

AN ACT

ENTITLED, An Act to allow the precinct superintendent to assign duties to the members of an election board and to consolidate the position of judge and clerk.

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

Section 1. That § 9-13-16.1 be amended to read as follows:

9-13-16.1. Each voting precinct shall be presided over by an election board consisting of a minimum of two precinct deputies and one precinct superintendent appointed by the governing body. Each precinct superintendent and precinct deputy shall receive compensation which shall be fixed by the governing body.

Section 2. That § 12-3-11 be amended to read as follows:

12-3-11. Interpreters shall be provided for precincts as determined by the auditor or person in charge of that election and interpreters shall be paid the same as precinct deputies. All expenses shall be paid out of the county general fund or other appropriate political subdivision fund.

Section 3. That § 12-15-1 be amended to read as follows:

12-15-1. The county auditor shall, not less than twenty days before any election, appoint a precinct superintendent and two precinct deputies who shall constitute the precinct election board and a precinct superintendent and two precinct deputies of the counting board if the board is appointed pursuant to § 12-15-14 or 12-15-14.1 for each of the voting precincts of the county. Two or four additional precinct deputies may be appointed. The county auditor shall make the appointments from lists of names submitted by the county central committee of each party. If the county auditor fails to receive the list at least forty-five days prior to an election, the county auditor shall make the appointments.

Section 4. That § 12-15-2 be amended to read as follows:

12-15-2. Any precinct superintendent or precinct deputy appointed under the provisions of § 12-15-1 shall be a registered voter and a resident of the precinct for which the person is appointed.

If, by the time prescribed in § 12-15-1, a sufficient number of members of the precinct election board are unable to be appointed, a vacancy may be filled by appointing any registered voter of the county in which the precinct is located provided the voter meets the party distribution required by § 12-15-3.

Section 5. That § 12-15-2.1 be amended to read as follows:

12-15-2.1. No person appointed as a precinct superintendent or precinct deputy may serve as a poll watcher at that election.

Section 6. That § 12-15-3 be amended to read as follows:

12-15-3. In the appointment of the members of the precinct election board and of the counting board under this chapter, if three or more parties have candidates on the official ballot, one precinct deputy shall be appointed from each party whose candidate for Governor in the last gubernatorial election had at least fifteen percent of the votes as shown by the precinct returns. If two parties have candidates on such ballots, the members of the precinct election board shall be selected from each party and the party receiving a majority of the votes cast for Governor in the election precinct at the last preceding gubernatorial election shall have a majority of the members of the precinct election board. In all cases the precinct superintendent shall belong to the party whose candidate received the most votes for Governor in the last gubernatorial election in that precinct. If a precinct has been created since the last election, the precinct superintendent shall belong to the party which received the most votes for Governor in the county in the last gubernatorial election.

Section 7. That § 12-15-7 be amended to read as follows:

12-15-7. Prior to each general or primary election, each county auditor, assisted by the state's attorney, shall call together the superintendents from each of the precincts in the county, and any precinct deputy as the county auditor may deem appropriate, at some convenient time and place and instruct them on the election laws and the duties of the precinct superintendent and precinct deputies. Any person who is called to the meeting and who attends the meeting shall be paid a fee fixed by the board of county commissioners of not less than five dollars for attending the meeting.

Section 8. That § 12-15-9 be amended to read as follows:

12-15-9. Before performing election day duties, each precinct superintendent and precinct deputy of the election and counting boards shall severally take an oath in the following form:

I, A.B., do solemnly swear (or affirm) that I will perform the duties of precinct superintendent or (precinct deputy) according to law and the best of my ability and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the election about to be held.

The members of the precinct election board may administer the oath to each other. The person administering the oaths shall cause an entry thereof to be made and signed by the person and prefixed to the pollbook.

Section 9. That § 12-15-10 be amended to read as follows:

12-15-10. If any person appointed as precinct superintendent or precinct deputy neglects or refuses to be sworn or to act as such, the position of the person shall be filled by the voters of the precinct present at the polling place when it opens, from the different political parties, as provided in this chapter. The person so elected to fill the vacancy is vested with the same power for that election, as if regularly appointed.

Section 10. That § 12-15-11 be amended to read as follows:

12-15-11. Each precinct superintendent and precinct deputy shall receive a fee to be established annually by resolution of the board of county commissioners at its first regular meeting each year. The person delivering the pollbooks and ballot boxes to the proper authority at the county seat shall receive the county rate for mileage as established pursuant to § 7-7-24, for miles necessarily traveled in going to and returning from making the delivery.

Section 11. That § 12-15-13 be amended to read as follows:

12-15-13. The county auditor shall, on the receipt of the returns of any primary, general, or special election make out a certificate stating the fee that each precinct superintendent and precinct deputy is entitled. The county auditor shall submit the certificate to the board of county

commissioners at its next session. The board shall order the fee to be paid out of the county treasury.

