signed and certified by the canvassers under the seal of the business manager or finance officer of the local jurisdiction.

Source: 16 SDR 203, effective May 28, 1990; 30 SDR 171, effective May 10, 2004.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 9-13-24, 13-7-18, 12-20-13.2.

**5:02:17:13. Certification of provisional ballot count.**

The certification of provisional ballot count shall be a table containing the following elements:

(1) Precinct Name;
(2) Name of candidate or ballot question;
(3) Number of votes received in figures; and
(4) Number of votes received in words.

The certification shall also contain the following:

STATE OF SOUTH DAKOTA )
) SS
COUNTY OF _____ )
We, (list names) , appointed as the provisional ballot counting board or provisional ballot resolution board in the jurisdiction of _____ for the _____ election held on the _____ day of _____ , 20___ , hereby certify that the foregoing is a true abstract of the provisional votes which were counted for this jurisdiction.

_____
_____
_____
_____
_____
Sworn to before me this _____ day of _____, 20__ .
_____
Person in Charge of the Election

Source: 29 SDR 177, effective July 2, 2003.
General Authority: SDCL 12-20-13.1.
Law Implemented: SDCL 12-20-13.1.

**5:02:17:14. Electronic pollbook security.**

The pollbook file containing voter names, numbers and ballot types for an electronic pollbook must be located in the electronic pollbook. The pollbook file may not be located on a network drive or removable drive. The electronic pollbook may not be connected to the internet.

A pollbook file shall be password protected. The password shall be provided only to the precinct superintendent who may not divulge the password to any other person.

No person other than the election worker assigned to operate the electronic pollbook may be allowed to enter any information into the electronic pollbook.

Following the completion of the recapitulation sheet at the close of the polls, the pollbook file shall be immediately closed so that it is password protected.

The pollbook file may not be reopened prior to the official canvass. If the board of canvassers examines the pollbook file, the board must check the “properties” of the pollbook file prior to opening the file to determine that the file has not been accessed since the close of the polls.

Source: 35 SDR 306, effective July 1, 2009.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 12-16-28, 12-8-5.

## Chapter 5:02:18

## Circuit Court Elections (Repealed)

## Chapter 5:02:19

## Recounts

Sec.

5:02:19:01 Reconvening of a recount.
5:02:19:02 Staff for recount board.
5:02:19:03 Precautions to insure against tampering.
5:02:19:04 Counting rules to apply.
5:02:19:05 Candidate's petition for recount.
5:02:19:06 Precinct voters' petition for recount.
5:02:19:07 Voters' petition for recount on questions submitted to the entire state.
5:02:19:08 Certificate of recount.
5:02:19:09 Certificate of disputed ballots.
5:02:19:10 Voters’ petition for recount in close municipal or school question election.
5:02:19:11 Oath of recount board.

### 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.

Source: 5 SDR 31, effective November 1, 1978.
General Authority: SDCL 12-1-9, 12-21-6.1.

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.

Source: 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979.
General Authority: SDCL 12-1-9, 12-21-6.1.
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.

Source: 5 SDR 31, effective November 1, 1978.
General Authority: SDCL 12-1-9, 12-21-6.1.
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 ARSD chapters 5:02:09 and 5:02:16 regarding the counting of ballots also apply to recounts.

Source: 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 19 SDR 12, effective August 5, 1992; 23 SDR 236, effective July 17, 1997; 26SDR168, effective June 25, 2000; 29 SDR 113, effective January 30, 2003.
General Authority: SDCL 12-1-9(4), 12-21-6.1.
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

I, _____, candidate for the office of _____, believe that a recount will change the result of the election held on the ____ day of _____, 19 ___, 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 _____ , 19 ____ .
(Seal)

_____
Officer Administering Oath

My Commission Expires _____

_____
Title of Officer Administering Oath

Source: 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
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 _____ , 19 ____ .

(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

Source: 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
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.

Source: 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989.
General Authority: SDCL 12-1-9.
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.

Source: 6 SDR 25, effective September 24, 1979; 28 SDR 99, effective January 17, 2002.
General Authority: SDCL 12-1-9(4), 12-21-6.1.
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.

Source: 6 SDR 25, effective September 24, 1979; 28 SDR 99, effective January 17, 2002.
General Authority: SDCL 12-1-9(4), 12-21-6.1.
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

Source: 28 SDR 99, effective January 17, 2002.
General Authority: SDCL 12-1-9(4).
Law Implemented: SDCL 9-13-27.4, 13-7-19.3.

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

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.

Source: 35 SDR 48, effective September 8, 2008.
General Authority: SDCL 12-1-9(10).
Law Implemented: SDCL 12-21-2.

