

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

537R0319

## SENATE LOCAL GOVERNMENT ENGROSSED NO. **SB 13** - 1/15/2010

Introduced by: The Committee on Local Government at the request of the State Board of  
Elections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning petitions and  
2 elections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 2-1-10 be amended to read as follows:

5 2-1-10. Each person, who circulates and secures signatures to a petition to initiate a  
6 constitutional amendment or other measure or to refer legislation to the electors, shall sign a  
7 verification before filing the petition with the officer in whose office it is by law required to be  
8 filed. The verification shall prescribe that the circulator made reasonable inquiry and, to the best  
9 of the circulator's knowledge, each person signing the petition is a qualified voter of the state  
10 in the county indicated on the signature line and that no state statute regarding the circulation  
11 of petitions was knowingly violated. The State Board of Elections shall prescribe the form for  
12 the verification. The verification shall be complete and the affixing of the circulator's signature  
13 shall be witnessed and notarized by a notary public commissioned in South Dakota or other  
14 officer authorized to administer oaths pursuant to § 18-3-1. Any person who falsely swears to



1 the verification provided for in this section is guilty of a Class 1 misdemeanor.

2 Section 2. That § 6-16-5 be amended to read as follows:

3 6-16-5. If the proposed district contains less than one thousand eligible voters as defined in  
4 § 6-16-6, the county auditor shall set a date, time, and location for a meeting to be held within  
5 the district to conduct an election on the question of formation of the special district. The date  
6 may not be more than sixty days after the appropriate board declares that the application for  
7 incorporation is valid. The auditor shall appoint three judges of election, one of whom shall  
8 serve as the superintendent, to conduct the election. The vote upon the question of incorporation  
9 shall be by ballot which conforms to a ballot for a statewide question except that the statement  
10 required to be printed on the ballot shall be prepared by the state's attorney. After the vote is cast  
11 and counted, the judges shall prepare a certification showing the whole number of ballots cast,  
12 together with the number voting for and the number voting against incorporation, and shall  
13 return the certification to the county auditor. If a majority, or if it is a water project district at  
14 least sixty percent, of the votes cast on the question of formation is in favor, an election shall  
15 be conducted by those present at the same meeting to elect the initial board of directors or  
16 trustees.

17 Section 3. That § 6-16-5.2 be amended to read as follows:

18 6-16-5.2. If a majority, or if it is a water project district at least sixty percent, of the votes  
19 cast in an election conducted pursuant to § 6-16-5.1 is in favor on the question of formation of  
20 the special district, an election shall be conducted by the county auditor within sixty days after  
21 the official canvass to elect the initial board of directors or trustees. The election shall be  
22 conducted pursuant to Title 12. The county auditor shall publish a notice of vacancy no later  
23 than fifty days prior to the election. Circulation of nominating petitions may begin upon  
24 completion of the official canvass of the election to form the district. Nominating petitions shall

1 be filed with the county auditor by 5:00 p.m. at least thirty days before the election. The  
2 nominating petitions shall contain signatures of at least twenty-five registered voters in the  
3 district. Absentee ballots shall be made available to the voters no later than twenty days before  
4 the date of election. The election shall be canvassed by the county commission.

5 Section 4. That § 7-18A-11 be amended to read as follows:

6 7-18A-11. The right to propose an ordinance or resolution shall be exercised by filing with  
7 the auditor a petition in proper form containing the proposed ordinance or resolution, signed by  
8 the required number of qualified voters of the county. The signer or circulator of the petition  
9 shall add the signer's place of residence and the ~~date~~ month and day of signing. The signer's post  
10 office box number may be given in lieu of a street address if the signer lives within a  
11 municipality of the second or third class. ~~A date may be written in full or may be written using~~  
12 ~~standard abbreviations, including numerals.~~

13 Section 5. That § 9-13-14.1 be amended to read as follows:

14 9-13-14.1. If a vacancy exists on a municipal governing body, the remaining members shall  
15 appoint a replacement to serve until the next annual municipal election, or the vacancy may be  
16 filled by special election for the remainder of the unexpired term as provided in § 9-13-14.2. In  
17 the aldermanic form of municipal government, the appointment ~~must~~ shall be a person from the  
18 same ward of the ~~first or second class~~ municipality. If electing a person to fill the remainder of  
19 the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the  
20 publication required by § 9-13-6.

