2026 South Dakota Legislature

Senate Bill 171

AMENDMENT 171A
FOR THE INTRODUCED BILL

1 **An Act to amend provisions pertaining to the processing of absentee ballots and to**
2 **declare an emergency.**

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

4 **Section 1. That § 12-19-10 be AMENDED:**

5 **12-19-10.** Upon receipt of the sealed return envelope containing the voted ballots,
6 the person in charge of the election or their designee shall mark the date of receipt on the
7 envelope. The person in charge of the election shall keep the absentee ballot in a safe
8 place without opening the envelope or breaking the seal thereof, and shall, except as
9 provided by § 12-19-42, deliver it to the precinct superintendent of election of the voter's
10 home precinct, or to the absentee ballot counting board as provided in § 12-19-42. The
11 person in charge of the election shall have the absentee ballots delivered with the election
12 supplies, or if received later, then prior to the close of the polls.
13 If the person in charge of the election creates an absentee ballot precinct, pursuant
14 to § 12-19-37, the person in charge of the election must deliver to the superintendent of
15 each precinct, the list containing the names of each voter who voted by absentee ballot
16 along with the election supplies. On election day, the person in charge of the election shall
17 forward to a precinct superintendent any updates to the list of voters who voted by
18 absentee ballot upon receipt of an absentee ballot.
19 If the precinct election board is not otherwise engaged in official duties, or if there
20 are absentee ballots not processed when the polls close, immediately thereafter, the board
21 must carefully compare the statement on the reverse side of the official return envelope
22 with the written application received from the officer in charge of the election without
23 opening or breaking the seal of the return envelope. If The board shall omit the comparison
24 of the statement and the application if the ballot is contained in a combined absentee
25 ballot application/return application form and return envelope, the comparison of the
26 statement and the application must be omitted.

1 The precinct election board or the precinct counting board shall enter the voter's
2 name on in the election pollbook and mark the registration list if whether:
3 (1) The ballot received was voted by the voter whose name appears on the statement;
4 (2) The voter is registered in the precinct and has not previously voted in that precinct
5 at the election; and
6 (3) The written application and statement were both signed by the voter.
7 The board shall then open the envelope without opening, unfolding, or examining
8 the ballots the envelope may contain,; stamp the ballots with the official stamp,; and
9 deposit the ballots with the other ballots cast at the election. If the board determines that
10 an absentee ballot envelope cannot be opened because the envelope does not meet the
11 requirements for opening, the reason for not opening the envelope must be written on the
12 envelope, signed accompanied by the signature of a member of the board, and the
13 envelope must be placed in a larger envelope for unopened absentee ballots.
14 It is a Class 2 misdemeanor for a person an individual, prior to the counting of the
15 votes, to open, unfold, or examine any ballot, or make any communication to any person
16 other individual concerning the markings or contents of the ballot, or to create any record
17 associating an individual voter with a ballot.

18 **Section 2. That § 12-19-37 be AMENDED:**

19 **12-19-37.** Any county may create a special precinct to be known as an absentee
20 ballot precinct. If the county creates an absentee ballot precinct, all absentee ballots cast
21 at any election shall be counted in such precinct. However, if a paper ballot precinct has
22 ten or fewer absentee ballots cast at the time the polls open on election day, the absentee
23 ballots in that precinct shall be counted at the polling place.
24 The person in charge of the election may create an absentee ballot precinct. Except
25 as otherwise provided by this section, if the person in charge of the election creates an
26 absentee ballot precinct, all absentee ballots cast at the election must be forwarded to the
27 absentee ballot precinct for counting. If ten or fewer voters in a precinct vote by absentee
28 ballot, the person in charge of the election must forward the absentee ballots to the
29 precinct for counting.
30 If the person in charge of the election creates an absentee ballot precinct, the
31 person in charge of the election shall create a pollbook using the data provided in the
32 electronic voter registration system, listing the name of each voter who voted by absentee
33 ballot in the jurisdiction and the type of ballot the voter cast.

1   The election board of the absentee ballot precinct is the absentee ballot counting

2   board. There may be only one absentee ballot counting board at any time in a county.

