

# Spring 2007 Board of Elections Finalized Rules

## 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 Repealed.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 Repealed.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's~~ 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.

**5:02:03:21. Statement by person registering without a ~~driver's~~ 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 ~~driver's~~ license or social security number shall be in the following form:

Statement by Person Registering Without a ~~Driver's~~ Driver License or Social Security Number

I, \_\_\_\_\_ (print complete name), under oath, declare that I do not have a valid South Dakota driver ~~driver's~~ license and that I have not been issued a social security number. Because I do not have a South Dakota driver ~~driver's~~ 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.  
General Authority: SDCL 12-4-5.4.  
Law Implemented: SDCL 12-4-5.4.

**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 ~~swear or 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.

General Authority: SDCL 12-18-40.

Law Implemented: SDCL 12-18-40.

## 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. ~~Supreme Court justice retention ballot.~~ Repealed.

5:02:06:03.02. Deadline for request to be on retention ballot.

5:02:06:04. Special district.

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. Repealed.
- 5:02:06:10.02. Presidential primary'.
- 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.

### 5:02:06:01. General election.

The general election ballot must be white and must be in the following form, as applicable:

#### OFFICIAL GENERAL ELECTION BALLOT

\_\_\_\_\_ County, South Dakota

November \_\_\_\_\_, \_\_\_\_\_

To vote use a cross (X) or check mark (✓) in the square in front of the name (or group).  
DO NOT cast more votes than are allowed in each race.

REPUBLICAN PARTY	DEMOCRATIC PARTY	INDEPENDENT CANDIDATES	
------------------	------------------	------------------------	--

For PRESIDENTIAL ELECTORS, you may vote for one slate or leave it blank

<input type="checkbox"/> -Doe & Roe Electors _____ John Doe _____ Jane Doe _____ John Doe	<input type="checkbox"/> -Doe & Roe Electors- _____ John Doe _____ Jane Doe _____ John Doe	<input type="checkbox"/> -Doe & Roe Electors _____ affiliated with the _____ Party _____ John Doe _____ Jane Doe _____ John Doe	<input type="checkbox"/> -Doe & Roe Electors _____ affiliated with- _____ no Party _____ John Doe _____ Jane Doe _____ John Doe
--	---	--	--

For UNITED STATES SENATOR, you may vote for one or leave it blank

<input type="checkbox"/> -John Doe	<input type="checkbox"/> -John Doe	<input type="checkbox"/> -John Doe _____ affiliated with the _____ Party	<input type="checkbox"/> -John Doe _____ affiliated with the _____ Party
------------------------------------	------------------------------------	--	--

For UNITED STATES REPRESENTATIVE, you may vote for one or leave it blank

<input type="checkbox"/> -Jane Doe	<input type="checkbox"/> -Jane Doe	<input type="checkbox"/> -Jane Doe _____ affiliated with the _____ Party
------------------------------------	------------------------------------	--

For GOVERNOR AND LIEUTENANT GOVERNOR, TO BE ELECTED AS A TEAM, you  
may vote for one or leave it blank

☐ John Doe  
for GOVERNOR  
And  
Jane Doe  
for LIEUTENANT GOVERNOR

☐ John Doe  
for GOVERNOR  
And  
Jane Doe  
for LIEUTENANT GOVERNOR

☐ John Doe  
affiliated with the  
Party  
for GOVERNOR  
and  
Jane Doe  
affiliated with the  
Party  
for LIEUTENANT GOVERNOR

---

For SECRETARY OF STATE, you may vote for one or leave it blank

☐ John Doe

☐ John Doe

☐ John Doe  
affiliated with the  
Party

---

For ATTORNEY GENERAL, you may vote for one or leave it blank

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe  
affiliated with the  
Party

---

For STATE AUDITOR, you may vote for one or leave it blank

☐ John Doe

☐ John Doe

☐ John Doe  
affiliated with the  
Party

---

For STATE TREASURER, you may vote for one or leave it blank

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe  
affiliated with the  
Party

---

For COMMISSIONER OF SCHOOL AND PUBLIC LANDS, you may vote for one or  
leave it blank

☐ John Doe

☐ John Doe

☐ John Doe  
affiliated with the  
Party

---

For PUBLIC UTILITIES COMMISSIONER, you may vote for one or leave it blank

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe  
affiliated with the  
Party

