

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

400W0364

SENATE ENGROSSED NO. **SB 69** - 02/04/2015

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

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

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

4 Section 1. That § 12-6-4 be amended to read as follows:

5 12-6-4. Except as provided by § 12-5-4 and as may be otherwise provided in chapter 12-9,
6 no candidate for any office to be filled, or nomination to be made, at the primary election, other
7 than a presidential election, may have that person's name printed upon the official primary
8 election ballot of that person's party, unless a the original petition has been ~~filed~~ received in the
9 office of the person in charge of that election on that person's behalf not prior to ~~January~~
10 December first of the year preceding the election, and not later than the last Tuesday of ~~March~~
11 February at five p.m. prior to the date of the primary election. ~~If the petition is mailed by~~
12 ~~registered mail by the last Tuesday of March at five p.m. prior to the primary election, the~~
13 ~~petition shall be considered filed.~~ A nominating petition for national convention delegates and
14 alternates as provided in § 12-5-3.11 shall be filed in accordance with the provisions of this
15 section. Nominating petitions for all party and public offices except legislative and judicial



1 offices shall be ~~filed~~ received in the office of the county auditor of the county in which the
2 person is a candidate. Nominating petitions for legislative and judicial office whether elected
3 in one or more counties, and all other party and public offices to be voted on in more than one
4 county shall be ~~filed~~ received in the Office of the Secretary of State.

5 Section 2. That § 46A-3B-4 be amended to read as follows:

6 46A-3B-4. A director candidate may be nominated by a petition signed by at least twenty-
7 five registered voters in the director area to be represented by the candidate. Nominating
8 petitions shall be made available at the water development district office, the secretary of state's
9 office, and the respective county auditors' offices on forms prescribed by the state election board
10 and ~~filed with the secretary of state~~ received in the Office of the Secretary of State not prior to
11 eight a.m., ~~January~~ December first of the year preceding the election, and not later than five
12 p.m., the last Tuesday of ~~March~~ February prior to the date of the primary election. ~~If a petition~~
13 ~~is mailed to the secretary of state's office by registered mail by five p.m., the last Tuesday of~~
14 ~~March prior to the primary election, it is considered filed.~~ For the initial election, director
15 nominating petitions shall be made available by the Department of Environment and Natural
16 Resources and shall be ~~filed with~~ received by the department not later than five p.m., the first
17 Tuesday of August before the general election or in the case of a special election ~~under~~ pursuant
18 to § 46A-3B-1, not later than thirty days before the date set for the special election.

19 Section 3. That § 12-11-3 be amended to read as follows:

20 12-11-3. Each party nomination and independent petition shall be ~~filed with the secretary~~
21 ~~of state~~ received in the Office of the Secretary of State not less than ~~forty-five~~ sixty-five days
22 preceding any election ~~which~~ that is not combined with a primary or general election. If the
23 election is conducted with a primary election, each party nomination and independent petition
24 shall be ~~filed~~ received by the last Tuesday in ~~March~~ February. Each nomination shall be certified

1 in a like manner as any other nomination for the purpose of a general election. The election shall
2 be conducted, canvassed, and the results certified as in a general election. If the election is
3 conducted with a general election, each party nomination and independent petition shall be ~~filed~~
4 received by the second Tuesday in August.

5 Section 4. That § 12-6-4.1 be amended to read as follows:

6 12-6-4.1. No petition or certificate of nomination ~~covered by~~ subject to the provisions of this
7 chapter may be circulated prior to the first day of ~~January~~ December of the year ~~in which the~~
8 ~~election will be held~~ preceding the election.

9 Section 5. That § 12-6-7 be amended to read as follows:

10 12-6-7. A nominating petition may be composed of several sheets, which shall have
11 identical headings printed at the head ~~thereof.~~ of each sheet. If the candidate's political party
12 was recognized pursuant to § 12-5-1 at the last general election, the petition for party office or
13 political public office shall be signed by not less than one percent of the voters ~~who cast their~~
14 ~~vote for that party's gubernatorial candidate at the last gubernatorial election~~ registered for the
15 candidate's political party at the last general election in the county, part of the county, district,
16 or state electing a candidate to fill the office. If the candidate's political party has been
17 recognized pursuant to § 12-5-1 since the last general election, the petition shall be signed by
18 not less than one percent of the voters having no party affiliation at the last general election
19 including any registered voters of the new political party, in the county, part of the county,
20 district, or state electing a candidate to fill the office.