3   **Section 3. That § 12-19-41 be AMENDED:**

4   **12-19-41.** ~~Except as otherwise provided in §§ 12-19-37 to 12-19-52, inclusive,~~

5   ~~the absentee ballot counting board's powers and duties shall be the same as provided in~~

6   ~~chapters 12-19 and 12-20 for precinct election officials in regular precinct polling places,~~

7   ~~except that the board shall receive and count all absentee ballots for all precincts in the~~

8   ~~county upon receipt thereof from the person in charge of the election.~~<u>Except as otherwise</u>

9   <u>specified in §§ 12-19-37 to 12-19-52, inclusive, the powers and duties of an absentee</u>

10 <u>ballot counting board are the same as those of precinct election officials in a regular</u>

11 <u>precinct polling place.</u>

12   <u>An absentee counting board shall:</u>

13 <u>(1)   Receive, from the person in charge of the election, all absentee ballots for all</u>

14   <u>precincts in the jurisdiction of the person in charge of the election; and</u>

15 <u>(2)   Process and count each absentee ballot received from the person in charge of the</u>

16   <u>election.</u>

17 **Section 4. That § 12-19-43 be AMENDED:**

18   **12-19-43.** ~~The county auditor shall direct the board to meet on election day prior~~

19 ~~to the closing of the polls for the sole purpose of reviewing the absentee voters' affidavits~~

20 ~~appearing on the sealed ballot envelopes, if in the auditor's judgment this procedure shall~~

21 ~~be necessary due to the number of absentee ballots received. The absentee ballots shall~~

22 ~~be opened, stamped, and placed in the ballot box or processed by an automatic tabulating~~

23 ~~machine, but under no circumstances shall the ballots be manually counted nor~~<u>If in the</u>

24 <u>judgment of the person in charge of the election it is necessary to convene the absentee</u>

25 <u>counting board prior to the closing of the polls on election day, the person in charge of</u>

26 <u>the election may direct the board to meet during regular business hours on the day before</u>

27 <u>the election and on election day prior to the closing of the polls for the purpose of</u>

28 <u>processing absentee ballots, pursuant to § 12-19-10.</u> <u>If the person in charge of the</u>

29 <u>election convenes the absentee counting board on the day before the election, the board</u>

30 <u>may only process the absentee ballots, as provided in § 12-19-10, and may not manually</u>

31 <u>count any ballots or use the automatic tabulating equipment to count the ballots.</u>

32   <u>The absentee ballots may be counted by the automatic tabulating equipment on</u>

33 <u>election day, prior to the closing of the polls, provided that</u> any vote totals<u> are not</u> printed

1   or displayed by any tabulating machine prior to the closing of the polls. The absentee
2   ballot counting board may not manually count the absentee ballots prior to the closing of
3   the polls.

4   If ballots are processed by an automatic tabulating machine prior to the closing of
5   the polls, the resolution board shall be present and notification of such processing shall be
6   provided to each county party chairperson at least ten days before the election.

7   **Section 5. That § 12-19-44 be AMENDED:**

8   **12-19-44.** The process of sorting, validating, processing, and counting absentee
9   ballots must be open to poll watchers for the purpose of observing the process.

10   A poll watcher shall keep a reasonable distance from ballots and identification
11 information to protect the privacy of absentee voters. No record associating an individual
12 voter with a ballot may be created.

13   A violation of this section is a Class 2 misdemeanor.

14 **Section 6. That § 12-19-45 be AMENDED:**

15   **12-19-45.** The person in charge of the election shall preserve a record of the
16 name, post office address, and voting precinct of each applicant for absentee ballots an
17 absentee ballot and shall personally deliver the same to the Absentee Ballot Counting
18 Board record to the absentee ballot counting board. The person in charge of the election
19 shall keep a record of the name of the authorized messenger requesting an absentee ballot
20 to be delivered to another voter.

21 **Section 7. That § 12-19-46 be AMENDED:**

22   **12-19-46.** The Absentee Ballot Counting Board shall commence counting the
23 absentee voters' ballots immediately upon close of the polls at a central place designated
24 by the county auditor.

25   If the absentee ballot counting board did not begin to process or tabulate the
26 absentee ballots on election day prior to the closing of the polls, pursuant to § 12-19-43,
27 the board must immediately, upon the close of the polls, commence:

28 (1)   Processing each absentee ballot, pursuant to § 12-19-10; and

29 (2)   Counting the absentee ballots.

30 **Section 8. That § 12-19-47 be REPEALED.**

1   ~~The absentee ballot counting board, during the time prescribed in § 12-19-46, shall~~
2   ~~process each absentee ballot as required by § 12-19-10.~~

3   **Section 9.** <u>Whereas, this Act is necessary for the immediate preservation of the public peace,</u>
4   <u>health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force</u>
5   <u>and effect from and after its passage and approval.</u>