

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

400W0364

HOUSE ENGROSSED NO. **SB 69** - 03/10/2015

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 petition has been ~~filed~~ received in the office of the
9 person in charge of that election on that person's behalf not prior to ~~January~~ December first of
10 the year preceding the election, and not later than the last third Tuesday of March at five p.m.
11 prior to the date of the primary election. ~~If the petition is mailed by registered mail by the last~~
12 ~~first Tuesday of March at five p.m. prior to the primary election, the petition shall be considered~~
13 ~~filed received~~: A nominating petition for national convention delegates and alternates as
14 provided in § 12-5-3.11 shall be filed in accordance with the provisions of this section.
15 Nominating petitions for all party and public offices except legislative and judicial offices shall



1 be ~~filed~~ received in the office of the county auditor of the county in which the person is a
2 candidate. Nominating petitions for legislative and judicial office whether elected in one or
3 more counties, and all other party and public offices to be voted on in more than one county
4 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 third Tuesday of March prior to the date of the primary election. ~~If a petition is~~
13 ~~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~~ received. For the initial election,
15 director nominating petitions shall be made available by the Department of Environment and
16 Natural Resources and shall be ~~filed with~~ received by the department not later than five p.m.,
17 the first Tuesday of August before the general election or in the case of a special election ~~under~~
18 pursuant 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 third Tuesday in March. Each nomination shall be certified in

1 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.~~ The of each sheet. If the candidate's political party
12 was recognized pursuant to § 12-5-1, the day following the official state canvass at the last
13 general election, the petition for party office or political public office shall be signed by not less
14 than one percent of the voters who cast their vote for that party's gubernatorial candidate at the
15 last gubernatorial election registered for the candidate's political party at the last general election
16 in the county, part of the county, district, or state electing a candidate to fill the office. If the
17 candidate's political party has been recognized pursuant to § 12-5-1 since the last general
18 election, the petition shall be signed by not less than one percent of the voters having no party
19 affiliation at the last general election including any registered voters of the new political party
20 and voters registered as other, in the county, part of the county, district, or state electing a
21 candidate to fill the office.

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

23 12-6-7.1. Notwithstanding the provisions of § 12-6-7, if the candidate's political party was
24 recognized pursuant to § 12-5-1 at the last general election, a nominating petition for a candidate

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

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

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

1 recognized political party pursuant to subdivision 121-1-3(10) from signing ~~either~~ a petition
2 nominating for an independent or a nonpolitical candidate for office ~~if the person has not~~
3 ~~previously signed a petition for that office to be filled.~~

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

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

1 lieutenant governor is certified to the secretary of state by the second Tuesday in August. The
2 State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the forms
3 for the certificate of nomination and the certification for lieutenant governor.

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

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

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

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

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

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

1 submits an independent nominating petition shall ~~file with~~ submit to the county auditor a
2 certification of qualification by the ~~first last~~ first last Tuesday ~~after the first Monday of June in April~~. A
3 sheriff appointed to fill a vacancy by the county commission shall ~~file with~~ submit to the county
4 auditor a certification of qualification within thirty days of the appointment. Failure to ~~file~~
5 submit a certification shall prevent the candidate's name from being placed on the ballot.

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

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

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

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

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

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

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

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

24 12-6-8.1. Any person may have his or her name withdrawn from the primary election by

1 making a written request under oath. The request shall be ~~filed with~~ submitted to the officer with
2 whom the nominating petition was ~~filed~~ submitted pursuant to § 12-6-4, not later than two days
3 after the ~~last~~ third Tuesday in March at five p.m. ~~If the request is mailed by registered mail not~~
4 ~~later than two days after the last Tuesday in March at five p.m., the request is properly filed~~
5 received. No name that is withdrawn pursuant to this section may be printed on the ballots to
6 be used at the election.