21 Section 6. That § 12-6-7.1 be amended to read as follows:

22 12-6-7.1. Notwithstanding the provisions of § 12-6-7, if the candidate's political party was
23 recognized pursuant to § 12-5-1 at the last general election, a nominating petition for a candidate
24 for office in the State Legislature, county political public office, and county party office shall

1 be signed by not less than fifty voters or not less than one percent of the voters ~~who cast their~~
2 ~~vote for the party's gubernatorial candidate~~ registered for the candidate's political party at the
3 last general election, whichever is less. If the candidate's political party has been recognized
4 pursuant to § 12-5-1 since the last general election, the petition shall be signed by not less than
5 fifty voters or not less than one percent of the number of voters having no party affiliation at the
6 last general election including any registered voters of the new political party, whichever is less.
7 The petition shall clearly designate the senatorial or representative district for which ~~said~~
8 ~~individual~~ the person is a candidate.

9 Section 7. That § 12-6-8 be amended to read as follows:

10 12-6-8. No person may sign the nominating petition of a candidate before ~~January first in~~
11 ~~the year in which the election is to be held~~ December first of the year preceding the election, nor
12 for whom the person is not entitled to vote, nor for a political candidate of a party of which the
13 person is not a member, nor of more than the number of candidates required to be nominated
14 for the same office. There shall be added by either the signer or the circulator, the signer's place
15 of residence, and the date of signing. The signer's post office box number may be given in lieu
16 of a street address if the signer lives within a municipality of the second or third class. A formal
17 declaration of the candidate shall be signed by the circulator prior to the circulation of petitions.
18 The signed declaration of the candidate, or a facsimile thereof, may accompany and be a part
19 of the petition. The original signed declaration shall accompany the group of petitions upon
20 ~~filing~~ being received by the office of the person in charge of that election. The petition shall be
21 verified under oath by the persons circulating the petition. The verification by the person
22 circulating the petition may not be notarized by the candidate whom the petition is nominating.
23 The provisions of this section ~~may not~~ prohibit a person registered with party affiliation from
24 signing ~~either~~ a petition nominating for an independent or a nonpolitical candidate for office ~~if~~

1 ~~the person has not previously signed a petition for that office to be filled.~~

2 Section 8. That § 12-7-1 be amended to read as follows:

3 12-7-1. Any candidate for nonjudicial public office, except as provided in § 12-7-7, who is
4 not nominated by a primary election may be nominated by filing with the secretary of state or
5 county auditor ~~as prescribed by~~ pursuant to § 12-6-4, not prior to ~~January~~ December first at ~~8:00~~
6 ~~a.m. of the year preceding the election~~ and not later than the last Tuesday of April at 5:00 p.m.
7 prior to the election, a certificate of nomination which shall be executed as provided in chapter
8 12-6. ~~If the certificate of nomination is mailed by registered mail by the last Tuesday of April~~
9 ~~at 5:00 p.m. prior to the election, it is timely submitted.~~ The certificate of nomination shall be
10 signed by registered voters within the district or political subdivision in and for which the
11 officers are to be elected. The number of signatures required may not be less than one percent
12 of the ~~total combined vote cast for Governor at the last certified gubernatorial election~~ number
13 of voters having no party affiliation at the last general election within the district or political
14 subdivision. An independent candidate for Governor shall certify the candidate's selection for
15 lieutenant governor to the secretary of state prior to circulation of the candidate's nominating
16 petition. The candidate and the candidate's selection for lieutenant governor or vice president
17 shall sign the certification ~~before it is filed~~ prior to it being received by the Office of the
18 Secretary of State. If the independent candidate for lieutenant governor declares that he or she
19 is not running, then the independent candidate for lieutenant governor shall withdraw pursuant
20 to § 12-6-55. If an independent candidate for lieutenant governor withdraws, no independent
21 candidate for governor may have his or her name printed upon a ballot unless a replacement
22 selection for lieutenant governor is certified to the secretary of state by the second Tuesday in
23 August. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26,
24 prescribing the forms for the certificate of nomination and the certification for lieutenant

1 governor.

2 Section 9. That § 12-5-3.8 be amended to read as follows:

3 12-5-3.8. If a political party chooses to have a primary for selection of its the party's
4 delegates and alternates to the national convention, the party shall certify the candidate names
5 or the delegate and alternate slates which are to be listed on the primary ballot to the secretary
6 of state by the last Tuesday in ~~March~~ February preceding the primary by five p.m. Only
7 candidates or slates certified may be placed on the ballot by the secretary of state and the
8 position of the candidates or slates on the primary ballot shall be chosen by lot by the secretary
9 of state. ~~The certification shall be deemed to be filed if mailed by registered mail by five p.m.~~
10 ~~on the last Tuesday in March.~~

11 Section 10. That § 12-5-3.14 be amended to read as follows:

12 12-5-3.14. Any candidate, committee, or group supporting a candidate in any presidential
13 primary, shall, by five p.m. on the last Tuesday in ~~March~~ February prior to the presidential
14 primary election, notify the secretary of state of an intention to have the name of the candidate
15 placed on the presidential primary election ballot or submit a slate of candidates or both.