---

For STATE SENATOR, District \_\_, you may vote for one or leave it blank

☐ John Doe

☐ John Doe

☐ John Doe, affiliated  
with the Party

---

For STATE REPRESENTATIVES, District \_\_, you may vote for up to two or leave it  
blank

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe, affiliated  
with the Party

☐ John Doe

☐ John Doe

☐ John Doe, affiliated  
with the \_\_\_\_\_ Party

---

For COUNTY TREASURER, you may vote for one or leave it blank

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe, affiliated  
with the \_\_\_\_\_ Party

---

For COUNTY AUDITOR, you may vote for one or leave it blank

☐ John Doe

☐ John Doe

☐ John Doe, affiliated  
with the \_\_\_\_\_ Party

---

For STATES ATTORNEY, you may vote for one or leave it blank

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe, affiliated  
with the \_\_\_\_\_ Party

---

For SHERIFF, you may vote for one or leave it blank

☐ John Doe

☐ John Doe

☐ John Doe, affiliated  
with the \_\_\_\_\_ Party

---

For REGISTER OF DEEDS, you may vote for one or leave it blank

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe, affiliated  
with the \_\_\_\_\_ Party

---

For CORONER, you may vote for one or leave it blank

☐ John Doe

☐ John Doe

☐ John Doe, affiliated  
with the \_\_\_\_\_ Party

---

For COUNTY COMMISSIONER, District \_\_, you may vote for one or leave it blank

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe, affiliated  
with the \_\_\_\_\_ Party

---

For COUNTY COMMISSIONER AT LARGE, you may vote for up to \_\_\_\_ or leave it blank

☐ John Doe

☐ John Doe

☐ John Doe, affiliated  
with the \_\_\_\_\_ Party

☐ Jane Doe

☐ Jane Doe

☐ Jane Doe, affiliated  
with the \_\_\_\_\_ Party

---

OFFICIAL GENERAL ELECTION BALLOT		(Ballot Stamp)
November ,	County, South Dakota	
<b>INSTRUCTIONS TO THE VOTER:</b> Insert appropriate instructions from ARSD 5:02:06:01.02		
<b>For Presidential Electors, you may vote for <u>one</u> slate or leave it blank</b>	<b>For Secretary of State, you may vote for <u>one</u> or leave it blank</b>	<b>For State Senator, District __, you may vote for <u>one</u> or leave it blank</b>
<input type="radio"/> Doe & Roe Electors    Party Label John Hall	<input type="radio"/> John Doe    Party Label	<input type="radio"/> John Doe    Party Label
Jane Smith Pat Jones	<input type="radio"/> Jane Smith    Party Label	<input type="radio"/> Jane Smith    Party Label
<input type="radio"/> Lee & Jones Electors    Party Label	<input type="radio"/> Pat Jones    Independent	<input type="radio"/> Pat Jones    Independent
Jill Doe John Doe Shannon McGee	<b>For Attorney General, you may vote for <u>one</u> or leave it blank</b> <input type="radio"/> John Doe    Party Label	<b>For State Representatives, District __, you may vote for up to <u>two</u> or leave it blank</b> <input type="radio"/> John Doe    Party Label
<input type="radio"/> Hill & Hall Electors    Independent Bill Smith June Johnson Kim Olson	<input type="radio"/> Jane Smith    Party Label <input type="radio"/> Pat Jones    Independent	<input type="radio"/> Jane Smith    Party Label <input type="radio"/> Pat Jones    Party Label
<b>INSTRUCTIONS TO THE VOTER:</b> Insert appropriate instructions from ARSD 5:02:06:01.02	<b>For State Auditor, you may vote for <u>one</u> or leave it blank</b>	<input type="radio"/> Jill Doe    Party Label
<b>For United States Senator, you may vote for <u>one</u> or leave it blank</b>	<input type="radio"/> John Doe    Party Label	<input type="radio"/> Shannon McGee    Independent
<input type="radio"/> John Doe    Party Label	<input type="radio"/> Jane Smith    Party Label	<input type="radio"/> Bill Smith    Independent
<input type="radio"/> Jane Smith    Party Label	<input type="radio"/> Pat Jones    Independent	<b>For State Representative, District __, you may vote for <u>one</u> or leave it blank</b> <input type="radio"/> John Doe    Party Label
<input type="radio"/> Pat Jones    Independent	<b>For State Treasurer, you may vote for <u>one</u> or leave it blank</b>	<input type="radio"/> Jane Smith    Party Label
<b>For United States Representative, you may vote for <u>one</u> or leave it blank</b>	<input type="radio"/> John Doe    Party Label	<input type="radio"/> Pat Jones    Independent
<input type="radio"/> John Doe    Party Label	<input type="radio"/> Jane Smith    Party Label	<b>For County Treasurer, you may vote for <u>one</u> or leave it blank</b> <input type="radio"/> John Doe    Party Label
<input type="radio"/> Jane Smith    Party Label	<input type="radio"/> Pat Jones    Independent	<input type="radio"/> Jane Smith    Party Label
<input type="radio"/> Pat Jones    Independent		<input type="radio"/> Pat Jones    Independent
<b>For Governor and Lieutenant Governor, to be elected as a team, you may vote for <u>one</u> or leave it blank</b>	<b>For Commissioner of School and Public Lands, you may vote for <u>one</u> or leave it blank</b>	<b>For County Auditor, you may vote for <u>one</u> or leave it blank</b>
<input type="radio"/> John Doe    Party Label for Governor and Jane Doe for Lieutenant Governor	<input type="radio"/> John Doe    Party Label <input type="radio"/> Jane Smith    Party Label <input type="radio"/> Pat Jones    Independent	<input type="radio"/> John Doe    Party Label <input type="radio"/> Jane Smith    Party Label
<input type="radio"/> Pat Jones    Party Label for Governor and Kim Olson for Lieutenant Governor	<b>For Public Utilities Commissioner, you may vote for <u>one</u> or leave it blank</b> <input type="radio"/> John Doe    Party Label <input type="radio"/> Jane Smith    Party Label <input type="radio"/> Pat Jones    Independent	<input type="radio"/> Pat Jones    Independent
<input type="radio"/> Mary Johnson    Independent for Governor and Shannon McGee for Lieutenant Governor		<b>For States Attorney, you may vote for <u>one</u> or leave it blank</b> <input type="radio"/> John Doe    Party Label <input type="radio"/> Jane Smith    Party Label <input type="radio"/> Pat Jones    Independent
<b>Go to top of next column</b>	<b>Go to top of next column</b>	<b>Turn Page</b>