## Chapter 5:02:20

## Presidential Preference Primary (Repealed)

## Chapter 5:02:21

## Revocation of Voter Registrar Authorization (Repealed)

# ARTICLE 5:04

# OFFICE OF THE SECRETARY OF STATE

## Chapter 5:04:06

## Statewide Voter Registration File

Sec.

5:04:06:01 File export format.
5:04:06:02 File standardization.
5:04:06:03 County voter file export.
5:04:06:04 Duplicate voter registration check.
5:04:06:05 Potential duplicate voter registration check.
5:04:06:06 Voter registration list request form.
5:04:06:07 Charges for information from the statewide voter registration file.

**5:04:06:01. File export format.**

The file format which a county voter registration system must produce for export to the statewide voter registration system is:

**Voter Registration**

| Field Name | Format | Required | Field Description |
|---|---|---|---|
| Transaction Code | A1 | Y | Add (A), Update (U), Delete (D), County Auditor (C), Bypass (B) |
| Voter ID # (created for this system - 2 digit county code followed by 7 digits) | A9 | Y | |
| Voter Status (Active-inactive) | A1 | Y | Active (A), Inactive (I) |
| First Name | A15 | Y | |
| Last Name | A23 | Y | |
| Middle Name | A15 | | |
| Title | A6 | | Ex: Sister, Mr., Mrs, Miss, Ms, Rev, etc. |
| Suffix | A3 | | Jr, Sr, I, II, III, IV, V |
| Address | A40 | Y | |
| City | A25 | Y | |
| State | A2 | | |
| Zip | A10 | | If Zip+4, include hyphen. |
| Mailing Address | A35 | | |
| Mailing City | A20 | | |
| Mailing State | A2 | | |
| Mailing Zip | A10 | | If Zip+4, include hyphen. |
| Party | A3 | Y | Democrat (DEM), Republican (REP), Independent (IND), Libertarian (LIB), Reform (REF), Other (OTH), Constitution (CON). |
| Precinct | A4 | Y | |
| Senate District | A3 | Y | |
| House District | A3 | Y | 1-35, 28A, 28B |
| Commissioner District | A2 | | |
| City/Township | A5 | Y | |
| Ward Code | A3 | | |
| School Code | A4 | Y | 99-9 |
| Special District 1 | A4 | | |
| Special District 2 | A4 | | |
| Special District 3 | A4 | | |
| Special District 4 | A4 | | |
| Special District 5 | A4 | | |
| Telephone number | A12 | | 999-999-9999 |
| Date of Birth | A8 | | YYYYMMDD |
| SSN or License Number | A15 | Y | |
| Original Registration Date | A8 | | YYYYMMDD |
| Registration Changed Date | A8 | | YYYYMMDD |
| Date Last Jury Service | A8 | | YYYYMMDD |

| | | | |
|---|---|---|---|
| Date County System Updated | A8 | | YYYYMMDD |
| State of Driver License Issuance | A2 | Y | |

**Voter Election History Table**

| Field Name | Format | Required | Field Description |
|---|---|---|---|
| Voter ID # (created for this system - 2 digit county code followed by 7 digits) | A9 | Y | |
| Election Date | A8 | Y | YYYYMMDD |
| Election Type | A9 | | General, primary, Municipal, School, Township, Special, and Combined |

Source: 28 SDR 54, effective October 22, 2001; 30 SDR 189, effective June 9, 2004.
General Authority: SDCL 12-4-39(2)
Law Implemented: SDCL 12-4-39(2), 12-4-5.5

**5:04:06:02 File standardization.**

The data transmitted from a county voter registration system to the state voter registration file must be standardized as follows:

(1) Each date must be in the YYYYMMDD date format;
(2) No blank at the beginning of fields is permitted;
(3) County number is the same as the county license plate number;
(4) The first, middle, last name, title, and suffix may not contain any punctuation except for a hyphen (-) and single quote mark(‘). Punctuation not allowed include periods (.), quotation marks (“), ampersand (&), and commas (,). Each name must be in a separate field;
(5) Any seniority term such as Jr and Sr must be placed in the suffix field;
(6) No address field may contain any punctuation;
(7) Each phone number must contain hyphen or hyphens in the normal location;
(8) No social security number and driver license number may contain any hyphens;
(9) A school district must be listed by the official school district number such as "32-2";
(10) The political party field must use a three character code. The valid political party codes are:
(a) DEM - Democrat;
(b) IND - Independent or "no party";
(c) LIB - Libertarian;
(d) OTH - Other parties;
(e) REF - Reform;
(f) REP – Republican; or
(g) CON - Constitution
(11) In the voter history, the allowed election types are general, primary, municipal, school, township, special, and combined. If an election falls into several of these types, deference must be given to general and primary;

(12) The voter registration file must be a total of 333 bytes. The voter history file must be 27 bytes. Each record that does not meet these length requirements may not be processed and must be returned to the county. Each file must be of fixed length and the fields must be left justified;
(13) A transaction code must be included. The codes are A-add, U-update, C-county auditor change, B-bypass and D-delete; and
(14) A "state of issuance" code must be included. These codes are NN-for no number, SN-for a social security number or the last four digits of a social security number, and SD or other appropriate two digit state abbreviation for the state of driver license issuance when a driver license number is provided.