16 Section 11. That § 23-3-43.1 be amended to read as follows:

17 23-3-43.1. Any candidate for election to the office of county sheriff shall ~~file with~~ submit
18 to the county auditor by the last Tuesday of ~~March~~ February of the election year a certification
19 of qualification issued by the law enforcement officers standards commission that the candidate
20 meets the qualifications provided in § 23-3-43. However, any candidate appointed to fill a
21 vacancy by a party central committee pursuant to § 12-6-56 shall ~~file with~~ submit to the county
22 auditor a certification of qualification by the second Tuesday in August. Any candidate who ~~files~~
23 submits an independent nominating petition shall ~~file with~~ submit to the county auditor a
24 certification of qualification by the first Tuesday after the first Monday of June. A sheriff

1 appointed to fill a vacancy by the county commission shall ~~file with~~ submit to the county auditor
2 a certification of qualification within thirty days of the appointment. Failure to ~~file~~ submit a
3 certification shall prevent the candidate's name from being placed on the ballot.

4 Section 12. That § 12-5-1 be amended to read as follows:

5 12-5-1. A new political party may be organized and participate in the primary election by
6 ~~filing with~~ submitting to the secretary of state not later than the last Tuesday of ~~March~~ February
7 at five p.m. prior to the date of the primary election, a written declaration signed by at least two
8 and one-half percent of the voters of the state as shown by the total vote cast for Governor at the
9 last preceding gubernatorial election, which declaration shall contain:

10 (1) The name of the proposed party; and

11 (2) A brief statement of the principles thereof;

12 whereupon the party shall, under the party name chosen, have all the rights of a political party
13 whose ticket was on the ballot at the preceding general election. No signature on a declaration
14 is valid if the declaration was signed more than one year prior to filing of the declaration.

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

17 The national and state chairperson of a recognized political party may request in writing,
18 subscribed and sworn to by each chairperson before any officer qualified to administer oaths and
19 take acknowledgments, to no longer be recognized as a political party. The political party shall
20 also comply with the requirements for dissolution pursuant to chapter 12-27.

21 Section 13. That § 12-6-8.1 be amended to read as follows:

22 12-6-8.1. Any person may have his or her name withdrawn from the primary election by
23 making a written request under oath. The request shall be ~~filed with~~ submitted to the officer with
24 whom the nominating petition was ~~filed~~ submitted pursuant to § 12-6-4, not later than two days

1 after the last Tuesday in ~~March~~ February at five p.m. ~~If the request is mailed by registered mail~~
2 ~~not later than two days after the last Tuesday in March at five p.m., the request is properly filed.~~
3 No name that is withdrawn pursuant to this section may be printed on the ballots to be used at
4 the election.

5 Section 14. That § 12-5-4 be amended to read as follows:

6 12-5-4. A candidate for party precinct committeeman or committeewoman shall ~~file~~ submit
7 a statement in writing, with the county auditor of the county in which he or she is a candidate,
8 not later than the last Tuesday in ~~March~~ February before the primary election. The statement
9 shall state that the candidate:

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

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

17 Section 15. That § 9-13-7 be amended to read as follows:

18 9-13-7. No candidate for elective municipal office may be nominated unless a nominating
19 petition is ~~filed with~~ submitted to the finance officer no later than five p.m. on the last Friday
20 in February preceding the day of election. ~~The petition shall be considered filed if it is mailed~~
21 ~~by registered mail by five p.m. on the last Friday in February before the election.~~ The petition
22 shall contain the name, residence address, and mailing address of the candidate and the office
23 for which the candidate is nominated and shall be on the form prescribed by the State Board of
24 Elections. The signer's post office box number may be given in lieu of a street address if the

1 signer lives within a municipality of the second or third class. The finance officer may only
2 accept nominating petitions that are on the prescribed form and were circulated and submitted
3 pursuant to the provisions in chapters 9-13 and 12-6. If the nominating petition meets the
4 statutory requirements, the filing of the petition constitutes nomination.

5 Section 16. That § 13-7-6 be amended to read as follows:

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

23 Section 17. That § 13-7-10.2 be amended to read as follows:

24 13-7-10.2. If the joint election provided for in § 13-7-10.1 is held on the second Tuesday in

1 April, no candidate for elective school board membership may be nominated unless the
2 candidate is a resident voter of the school district and unless a nominating petition has been ~~filed~~
3 submitted on the candidate's behalf with the business manager of the school district no later than
4 the last Friday in February at five p.m. prior to the date of the election. ~~If the petition is mailed~~
5 ~~by registered mail by the last Friday in February at five p.m. before the election, it shall be~~
6 ~~considered filed.~~ A formal declaration of a candidate shall be signed by the candidate before the
7 circulation of the petition. The petition shall be signed by not less than twenty voters of the
8 school district. No petition may be circulated until the last Friday in January before the election.
9 There shall be added by either the signer or the circulator the signer's place of residence and date
10 of signing. The petition shall be verified under oath by the person circulating the petition. The
11 filing of the nominating petition shall constitute nomination and will entitle the candidate to
12 have the candidate's name placed on the ballot for the term the candidate specifies on the
13 petition only upon verification signed by the business manager that the nominating petition
14 contains the minimum number of signatures and that the candidate is a resident voter.