November __, ____	County, South Dakota	
<b>For Sheriff, you may vote for <u>one</u> or leave it blank</b>	<b>NONPOLITICAL BALLOT</b>	<b>INSTRUCTIONS TO THE VOTER: Insert appropriate instructions from ARSD 5:02:06:01.02</b>
<input type="radio"/> John Doe      Party Label	<b>Supreme Court Justice Retention</b>	<b>Constitutional Amendment(s)</b>
	<b>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?</b>	The following amendment(s) to the State Constitution (is/are) submitted to the voters by the (Legislature or by petition). The amendment(s) will not become effective unless approved by majority vote.
<input type="radio"/> Jane Smith      Party Label	Justice John Doe, representing the ____ Supreme Court District	<b>Constitutional Amendment A</b>
<input type="radio"/> Pat Jones      Independent	<input type="radio"/> Yes <input type="radio"/> No	<u>Title:</u>
<b>For Register of Deeds, you may vote for <u>one</u> or leave it blank</b>		<u>Attorney General Explanation:</u>
	Justice John Doe, representing the ____ Supreme Court District	
<input type="radio"/> John Doe      Party Label	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> Yes
<input type="radio"/> Jane Smith      Party Label		<input type="radio"/> No
	<b>Judge of the Circuit Court</b>	<b>Initiated Measure(s)</b>
<input type="radio"/> Pat Jones      Independent		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.
<b>For Coroner, you may vote for <u>one</u> or leave it blank</b>	<b>For ____ Circuit, Position __, you may vote for <u>one</u> or leave it blank</b>	
		<b>Initiated Measure 1</b>
<input type="radio"/> John Doe      Party Label	<input type="radio"/> John Doe	<u>Title:</u>
	<input type="radio"/> Jane Smith	<u>Attorney General Explanation:</u>
<input type="radio"/> Jane Smith      Party Label		
	<b>Water Development District</b>	<input type="radio"/> Yes
<input type="radio"/> Pat Jones      Independent	<b>For ____ District Director, ____ Water Development District, you may vote for <u>one</u> or leave it blank</b>	
<b>For County Commissioner, District __, you may vote for <u>one</u> or leave it blank</b>		<input type="radio"/> No
<input type="radio"/> John Doe      Party Label	<input type="radio"/> John Doe	<b>Referred Law(s)</b>
		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.
<input type="radio"/> Jane Smith      Party Label	<input type="radio"/> Jane Smith	<b>Referred Law 2</b>
<input type="radio"/> Pat Jones      Independent	<b>Heartland Consumers Power District</b>	<u>Title:</u>
	<b>For ____ District Director, you may vote for <u>one</u> or leave it blank</b>	<u>Attorney General Explanation:</u>
<b>For County Commissioner At Large, you may vote for up to __ or leave it blank</b>		
<input type="radio"/> John Doe      Party Label	<input type="radio"/> John Doe	<input type="radio"/> Yes
<input type="radio"/> Jane Smith      Party Label	<input type="radio"/> Jane Smith	<input type="radio"/> No
<input type="radio"/> Pat Jones      Party Label		
<input type="radio"/> Jill Doe      Party Label		
<input type="radio"/> Shannon McGee      Independent		
<input type="radio"/> Kim Olson      Independent		
<b>Go to top of next column</b>	<b>Go to top of next column</b>	<b>Turn Page</b>