21 Section 6. That § 9-13-14.2 be amended to read as follows:

22 9-13-14.2. The governing body of any municipality may, by ordinance enacted prior to the  
23 vacancy, require that any vacancy on the governing body or in the office of the mayor is to be  
24 filled by a special election called for that purpose to be conducted as provided in § 9-13-14 and

1 this section. No such special election may be held less than ninety days before the annual  
2 municipal election. The finance officer of the municipality shall publish a notice in the official  
3 newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by  
4 special election, the date of the election, and the time and place where nominating petitions may  
5 be filed for the office. The notice shall be published once each week for two consecutive weeks  
6 beginning at least sixty days before the date of the special election. Nominating petitions for the  
7 vacancy shall be prepared and filed as provided in § 9-13-7, may not be circulated more than  
8 sixty days before the date of the special election, and shall be filed at least thirty days before the  
9 date of the special election. A notice of the special election shall be published as provided in  
10 §§ 9-13-13 and 9-13-14.

11 Section 7. That § 9-13-25 be amended to read as follows:

12 9-13-25. In any municipality, the person having the highest number of votes for any office  
13 shall be declared elected. However, the governing board of any municipality may, on or before  
14 the first of October in the year preceding, approve an ordinance ~~prescribing the~~ requiring a  
15 secondary election procedures as found in to be conducted pursuant to § 9-13-27.1 and section  
16 8 of this Act.

17 Section 8. That chapter 9-13 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 If a municipality has passed an ordinance requiring a secondary election and no candidate  
20 in a race involving three or more candidates receives a majority of the votes cast in the race, a  
21 secondary election shall be held three weeks from the date of the first election. At the secondary  
22 election, the only persons voted for shall be the two candidates receiving the highest number of  
23 votes at the first election. However, if there is a tie for second place in the first election and  
24 there is no tie for first place, all tying second place candidates shall be placed along with the first

1 place candidate on the ballot for the secondary election. The secondary election shall be held  
2 at the same polling places and shall be conducted, returned, and canvassed in the same manner  
3 as the first election. The result shall be declared and entered in the minutes of the municipality  
4 in the same manner as the first election. The person receiving the highest number of votes at the  
5 secondary election is elected.

6 Section 9. That § 12-1-3 be amended by adding thereto a NEW SUBDIVISION to read as  
7 follows:

8 "Qualified voter," a person on the active voter registration list;

9 Section 10. That § 12-4-36 be amended to read as follows:

10 12-4-36. There is a rebuttable presumption that the signer of a petition filed pursuant to  
11 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  
12 name fails to appear on the active voter registration list of the county stated on the petition as  
13 the signer's county of registration on the date the petition was signed. This rebuttable  
14 presumption may only be overcome by clear and convincing evidence presented by the petition  
15 sponsor, circulator, or candidate that the signer was on the active voter registration list of the  
16 county stated on the petition on the date the petition was signed.

17 Section 11. That § 12-4-37 be amended to read as follows:

18 12-4-37. The secretary of state shall establish a computerized system for maintaining and  
19 utilizing the voter registration file and transmitting voter registration information from each  
20 county auditor to the Office of the Secretary of State. ~~Each county auditor shall furnish the~~  
21 ~~current master registration file of voters as provided in § 12-4-9 in computer format to the~~  
22 ~~secretary of state by January 1, 2002.~~ Each county auditor shall transmit any changes thereafter  
23 to the master registration file or the absentee voter log to the secretary of state on a daily basis.

24 Section 12. That § 12-6-51.1 be amended to read as follows:

1 12-6-51.1. If no candidate for United States Senate, United States House of Representatives,  
2 or Governor in a race involving three or more candidates receives thirty-five percent of the votes  
3 of the candidate's party, a secondary election shall be held three weeks from the date of the first  
4 primary election. At the secondary election the only persons voted for shall be the two  
5 candidates receiving the highest number of votes at the first election. However, if there is a tie  
6 for second place in the first primary election and there is no tie for first place, all tying second  
7 place candidates shall be placed along with the first place candidate on the ballot for the  
8 secondary election. The secondary election shall be held at the same polling places, be  
9 conducted, returned, and canvassed and the results declared in the same manner as the first  
10 election. However, if the secondary election does not have a federal race, the electronic ballot  
11 marking system is not required and hand-counted ballots may be used. The person receiving the  
12 highest number of votes at the secondary election is nominated as the candidate for the party.