15 Publication of the notice of the election provided for in § 13-7-10.1 shall be in accordance
16 with § 13-7-8.

17 Section 18. That § 46A-3B-4 be amended to read as follows:

18 46A-3B-4. A director candidate may be nominated by a petition signed by at least twenty-
19 five registered voters in the director area to be represented by the candidate. Nominating
20 petitions shall be made available at the water development district office, the secretary of state's
21 office, and the respective county auditors' offices on forms prescribed by the state election board
22 and ~~filed~~ submitted with the secretary of state not prior to eight a.m., January first, and not later
23 than five p.m., the last Tuesday of March prior to the date of the primary election. ~~If a petition~~
24 ~~is mailed to the secretary of state's office by registered mail by five p.m., the last Tuesday of~~

1 ~~March prior to the primary election, it is considered filed.~~ For the initial election, director
2 nominating petitions shall be made available by the Department of Environment and Natural
3 Resources and shall be ~~filed with~~ received by the department not later than five p.m., the first
4 Tuesday of August before the general election or in the case of a special election under § 46A-
5 3B-1, not later than thirty days before the date set for the special election.

6 Section 19. That § 12-7-7 be amended to read as follows:

7 12-7-7. Any candidate for President or Vice President of the United States who is not
8 nominated by a primary election may be nominated by ~~filing~~ submitting with the secretary of
9 state, not prior to January first at 8:00 a.m. and not later than the first Tuesday in August at 5:00
10 p.m. prior to the election, a certificate of nomination which shall be executed as provided in
11 chapter 12-6. ~~If the certificate of nomination is mailed by registered mail by the first Tuesday~~
12 ~~in August at 5:00 p.m. prior to the election, it is timely submitted.~~ The number of signatures
13 required may not be less than one percent of the ~~total combined vote cast for Governor at the~~
14 ~~last certified gubernatorial election~~ number of voters having no party affiliation at the last
15 general election within the state. An independent candidate for President shall ~~file~~ submit a
16 declaration of candidacy and a certification of the candidate's selection for Vice President with
17 the secretary of state prior to circulation of the candidate's nominating petitions. The candidate
18 and the candidate's selection for Vice President shall sign the certification before it is ~~filed~~
19 submitted. The State Board of Elections shall promulgate rules pursuant to chapter 1-26
20 prescribing the forms for the certificate of nomination and the certification for Vice President.

21 Section 20. That § 12-6-56 be amended to read as follows:

22 12-6-56. If a vacancy occurs by reason of a death or a withdrawal as authorized by section
23 21 of this Act after a primary election, a party candidate for public office may be replaced by
24 a new nominee if a meeting of the appropriate party central committee is held and the results

1 are certified to the appropriate official within the times prescribed by § 12-8-6. If the vacancy
2 is a party candidate for presidential elector or statewide office, the vacancy shall be filled by the
3 State Party Central Committee. If the vacancy is a party candidate for public office other than
4 presidential elector or statewide office, the vacancy shall be filled by a vote of county party
5 central committee members in attendance who reside in the affected district.

6 Section 21. That chapter 12-6 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 If a party candidate for public office withdraws after filing petitions with the secretary of
9 state, the appropriate party central committee may make a replacement nominee only if:

10 (1) The party candidate:

11 (a) Withdraws because of personal illness or illness of an immediate family
12 member that was diagnosed after the petition filing and the illness prevents the
13 candidate from performing the duties of the office sought; and

14 (b) Files with the withdrawal request a form signed by a licensed physician
15 verifying that the provisions of subsection (a) apply to the candidate by at least
16 two licensed physicians;

17 (2) There is no other nominee for the office sought by the withdrawing candidate as of
18 the time of the withdrawal;

19 (3) The party candidate has been elected or appointed to fill a vacancy in another elective
20 office which duties conflict by law with the duties of the office sought, has become
21 the nominee for another elective office, or is deceased; or

22 (4) The party candidate permanently moves from his or her physical address stated in the
23 nominating petition filed with the secretary of state, and swears and certifies under
24 oath before the secretary of state that the candidate has not resided in the district for

1 a period of thirty consecutive calendar days and has no intention of resuming
2 residency in the district.