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. ~~If two or more candidates for state representative or county commission are to be elected at large, candidates' names on that portion of the ballot may not be placed directly opposite each other, but must be staggered as shown above.~~

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.

General Authority: SDCL 12-1-9(2).

Law Implemented: SDCL 12-16-2.1, 12-16-9, 12-16-10.

### **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 **FILL IN (Bold)** the oval (●) next to the names.
- (2) To vote for a group of presidential delegates and alternates fill in **FILL IN (Bold)** the oval (●) next to the names.
- (3) To vote for a person fill in **FILL IN (Bold)** the oval (●) next to the name.
- (4) To vote on a ballot question fill in **FILL IN (Bold)** the oval (●) next to "yes" or "no".
- (5) Use only a pencil, ~~or pen or marker.~~
- (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: The instruction to "Use only a pencil, pen or marker." Subdivisions 5 and 6 ~~should~~ shall be included in the first instruction box only. For subdivision 5, specify "pencil or pen", ~~Use either "pencil", or "pen" as appropriate for your system. or "marker" which ever is correct for your system.~~ If the ballot has columns, the words "Go to top of next column" ~~should~~ 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" ~~should~~ 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.



General Authority: SDCL 12-1-9(2).

Law Implemented: SDCL 12-16-9.

### **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.

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.**

~~—The retention question for a Supreme Court justice shall be on the general election optical scan ballot and shall be in the following form:~~

~~OFFICIAL NONPOLITICAL SUPREME COURT JUSTICE RETENTION BALLOT~~

~~Shall the justice(s) of the Supreme Court named on this ballot, whose term(s) expire(s) (date) , be retained in office?~~

~~VOTE ON EACH JUSTICE~~

~~\_\_\_\_\_ Justice John Doe, representing the \_\_\_\_\_ ☐ Yes  
\_\_\_\_\_ Supreme Court District ☐ No~~

~~\_\_\_\_\_ Justice John Roe, representing the \_\_\_\_\_ ☐ Yes  
\_\_\_\_\_ Supreme Court District ☐ No~~

Source: 10 SDR 27, effective September 26, 1983; 19 SDR 12, effective August 5, 1992; 32 SDR 225, effective July 3, 2006.

General Authority: SDCL 12-1-9(2).

Law Implemented: SDCL 16-1-2, 16-1-2.2.

### **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.

General Authority: SDCL 12-1-9(2).

Law Implemented: SDCL 9-20-13.

## 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 road or sanitary 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.

#### **5:02:08:00.01. 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; 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 complete date of signing, including month, and day, and year, is not indicated; ~~or~~
- (e) ~~Any information required by the petition form is incomplete or omitted~~ 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.

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.

## **New Rule**

### **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:

General Authority: SDCL 12-1-9(4).

Law Implemented: SDCL 12-6-8, 9-13-7, 9-13-9, 13-7-6.

## **New Rule**

### **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 need to file the petition, the secretary of state shall certify the petition as not filed.

Source:

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 \_\_\_\_\_, ~~19~~ 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 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 \_\_\_\_\_, ~~19~~ 20\_\_\_\_\_.

(Seal)

My Commission Expires \_\_\_\_\_  
Signature of Officer Administering Oath

\_\_\_\_\_  
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.

General Authority: SDCL 12-1-9(7).

Law Implemented: SDCL 12-6-5, 12-6-8.