13 Section 13. That § 12-14-1.1 be amended to read as follows:

14 12-14-1.1. ~~It shall be the duty of officials~~ The official in charge of ~~a local elections to~~  
15 election shall notify the county auditor at least ~~thirty~~ forty-five days preceding ~~their a local~~  
16 ~~elections~~ election, of the precinct, ward, representation area, or external boundary changes if any  
17 have been made.

18 Section 14. That § 12-16-1 be amended to read as follows:

19 12-16-1. The county auditor shall provide printed ballots for ~~every~~ each election in which  
20 the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a  
21 primary election shall contain the name of ~~every~~ each candidate who has filed for nomination  
22 and is approved. The printed ballots for the election of officers shall contain the name of ~~every~~  
23 each candidate whose nomination has been certified or filed with the county auditor in the  
24 manner provided by law unless ~~they are~~ the candidate is deemed elected by having no

1 opposition. The names of the candidates shall appear on the ballot exactly as listed in the  
2 declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed  
3 on paper of a different color from the official ballot but in the same form. The sample ballots  
4 and official ballots shall be printed and in the possession of the county auditor not later than ~~six~~  
5 ~~weeks~~ forty-five days prior to a primary or general election. The county auditor shall also  
6 prepare the necessary ballots if any question is required to be submitted to the voters of the  
7 county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to  
8 12-16-11, inclusive.

9 Section 15. That § 12-19-2 be amended to read as follows:

10 12-19-2. An absentee voter desiring to vote by mail may apply to the person in charge of the  
11 election for an absentee ballot. The application or request shall be made in writing and be signed  
12 by the applicant and shall state the applicant's voter registration address. The application or  
13 request shall contain an oath verifying the validity of the information contained in the  
14 application or request. The oath shall be administered by a notary public or other officer  
15 authorized by statute to administer an oath. If the application or request does not contain an  
16 oath, the application or request shall be accompanied by a copy of the voter's identification card  
17 as required by § 12-18-6.1. The copy of the voter's identification card shall be maintained by the  
18 person in charge of the election. However, the voter's identification card is not available for  
19 public inspection. The application or request may be used to obtain an absentee ballot for all  
20 elections in that calendar year conducted by the jurisdiction receiving the application or request  
21 if so indicated. ~~If the application or request is from a voter identified as being covered by the~~  
22 ~~Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1,~~  
23 ~~2006, an absentee ballot shall be provided to the voter for each federal election through the next~~  
24 ~~two general elections.~~ The ballot shall be sent to the voter's residence, as shown in the voter

1 registration file or any temporary residence address designated in writing by the voter, at the  
2 time of applying for the absentee ballot. If the application or request is for a primary, general,  
3 or other statewide election from a voter identified as being covered by the Uniformed and  
4 Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2010, the voter  
5 may designate on the application for the ballot to be sent electronically. The person in charge  
6 of the election shall stamp the application with the date it was received. The person in charge  
7 of the election shall preserve a record of the name, mailing address, and voting precinct of each  
8 applicant and, except as provided by § 12-19-45, deliver a copy of the record to the  
9 superintendent of the election board of the home precinct of the applicant.

10 Section 16. That § 12-19-10 be amended to read as follows:

11 12-19-10. Upon receipt of the sealed return envelope containing the voted ballots, the person  
12 in charge of the election shall keep it in a safe place without opening the envelope or breaking  
13 the seal thereof and shall, except as provided by § 12-19-42, deliver it to the precinct  
14 superintendent of election of the voter's home precinct. The person in charge of the election  
15 shall have the absentee ballots delivered with the election supplies, or if received later, then  
16 prior to the close of the polls. If the election board is not otherwise engaged in official duties,  
17 or if there are absentee ballots not processed when the polls close, immediately thereafter, the  
18 board shall carefully compare the statement on the reverse side of the official return envelope  
19 with the written application received from the officer in charge of the election without opening  
20 or breaking the seal of the return envelope. If the ballot is contained in a combined absentee  
21 ballot application/return envelope, the comparison of the statement and the application shall be  
22 omitted. The board shall enter the voter's name on the election pollbook and mark the  
23 registration list if:

24 (1) The ballots received were voted by the voter whose name appears on the statement;



1 (2) The voter is registered in such precinct and has not previously voted in that precinct  
2 at the election; and

3 (3) The written application and statement were both signed by the voter.