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

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

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

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

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

20 9-13-7. No candidate for elective municipal office may be nominated unless a nominating
21 petition is ~~filed with~~ submitted to the finance officer no later than five p.m. on the last Friday
22 in February preceding the day of election. ~~The petition shall be considered filed~~ received ~~if it~~
23 ~~is mailed by registered mail by five p.m. on the last Friday in February before the election.~~ The
24 petition shall contain the name, residence address, and mailing address of the candidate and the

1 office for which the candidate is nominated and shall be on the form prescribed by the State
2 Board of Elections. The signer's post office box number may be given in lieu of a street address
3 if the signer lives within a municipality of the second or third class. The finance officer may
4 only accept nominating petitions that are on the prescribed form and were circulated and
5 submitted pursuant to the provisions in chapters 9-13 and 12-6. If the nominating petition meets
6 the statutory requirements, the filing of the petition constitutes nomination.

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

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

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

2 13-7-10.2. If the joint election provided for in § 13-7-10.1 is held on the second Tuesday in
3 April, no candidate for elective school board membership may be nominated unless the
4 candidate is a resident voter of the school district and unless a nominating petition has been ~~filed~~
5 submitted on the candidate's behalf with the business manager of the school district no later than
6 the last Friday in February at five p.m. prior to the date of the election. ~~If the petition is mailed~~
7 ~~by registered mail by the last first Friday in February at five p.m. before the election, it shall be~~
8 ~~considered filed received~~: A formal declaration of a candidate shall be signed by the candidate
9 before the circulation of the petition. The petition shall be signed by not less than twenty voters
10 of the school district. No petition may be circulated until the last Friday in January before the
11 election. There shall be added by either the signer or the circulator the signer's place of residence
12 and date of signing. The petition shall be verified under oath by the person circulating the
13 petition. The filing of the nominating petition shall constitute nomination and will entitle the
14 candidate to have the candidate's name placed on the ballot for the term the candidate specifies
15 on the petition only upon verification signed by the business manager that the nominating
16 petition contains the minimum number of signatures and that the candidate is a resident voter.

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

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

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

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

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

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

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

2 12-6-56. If a vacancy occurs by reason of a death or a withdrawal as authorized by section
3 21 of this Act after a primary election, a party candidate for public office may be replaced by
4 a new nominee if a meeting of the appropriate party central committee is held and the results
5 are certified to the appropriate official within the times prescribed by § 12-8-6. If the vacancy
6 is a party candidate for presidential elector or statewide office, the vacancy shall be filled by the
7 State Party Central Committee. If the vacancy is a party candidate for public office other than
8 presidential elector or statewide office, the vacancy shall be filled by a vote of county party
9 central committee members in attendance who reside in the affected district.

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

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

14 (1) The party candidate:

15 (a) Withdraws because of personal illness or illness of an immediate family
16 member and the illness prevents the candidate from performing the duties of
17 the office sought; and

18 (b) Submits with the withdrawal request a form signed by a licensed physician
19 verifying that the provisions of subsection (a) apply to the candidate;

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

22 (3) The party candidate has been elected or appointed to fill a vacancy in another elective
23 office which duties conflict by law with the duties of the office sought, has become
24 the nominee for another elective office, it has been determined that the party

1 candidate's employment conflicts by law with the duties of the office sought, or is
2 deceased; or

3 (4) The party candidate permanently moves from his or her physical address stated in the
4 nominating petition filed with the secretary of state, and requests in writing,
5 subscribed and sworn to by the candidate before any officer qualified to administer
6 oaths and take acknowledgments that the candidate has not resided in the district for
7 a period of thirty consecutive calendar days and has no intention of resuming
8 residency in the district.

9 Section 22. That § 12-1-3 be amended by adding thereto NEW SUBDIVISIONS to read as
10 follows:

11 "Independent" or "no party affiliation," any voter who writes Independent, I, Ind, the field
12 is blank, no party affiliation, no party, no choice, nonpartisan, or line crossed off in the Choice
13 of Party field on the voter registration form;

14 "Other," any voter who writes any other nonrecognized political party in the Choice of Party
15 field on the voter registration form.