### 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 affiliated with the \_\_\_\_\_ party for the office of \_\_\_\_\_ at the general election to be held November \_\_\_\_\_, 19 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 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 \_\_\_\_\_, 19 20 \_\_\_\_\_.  
(Seal)

My Commission Expires \_\_\_\_\_  
Signature of Officer Administering Oath

\_\_\_\_\_  
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.

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), ~~that I am registered as a member of the \_\_\_\_\_ Party~~ 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.  
General Authority: SDCL 12-7-1, 12-1-9(7)  
Law Implemented: SDCL 12-7-1, 12-7-7

**5:02:08:07. Form of initiative petition**

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.

The substance of the proposed law is as follows:

Be it enacted by the people of South Dakota.

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

~~(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.  
General Authority: SDCL 12-1-9(7).  
Law Implemented: SDCL 2-1-1, 2-1-7, 2-1-10.

**5:02:08:08. Form of referendum petition**

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 date of its passage and approval.)

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

~~(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.  
General Authority: SDCL 12-1-9(7).  
Law Implemented: SDCL 2-1-3, 2-1-7, 2-1-10.

**5:02:08:09. Form of initiated constitutional amendment petition or initiated petition for repeal of constitutional provision**

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.

(Here identify the section or sections and article or articles proposed to be repealed or amended. State the exact text of the amendment.)

\_\_\_\_\_  
~~The balance of this petition form is as prescribed in § 5:02:08:00.03.~~

(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.  
General Authority: SDCL 12-1-9(7).  
Law Implemented: S.D. Constitution, art XXIII, § 1; SDCL 2-1-2.1.

### **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  
AFFILIATED WITH THE \_\_\_\_\_ PARTY  
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 ~~affiliated with the \_\_\_\_\_ Party~~ for the office of Presidential Electors for \_\_\_\_\_ and \_\_\_\_\_ at the General Election to be held November \_\_\_\_\_ , ~~19~~ 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 \_\_\_\_\_ , ~~19~~ 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.  
General Authority: SDCL 12-1-9.

Law Implemented: SDCL 12-6-5, 12-6-8, 12-7-1, 12-7-7.

#### **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~~ 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 counted during the test. 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 as verification that the test was completed and that an errorless count was received 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~~ 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, ~~the~~ 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.

General Authority: SDCL 12-17B-17(3).

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 ~~National Association of State Election Directors or the~~ Election Assistance Commission. If the state board of elections approves the system, it shall issue a certificate of approval. ~~Any system approved prior to December 15, 1995 may continue to be sold and operated in South Dakota without certification from an independent test authority.~~

Any changes or modifications in an approved electronic voting system may be certified by the state board of elections with or without the demonstration described in this section for initial approval provided that the modified system has been certified as fulfilling the requirements of the Election Assistance Commission voting system standards by an independent test authority accredited by the ~~National Association of State Election Directors or the~~ Election Assistance Commission.

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.

General Authority: SDCL 12-17B-17(1).

Law Implemented: SDCL 12-17B-2.

#### **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 ~~lock and seal the ballot box with a locking device and seal label to secure or cover any open slot in the box and to identify the 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 ~~them~~ 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.

General Authority: SDCL 12-17B-17(4).

Law Implemented: SDCL 12-17B-6, 12-17B-7, 12-17B-9.

Cross-Reference: 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," 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 ~~decides~~ 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".

~~cannot read a vote because of improper markings, the resolution board shall endeavor to determine if a vote as defined by law and administrative rule has been cast. If the resolution board cannot reach a joint conclusion, the board shall follow the procedure for creating a duplicate ballot described in subdivision (3)(a) of this section but not record any vote for the candidate or question in dispute. If the resolution board does not reach a joint conclusion for all of the votes on the ballot, the board shall reject the ballot and mark it as such. If the resolution board reaches a joint conclusion, the board shall follow the procedure for creating a duplicate ballot described in subdivision (3)(a) of this section.~~

Source: 21 SDR 77, effective October 24, 1994; 29 SDR 113, effective January 30, 2003.

General Authority: SDCL 12-17B-17(4).

Law Implemented: SDCL 12-17B-13, 12-17B-14.

## **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 ~~5:02:09:19 to 5:02:09:22, inclusive;~~

(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 ~~attempted vote~~ 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;

(78) The recount board shall count the ballots with the automatic tabulating equipment or by hand;

(89) The recount board shall complete the Certificate of Disputed Ballot as provided in §5:02:019:09;

(910) Any question arising on the recount shall be determined by majority vote of the recount board; and

(4011) 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.

