

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

400W0364

## CONFERENCE COMMITTEE ENGROSSED NO. **SB 69** - 03/13/2015

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~~ first 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 ~~Tuesday of March at five p.m. prior to the primary election, the petition shall be considered~~  
13 ~~filed.~~ A nominating petition for national convention delegates and alternates as provided in  
14 § 12-5-3.11 shall be filed in accordance with the provisions of this section. Nominating petitions  
15 for all party and public offices except legislative and judicial offices shall be ~~filed~~ received in



1 the office of the county auditor of the county in which the person is a candidate. Nominating  
2 petitions for legislative and judicial office whether elected in one or more counties, and all other  
3 party and public offices to be voted on in more than one county shall be ~~filed~~ received in the  
4 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 first 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.~~ 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 first 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. The petition for party office  
12 or political public office shall be signed by not less than one percent of the voters ~~who cast their~~  
13 ~~vote for that party's gubernatorial candidate at the last gubernatorial election~~ registered for the  
14 candidate's political party at the last general election in the county, part of the county, district,  
15 or state electing a candidate to fill the office.

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

17 12-6-7.1. Notwithstanding the provisions of § 12-6-7 a nominating petition for a candidate  
18 for office in the State Legislature, county political public office, and county party office shall  
19 be signed by not less than fifty voters or not less than one percent of the voters ~~who cast their~~  
20 ~~vote for the party's gubernatorial candidate~~ registered for the candidate's political party at the  
21 last general election, whichever is less. The petition shall clearly designate the senatorial or  
22 representative district for which ~~said individual~~ the person is a candidate.

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

24 12-6-8. No person may sign the nominating petition of a candidate before ~~January first in~~

1 ~~the year in which the election is to be held~~ December first of the year preceding the election, nor  
2 for whom the person is not entitled to vote, nor for a political candidate of a party of which the  
3 person is not a member, nor of more than the number of candidates required to be nominated  
4 for the same office. There shall be added by either the signer or the circulator, the signer's place  
5 of residence, and the date of signing. The signer's post office box number may be given in lieu  
6 of a street address if the signer lives within a municipality of the second or third class. A formal  
7 declaration of the candidate shall be signed by the circulator prior to the circulation of petitions.  
8 The signed declaration of the candidate, or a facsimile thereof, may accompany and be a part  
9 of the petition. The original signed declaration shall accompany the group of petitions upon  
10 filing being received by the office of the person in charge of that election. The petition shall be  
11 verified under oath by the persons circulating the petition. The verification by the person  
12 circulating the petition may not be notarized by the candidate whom the petition is nominating.  
13 The provisions of this section ~~may not~~ prohibit a person registered with ~~party affiliation a~~  
14 recognized political party from signing ~~either~~ a petition nominating an independent ~~or a~~  
15 ~~nonpolitical~~ candidate for office ~~if the person has not previously signed a petition for that office~~  
16 ~~to be filled~~. The provisions of this section do not prohibit a person registered with a recognized  
17 political party from signing a petition nominating a nonpolitical candidate for office.

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

19 12-7-1. Any candidate for nonjudicial public office, except as provided in § 12-7-7, who is  
20 not nominated by a primary election may be nominated by filing submitting with the secretary  
21 of state or county auditor ~~as prescribed by~~ pursuant to § 12-6-4, not prior to ~~January~~ December  
22 first at 8:00 a.m. of the year preceding the election and not later than the last Tuesday of April  
23 at 5:00 p.m. prior to the election, a certificate of nomination which shall be executed as provided  
24 in chapter 12-6. ~~If the certificate of nomination is mailed by registered mail by the last Tuesday~~

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

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

19 12-5-3.8. If a political party chooses to have a primary for selection of ~~its~~ the party's  
20 delegates and alternates to the national convention, the party shall certify the candidate names  
21 or the delegate and alternate slates which are to be listed on the primary ballot to the secretary  
22 of state by the ~~last~~ first Tuesday in March preceding the primary by five p.m. Only candidates  
23 or slates certified may be placed on the ballot by the secretary of state and the position of the  
24 candidates or slates on the primary ballot shall be chosen by lot by the secretary of state. ~~The~~