Section 12. That § 12-15-14 be amended to read as follows:

12-15-14. In each election precinct in which the number of ballots to be voted on paper ballots, including absentee ballots, has in prior general elections exceeded three hundred voters, the auditor shall appoint a precinct counting board to be composed of five precinct deputies, one of whom shall be superintendent, who shall count the ballots cast in the general election under the direction of the superintendent of the counting board.

Section 13. That § 12-16-17 be amended to read as follows:

12-16-17. The county auditor shall provide official and sample ballots to each precinct in the county. The quantity provided for a primary election shall be at least ten percent more than the number of votes cast for the gubernatorial candidate of the respective parties in the preceding gubernatorial primary election. The quantity provided for a general election shall be at least ten percent more than the number of votes cast for all candidates for Governor as shown by the returns of the last preceding gubernatorial election. The county auditor shall also provide and retain in that office an ample supply of all official ballots, and if at any time before or during an election, an additional supply for any precinct shall be requested by the precinct superintendent, the county auditor shall immediately cause to be delivered, to the precinct superintendent, a supply of extra official ballots. If the supply of official ballots has been completely exhausted, the county auditor may make emergency substitution by delivering or authorizing the use of sample ballots or photocopies of the official ballot. The election board shall account for any sample ballots or photocopies authorized to be used.

Section 14. That § 12-16-19 be amended to read as follows:

12-16-19. The ballots, together with all other election supplies may be delivered to the precinct superintendent or precinct deputy for each precinct at the time the precinct superintendent and precinct deputies are called together to receive instructions pursuant to § 12-15-7. If any precinct

superintendent or precinct deputy from that precinct is not present to receive instructions, the ballots, election supplies, and the ballot boxes for the precinct shall be delivered to the sheriff for delivery to the precinct superintendent.

Section 15. That § 12-16-20 be amended to read as follows:

12-16-20. The precinct superintendent or precinct deputy receiving the package of ballots shall at the opening of the polls on election day cause the same to be delivered with the seal unbroken to the election board of the election precinct. The precinct superintendent or precinct deputy shall receive a receipt from a member of the precinct board and shall return the receipt to the county auditor with the election returns.

Section 16. That § 12-16-21 be amended to read as follows:

12-16-21. In case the ballots to be furnished to any precinct are, for any reason, not duly delivered or received, or if the delivery has been exhausted, destroyed, or stolen, the precinct superintendent shall immediately procure from the county auditor replacement ballots.

Section 17. That § 12-16-25 be amended to read as follows:

12-16-25. A member of the precinct election board may post no less than one of the instruction cards in each booth or compartment provided for the voting of ballots and not less than three of the instruction cards elsewhere in and about the polling place upon the day of election.

Section 18. That § 12-16-30 be amended to read as follows:

12-16-30. Before opening the polls the county auditor or officer charged with the conduct of a local election shall deliver to the precinct superintendent of each precinct within the county, for use at the polling place of the precinct, a rubber stamp. The stamp shall contain the words, official ballot, the name or number of the election precinct, the name of the jurisdiction holding the election, and the date of the election. The date may be omitted if it is pre-printed on all ballots for the election. The stamp and other supplies for the election shall be delivered and receipted for by a member of the precinct election board in the manner and at the time as provided in this chapter for the delivery and

receipt of packages of ballots.

Section 19. That § 12-16-36 be amended to read as follows:

12-16-36. There shall be at the right of each name or question in one or two horizontal lines a sufficient number of squares for the tally marks as provided in § 12-16-34, on the tally sheets for each precinct, to contain the tally marks for one-third more votes than were cast in the precinct at the last preceding general election, not exceeding six hundred in any case. There shall be sufficient spaces at the right of the squares on the tally sheet so that a member of the precinct election board may write out the total number of votes tallied for the candidate or question.

Section 20. That § 12-16-41 be amended to read as follows:

12-16-41. In any case in which the certificate of the members of the precinct election board as to the number of votes cast for any candidate or in favor of or against any question submitted to the voters may not agree with the votes as shown by the tally list, the canvassing board to which the returns are made shall take as correct the number of votes shown by the tally list rather than the certificate.

Section 21. That § 12-17B-9 be amended to read as follows:

12-17B-9. Upon completion of the voting and after sealing the ballot box, two of the members of the precinct election board, of different major political parties, shall, by the most direct route, transport the box to the central counting location designated by the person in charge of the election or the ballots may be transported to the counting location by a sheriff's deputy and two deputy county auditors, one of each major political party, or by two deputy county auditors, one of each major political party.

Section 22. That § 12-18-1.1 be amended to read as follows:

12-18-1.1. Before the opening of the polls the members of the precinct election board shall count and verify against the receipt given the ballots delivered to the precinct for the purposes of the election.

Section 23. That § 12-18-1.2 be amended to read as follows:

12-18-1.2. The precinct superintendent shall have charge of the conduct at the polling place and supervise the precinct deputies. The precinct superintendent shall issue instructions and assign the duties to each person for maintaining the registration lists and the pollbook and issuing and receiving the official ballots. The duties for each person may be interchanged or rotated during the course of the day.