General Authority: SDCL 12-17B-7, 12-17B-17(4).

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

### **5:02:09:13. Envelope for unofficial returns**

The ~~official~~ returns printed from the tabulating or accumulation equipment shall be sealed in a manila envelope clearly labeled "~~Official 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.

General Authority: SDCL 12-1-9(4), 12-17B-17(2).

Law Implemented: SDCL 12-17B-13.

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

A ~~voting~~ mark that touches the oval on an optical scan ballot shall be counted as if it ~~were on or in the oval.~~ a vote; If the ~~voting~~ any mark that does not touch the oval and is not ~~on or in the oval,~~ the vote may not be counted as a vote.

Source: 28 SDR 99, effective January 17, 2002; 32 SDR 109, effective December 26, 2005.

General Authority: SDCL 12-1-9(4).

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

#### **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
- ☐ 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 ~~\$5,000~~ 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.

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.

**5:02:10:05. Official return envelope for ballots used in voting.**

~~Prior to January 1, 2004, the official return envelope for absentee ballots may follow the specifications provided in this section that were effect on November 28, 2001.~~

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;
- (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, "Must be received by the person in charge of the election by Election Day or the ballot will not be counted." are printed below the mail logo;
- (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; and
- (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 \$5,000 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.

\_\_\_\_\_  
Signature of 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.

General Authority: SDCL 12-1-9(8).  
Law Implemented: SDCL 12-19-4, 12-26-7, 22-6-1.

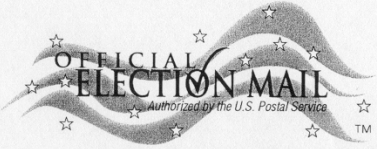

**5:02:10:08. Envelopes for use with voting service and overseas ballots.**

The envelopes used in connection with voting service and overseas ballots must be printed in black ink and must meet the following federal guidelines:

MAX  
Height 6 1/8 inches  
Length 11 1/2 inches

MIN  
Height 3 1/2 inches  
Length 5 1/2 inches  
Use Black Ink

**BALLOT TRANSMISSION ENVELOPE**  
(SAMPLE)

Name and complete address _____ _____ _____ _____			U.S. Postage Paid 39 USC 3406
<b>OFFICIAL ABSENTEE BALLOTING MATERIAL - FIRST CLASS MAIL</b>		<b>PAR AVION</b>	
NO POSTAGE NECESSARY IN THE U.S. MAELS-DMM <b>703.8.0</b>			
TO: _____ _____			

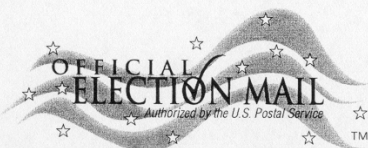
MAX  
Height 6 1/8 inches  
Length 11 1/2 inches

MIN  
Height 3 1/2 inches  
Length 5 1/2 inches  
Use Black Ink

### BALLOT RETURN ENVELOPE

(Sample)

If mailed in non U.S. Postal System - Voter must pay postage

Name and complete address _____ _____ _____ _____	 OFFICIAL ELECTION MAIL <small>Authorized by the U.S. Postal Service</small>	U.S. Postage Paid 39 USC 3406  PAR AVION
OFFICIAL ABSENTEE BALLOTING MATERIAL - FIRST CLASS MAIL		
NO POSTAGE NECESSARY IN THE U.S. MAELS-DMM 703.8.0		

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 \$5,000 10,000 fine), state that I am a registered voter, that my voting residence is \_\_\_\_\_, and that I have voted the enclosed ballot.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
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.  
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.

#### 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 ~~vote~~ was placed on the ballot. The write-in ~~vote~~ may not be counted as a vote but all other valid marks ~~votes for which the voter's intent can be determined~~ shall be counted as votes.

Source: 26 SDR 168, effective June 25, 2000.

General Authority: SDCL 12-1-9(4).

Law Implemented: SDCL ~~12-18-21.1~~ 12-20-21.2.

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

A ~~voting~~ mark that touches the circle or square on a paper ballot shall be counted ~~as if it were on or in the circle or square.~~ as a vote; If the voting any mark that does not touch the circle or square and is not ~~on or in the circle or square,~~ ~~the vote~~ may not be counted as a vote.

Source: 28 SDR 99, effective January 17, 2002.

General Authority: SDCL 12-1-9(4).

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