1 ~~certification shall be deemed to be filed if mailed by registered mail by five p.m. on the last~~  
2 ~~Tuesday in March.~~

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

4 12-5-3.14. Any candidate, committee, or group supporting a candidate in any presidential  
5 primary, shall, by five p.m. on the last first Tuesday in March prior to the presidential primary  
6 election, notify the secretary of state of an intention to have the name of the candidate placed  
7 on the presidential primary election ballot or submit a slate of candidates or both.

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

9 23-3-43.1. Any candidate for election to the office of county sheriff shall ~~file with~~ submit  
10 to the county auditor by the ~~last first~~ Tuesday of March of the election year a certification of  
11 qualification issued by the law enforcement officers standards commission that the candidate  
12 meets the qualifications provided in § 23-3-43. However, any candidate appointed to fill a  
13 vacancy by a party central committee pursuant to § 12-6-56 shall ~~file with~~ submit to the county  
14 auditor a certification of qualification by the second Tuesday in August. Any candidate who ~~files~~  
15 submits an independent nominating petition shall ~~file with~~ submit to the county auditor a  
16 certification of qualification by the ~~first last~~ last Tuesday ~~after the first Monday of June in April.~~ A  
17 sheriff appointed to fill a vacancy by the county commission shall ~~file with~~ submit to the county  
18 auditor a certification of qualification within thirty days of the appointment. Failure to ~~file~~  
19 submit a certification shall prevent the candidate's name from being placed on the ballot.

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

21 12-5-1. A new political party may be organized and participate in the primary election by  
22 ~~filing with~~ submitting to the secretary of state not later than the ~~last first~~ Tuesday of March at  
23 five p.m. prior to the date of the primary election, a written declaration signed by at least two  
24 and one-half percent of the voters of the state as shown by the total vote cast for Governor at the

1 last preceding gubernatorial election, which declaration shall contain:

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

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

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

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

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

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

14 12-6-8.1. Any person may have his or her name withdrawn from the primary election by  
15 making a written request under oath. The request shall be ~~filed with~~ submitted to the officer with  
16 whom the nominating petition was ~~filed~~ submitted pursuant to § 12-6-4, not later than two days  
17 after the ~~last~~ first Tuesday in March at five p.m. ~~If the request is mailed by registered mail not~~  
18 ~~later than two days after the last Tuesday in March at five p.m., the request is properly filed.~~ No  
19 name that is withdrawn pursuant to this section may be printed on the ballots to be used at the  
20 election.

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

22 12-5-4. A candidate for party precinct committeeman or committeewoman shall ~~file~~ submit  
23 a statement in writing, with the county auditor of the county in which he or she is a candidate,  
24 not later than the ~~last~~ first Tuesday in March before the primary election. The statement shall

1 state that the candidate:

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

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

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

10 9-13-7. No candidate for elective municipal office may be nominated unless a nominating  
11 petition is ~~filed with~~ submitted to the finance officer no later than five p.m. on the last Friday  
12 in February preceding the day of election. ~~The petition shall be considered filed if it is mailed~~  
13 ~~by registered mail by five p.m. on the last Friday in February before the election.~~ The petition  
14 shall contain the name, residence address, and mailing address of the candidate and the office  
15 for which the candidate is nominated and shall be on the form prescribed by the State Board of  
16 Elections. The signer's post office box number may be given in lieu of a street address if the  
17 signer lives within a municipality of the second or third class. The finance officer may only  
18 accept nominating petitions that are on the prescribed form and were circulated and submitted  
19 pursuant to the provisions in chapters 9-13 and 12-6. If the nominating petition meets the  
20 statutory requirements, the filing of the petition constitutes nomination.