4 The board shall then open the envelope without opening, unfolding or examining the ballots  
5 the envelope may contain, stamp the ballots with the official stamp, and deposit the ballots with  
6 the other ballots cast at the election. If the board determines that an absentee ballot envelope  
7 cannot be opened because the envelope does not meet the requirements for opening, the reason  
8 shall be written on the envelope, signed by a member of the board, and the envelope placed in  
9 a larger envelope for unopened absentee ballots. No person may, prior to the counting of the  
10 votes, open, unfold or examine any ballot, or make any communication to any person  
11 concerning the markings or contents of the ballot. A violation of the preceding sentence is a  
12 Class 2 misdemeanor.

13 Section 17. That § 12-19-12 be amended to read as follows:

14 12-19-12. If an absentee ballot is delivered to a polling place after the polls are closed, the  
15 absentee ballot may not be counted or opened, ~~but a member of the precinct election board shall~~  
16 ~~immediately endorse on the envelope the following: Received after closing of polls, and sign~~  
17 ~~the person's signature thereto and return the absentee ballot with the other ballots to the officer~~  
18 ~~in charge of the conduct of the election.~~

19 Section 18. That § 12-19-14 be amended to read as follows:

20 12-19-14. Any voter who, having procured an official ballot or ballots or Uniformed and  
21 Overseas Citizens Absentee Voting Act (UOCAVA) ballot link as provided in §§ 12-19-1 to  
22 12-19-12, inclusive, intentionally disposes ~~them~~ of a ballot in any manner other than as provided  
23 in ~~said~~ such sections or provides the UOCAVA ballot link to any other person is guilty of a  
24 Class 2 misdemeanor. The UOCAVA ballot link is the internet URL for accessing an

1 electronically provided absentee ballot.

2 Section 19. That § 12-19-47 be amended to read as follows:

3 12-19-47. The Absentee Ballot Counting Board, during the time prescribed in § 12-19-46,  
4 shall carefully compare the statement on the reverse side of the official return envelope with the  
5 ~~written application received from the officer in charge of the election without opening or~~  
6 ~~breaking the seal of the return envelope. If the ballot is contained in a combined absentee ballot~~  
7 ~~application/return envelope, the comparison of the statement and the application shall be~~  
8 ~~omitted. If the board is satisfied that the ballots received were voted by the voter whose name~~  
9 ~~appears on the statement and that the voter is registered in such precinct and has not previously~~  
10 ~~voted in that precinct at the election, the board shall enter the voter's name on the election~~  
11 ~~pollbook. After opening the envelope without opening, unfolding, or examining the ballots~~  
12 ~~contained in the envelope, the board shall affix to the ballots the official stamp and deposit the~~  
13 ~~ballots in the proper ballot box and count the ballots in the manner prescribed by the State Board~~  
14 ~~of Elections. No person, prior to the counting of the votes, may open, unfold, or examine any~~  
15 ~~ballot, or make any communication to any person concerning the markings or contents of the~~  
16 ~~ballot. A violation of the preceding sentence is a Class 2 misdemeanor process each absentee~~  
17 ~~ballot as required by § 12-19-10.~~

18 Section 20. That § 12-19-48 be amended to read as follows:

19 12-19-48. If an absentee ballot is delivered to an absentee ballot counting board after the  
20 polls are closed the absentee ballot may not be counted or opened, ~~but a member of the absentee~~  
21 ~~ballot counting board shall immediately endorse on the envelope the following: Received after~~  
22 ~~closing of polls, and sign the person's name on the envelope and return the absentee ballot with~~  
23 ~~the other ballots to the officer in charge of the election.~~

24 Section 21. That § 12-20-2.1 be amended to read as follows:

1 12-20-2.1. If the ballot box ~~for any precinct~~ is opened ~~prior to~~ for ballot counting at the  
2 precinct, each provisional ballot envelope and each unopened absentee ballot shall be removed,  
3 placed, and sealed in the provisional or unopened absentee ballot return envelope and returned  
4 ~~unopened~~ to the person in charge of the election with the other election supplies.

5 Section 22. That § 12-20-7 be amended to read as follows:

6 12-20-7. Any ballot or part of a ballot from which it is impossible to determine the voter's  
7 choice by using standards defined by the State Board of Elections shall be void and may not be  
8 counted. ~~If the voter's marks on a ballot are sufficiently plain to determine the voter's intention~~  
9 ~~it is the duty of the precinct deputies to count such vote.~~ The State Board of Elections shall  
10 promulgate rules, pursuant to chapter 1-26, defining standards for determining voter intent.