Source: 28 SDR 54, effective October 22, 2001; 30 SDR 189, effective June 9, 2004.
General Authority: SDCL 12-4-39(2)
Law Implemented: SDCL 12-4-39(2), 12-4-5.5

**5:04:06:03 County voter file export.**

If a change is made to a county's voter registration database, the county auditor must export the change to the statewide voter registration file on the same day unless prevented from doing so by a technical problem with the file transport system.

Source: 28 SDR 54, effective October 22, 2001.
General Authority: SDCL 12-4-39(2)
Law Implemented: SDCL 12-4-39(2)

**5:04:06:04 Duplicate voter registration check.**

The Secretary of State shall at least annually conduct a check of the statewide voter registration database to determine if there are duplicate registrations. If the following fields in the registration file match for two or more records, the records are considered duplicates:

(1) First name, last name, and social security/driver's license number;
(2) First name, date of birth, and social security/driver's license number; or
(3) Last name, date of birth, and social security/driver's license number.

The newest duplicate shall be retained as a registered voter. Information on the older duplicates must be sent to the registered voter's county of registration for deletion from the voter registration file.

Source: 28 SDR 54, effective October 22, 2001.
General Authority: SDCL 12-4-39(3)
Law Implemented: SDCL 12-4-39(3)

**5:04:06:05 Potential duplicate voter registration check.**

The Secretary of State shall at least annually conduct a check of the statewide voter registration database to determine if there are potential duplicate registrations. If the following fields in the registration file match two or more records, the records must be considered potential duplicates:

(1) First name, middle initial and date of birth;
(2) First initial, last name, and date of birth;
(3) First name, last name, and date of birth; or

(4) Social security/driver's license number.

The Secretary of State may send a notice to each duplicate person except the newest potential duplicate. The notice shall be treated like a confirmation notice as prescribed in §5:02:03:16 and shall indicate the reason for the notice. For each notice sent, the Secretary of State shall notify the county auditor in the addressee's county of registration.

Source: 28 SDR 54, effective October 22, 2001.
General Authority: SDCL 12-4-39(3)
Law Implemented: SDCL 12-4-39(3)

**5:04:06:06 Voter registration list request form.**

Any person requesting a printed voter registration list or file from the statewide voter registration system must complete a form which contains the following:

(1) Type of report;
(2) Selection criteria for the report;
(3) Name and address of the requestor; and
(4) Signature of the requestor below the statement, "In accordance with SDCL 12-4-41, I understand that the voter registration data obtained from the statewide voter registration database may not be used or sold for any commercial purpose and may not be placed for unrestricted access on the internet."

Source: 28 SDR 54, effective October 22, 2001; 30 SDR 189, effective June 9, 2004.
General Authority: SDCL 12-4-39(4)
Law Implemented: SDCL 12-4-39(4)

**5:04:06:07 Charges for information from the statewide voter registration file.**

The fees for a CD or disc containing a file with voter registration information are as follows:

(1) Statewide is $2,500;
(2) Legislative district is $100;
(3) County or any other district is $50 for up to 10,000 names;
(4) County or any other district is $100 for 10,000 to 25,000 names;
(5) County or any other district is $250 for more than 25,000 names.

The fee for any updated partial file containing only changes made within a year after the purchase of a complete file is $250 for a statewide file and $25 for a legislative district, any other district or county file.

The fees for a paper list with voter registration information are as follows:

(1) Statewide is $5,500;
(2) Legislative district is $200;
(3) County or any other district is $75 for up to 10,000 names;
(4) County or any other district is $200 for 10,000 to 25,000 names; and
(5) County or any other district is $600 for more than 25,000 names.

The fee for any updated partial list containing only changes made within a year after the purchase of a complete list is $550 for a statewide list and $60 for a legislative district, any other district or county list.

Source: 28 SDR 54, effective October 22, 2001.

General Authority: SDCL 12-4-39(5)
Law Implemented: SDCL 12-4-39(5)