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

22 13-7-6. No candidate for elective school board membership may be nominated unless such  
23 person is a resident voter of the school district and unless a nominating petition has been ~~filed~~  
24 submitted on such person's behalf with the business manager of the school district. The



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

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

16 13-7-10.2. If the joint election provided for in § 13-7-10.1 is held on the second Tuesday in  
17 April, no candidate for elective school board membership may be nominated unless the  
18 candidate is a resident voter of the school district and unless a nominating petition has been ~~filed~~  
19 submitted on the candidate's behalf with the business manager of the school district no later than  
20 the last Friday in February at five p.m. prior to the date of the election. ~~If the petition is mailed~~  
21 ~~by registered mail by the last Friday in February at five p.m. before the election, it shall be~~  
22 ~~considered filed.~~ A formal declaration of a candidate shall be signed by the candidate before the  
23 circulation of the petition. The petition shall be signed by not less than twenty voters of the  
24 school district. No petition may be circulated until the last Friday in January before the election.

1 There shall be added by either the signer or the circulator the signer's place of residence and date  
2 of signing. The petition shall be verified under oath by the person circulating the petition. The  
3 filing of the nominating petition shall constitute nomination and will entitle the candidate to  
4 have the candidate's name placed on the ballot for the term the candidate specifies on the  
5 petition only upon verification signed by the business manager that the nominating petition  
6 contains the minimum number of signatures and that the candidate is a resident voter.

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

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

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

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

24 12-7-7. Any candidate for President or Vice President of the United States who is not

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

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

16 12-6-56. If a vacancy occurs by reason of a death or a withdrawal as authorized by section  
17 21 of this Act after a primary election, a party candidate for public office may be replaced by  
18 a new nominee if a meeting of the appropriate party central committee is held and the results  
19 are certified to the appropriate official within the times prescribed by § 12-8-6. If the vacancy  
20 is a party candidate for presidential elector or statewide office, the vacancy shall be filled by the  
21 State Party Central Committee. If the vacancy is a party candidate for public office other than  
22 presidential elector or statewide office, the vacancy shall be filled by a vote of county party  
23 central committee members in attendance who reside in the affected district.

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

1 follows:

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

4 (1) The party candidate:

5 (a) Withdraws because of personal illness or illness of an immediate family  
6 member and the illness prevents the candidate from performing the duties of  
7 the office sought; and

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

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

12 (3) The party candidate has been elected or appointed to fill a vacancy in another elective  
13 office which duties conflict by law with the duties of the office sought, has become  
14 the nominee for another elective office, it has been determined that the party  
15 candidate's employment conflicts by law with the duties of the office sought, or is  
16 deceased; or

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

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

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

4 "Independent candidate," any registered voter who is not registered as a member of a  
5 recognized political party and who is a candidate for office;

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

8 Section 23. That § 12-8-6 be amended to read as follows:

9 12-8-6. ~~Nominations by~~A party committee to may fill vacancies occurring in nominations  
10 a vacancy created by a nomination made in a primary elections and certificates of election. The  
11 party committee shall certify the nomination to be filed with the secretary of state and those to  
12 be filed with the or the county auditor ~~shall be filed~~ not later than the second Tuesday in August  
13 at five p.m. ~~or mailed by registered mail by that date and time prior to the election.~~

14 Section 24. That § 12-5-1.4 be amended to read as follows:

15 12-5-1.4. If a political party qualifies for the primary ballot under § 12-5-1, each candidate  
16 intending to participate in a primary election shall file a nominating petition pursuant to § 12-6-  
17 4. In each primary election following the qualification of a political party and prior to the next  
18 gubernatorial election, each:

19 (1) State and federal candidate for that party shall file a petition bearing signatures of at  
20 ~~least~~ not less than two hundred fifty registered voters in that party or not less than one  
21 percent of the registered voters having no party affiliation including any registered  
22 voters of the new political party and voters registered as other in the state at the last  
23 general election; and

24 (2) Legislative and county candidate for that party shall file a petition bearing signatures

1 of at least five registered voters in that party not less than fifty voters in that party or  
2 not less than one percent of the registered voters having no party affiliation including  
3 any registered voters of the new political party and voters registered as other in that  
4 county or district.