11 Section 23. That § 12-21-24 be amended to read as follows:

12 12-21-24. ~~It shall be the duty of any person or official having custody of ballot boxes~~  
13 ~~containing the ballots to be recounted to produce the same before such board for the purposes~~  
14 ~~of such recount upon notice so to do from the county auditor~~ The county auditor shall provide  
15 the pollbooks, automatic tabulating system election night print outs, sealed ballot boxes, any  
16 provisional ballots which were determined countable pursuant to § 12-20-13.2, any uncounted  
17 provisional ballots, and any unopened absentee ballot envelopes to the recount board. The  
18 recount board is authorized to make a determination whether any provisional ballots or absentee  
19 ballots which were determined not to be countable, shall be counted, and those votes shall be  
20 added to the recount tally.

21 Section 24. That § 12-22-2 be amended to read as follows:

22 12-22-2. ~~Such~~ A contest may be instituted by any candidate for a public office, other than  
23 a candidate for ~~United States Senator, Representative in Congress, member of the Legislature;~~  
24 ~~or delegate to, or representative in any other body, convention, committee, or tribunal, which~~

1 ~~has the final right to determine the qualifications of its members. Legislative contests. A~~  
2 legislative contest shall be instituted as provided in § 12-22-26.

3 Section 25. That § 13-7-6 be amended to read as follows:

4 13-7-6. No candidate for elective school board membership may be nominated unless such  
5 person is a resident voter of the school district and unless a nominating petition has been filed  
6 on such person's behalf with the business manager of the school district. The nominating  
7 petition shall be filed no later than five p.m. on the Friday thirty-nine days before the date of the  
8 election. ~~However, if the nominating petition is from a candidate for a vacancy on a new school~~  
9 ~~board within a newly created school district entity pursuant to § 13-6-62, the nominating petition~~  
10 ~~shall be filed no later than thirty days prior to the date of the election.~~ The petition is considered  
11 filed if it is mailed by registered mail by five p.m. on the Friday thirty-nine days before the  
12 election. A formal declaration of a candidate shall be signed by the candidate before the  
13 circulation of the petition. The petition shall be signed by not less than twenty voters of the  
14 school district or if the school district is divided into school board representation areas, the  
15 petition shall be signed by not less than twenty voters who reside within the school board  
16 representation area. No petition may be circulated until ten weeks prior to the election. There  
17 shall be added by either the signer or the circulator the signer's place of residence and date of  
18 signing. The petition shall be verified under oath by the person circulating it. The filing of the  
19 nominating petition shall constitute nomination and will entitle the candidate to have the  
20 candidate's name placed on the ballot for the term the candidate specifies on the petition only  
21 upon verification signed by the business manager that the nominating petition contains the  
22 minimum number of signatures and that the candidate is a resident voter.

23 Section 26. That chapter 13-7 be amended by adding thereto a NEW SECTION to read as  
24 follows:

1        If the nominating petition is from a candidate for a vacancy on a new school board within  
2 a newly created school district entity pursuant to § 13-6-62, the nominating petition shall be  
3 circulated no more than sixty days prior to the date of the election and filed no later than thirty  
4 days prior to the date of the election.

5        Section 27. That § 31-12A-15 be amended to read as follows:

6        31-12A-15. In each road district an annual election of officers shall be held on the first  
7 Tuesday in May at a place in the district as the board of trustees shall designate. ~~The~~ Unless  
8 otherwise specified, the election shall be conducted according to chapter 8-3, at a meeting of the  
9 registered voters who reside in the road district.

10       Section 28. That § 34-47-2 be amended to read as follows:

11       34-47-2. If the voters of both the rural fire protection district and ambulance district approve  
12 a consolidation pursuant to § 34-47-1, the districts shall be consolidated into an emergency  
13 services district on the following January first. After the voters of each district approve the  
14 consolidation and before the consolidation takes effect, the voters of both districts shall meet  
15 together and elect a five-member board of emergency services. Board members shall serve until  
16 their successors are elected and qualified. Three members of the first board shall serve two-year  
17 terms and two members shall serve one-year terms, to be determined by lot at the first board  
18 meeting. Subsequent members of the board shall be elected by the voters at the annual meeting  
19 to serve two-year terms. Unless otherwise specified, an emergency services district board  
20 member election shall be conducted pursuant to chapter 8-3. At its first meeting each year the  
21 board shall elect a president, vice president, and secretary-treasurer.