Section 24. That § 12-18-1.3 be amended to read as follows:

12-18-1.3. If punch card ballots are used, before the opening of the polls the members of the precinct election board shall compare the ballots used in the marking devices with the sample ballots furnished and see that the names, numbers, and letters on the sample ballots agree and shall certify that fact on forms provided by the person in charge of the election.

Section 25. That § 12-18-1.5 be amended to read as follows:

12-18-1.5. In those precincts where counting boards have been appointed, the precinct superintendent and precinct deputies shall remain at the place of election at all times after the polls are opened until the polls are closed, the election supplies are turned over to the counting board and the certificate and receipt required by § 12-20-1 have been signed. At this time, the counting board shall assume its duties and the election board is excused. The members of the counting board shall remain at the place of vote counting at all times from the time the counting board assumes the duties until the completion of the vote count and execution of the returns on the election.

Section 26. That § 12-18-4 be amended to read as follows:

12-18-4. Before opening the polls each ballot box shall be carefully examined by the members of the precinct election board and everything in each ballot box shall be removed. Each ballot box shall then be sealed and may not be opened during the election except for vote counting as provided for in chapter 12-20.

Section 27. That § 12-18-5 be amended to read as follows:

12-18-5. A member of the precinct election board belonging to a political party which is not the same as the political party of the member of the precinct election board who has the registration list shall keep a poll list which shall contain in numerical order the names of all persons voting at the election.

Section 28. That § 12-18-7.1 be amended to read as follows:

12-18-7.1. Any person whose name appears on the precinct registration list may vote at that election. However, if a person's name does not appear on the registration list, but the person does present an acknowledgment notice, the person shall be permitted to vote if one of the members of the precinct election board communicates with the office of the county auditor and confirms that the person's name was erroneously omitted from the list. If it is not possible to communicate with the office of county auditor, the person may vote after executing an emergency voting card pursuant to § 12-18-7.2.

Section 29. That § 12-18-7.2 be amended to read as follows:

12-18-7.2. If any person attempting to vote in any election claims to be registered or any person attempting to vote in any election claims to be on the inactive registration list but does not possess an acknowledgment notice and the person's name does not appear in the registration list of the precinct, the person may vote if one of the members of the precinct election board first confirms by telephone or other means with the county auditor or a deputy auditor that the name was erroneously omitted from the list, and an emergency voting card, in duplicate, in the form prescribed by the State Board of Elections is signed by the applicant and each member of the precinct election board. The original emergency voting card shall be retained by the precinct superintendent as part of the precinct superintendent's permanent records, and the duplicate shall be given to the voter. In a primary election, the party affiliation of any voter using the emergency voting procedure of this section shall be designated on the emergency voting card.

Section 30. That § 12-18-10 be amended to read as follows:

12-18-10. If a person makes an application for ballots, or if an absentee ballot has been cast, the person's right to vote at that poll and election may be challenged only as to the person's identity as the person registered whom the person claims to be or on grounds that within fifteen days preceding the election the person has been convicted of a felony or declared by proper authority to be mentally incompetent. The proceedings shall be conducted before the precinct superintendent and precinct deputies who shall determine from the evidence presented whether or not the person is permitted to vote and the members of the precinct election board shall indicate beside the name on the registration list the ground stated and the result of the precinct election board's decision.

Section 31. That § 12-18-12 be amended to read as follows:

12-18-12. Before delivering a ballot to any voter the member of the precinct election board in charge of the ballots shall stamp on the back and near the top of the ballot the official stamp provided for that purpose.

Section 32. That § 12-18-13 be amended to read as follows:

12-18-13. No voter may receive or vote a ballot from any other person than the precinct superintendent or precinct deputy in charge of the ballots, nor may any person other than the precinct superintendent or precinct deputy deliver a ballot to the voter.

Section 33. That § 12-18-23 be amended to read as follows:

12-18-23. Each voter who does not vote a ballot delivered to the voter by a member of the precinct election board in charge of the ballots shall, before leaving the polling place, return the ballot to the member of the precinct election board in charge of the ballot box.

Section 34. That § 12-18-24 be amended to read as follows:

12-18-24. If any voter spoils a ballot, the voter may obtain another ballot, and so on, successively, not to exceed three ballots in all, upon returning to a member of the precinct election board the spoiled ballot. In obtaining a ballot to replace a spoiled one, the name of the voter shall be given and the number of the spoiled ballot. The number shall be noted opposite of the voter's name as spoiled.

The ballots that are returned shall be canceled by writing the words, spoiled and replaced, across the face of the ballot and each spoiled ballot shall be placed in a separate envelope identifying the spoiled ballots as such and stating the number of spoiled ballots for accounting purposes.

Section 35. That § 12-18-27 be amended to read as follows:

12-18-27. No person may show a ballot after it is marked to any person in such a way as to reveal the contents of the ballot, or the name of any candidate for whom the person has marked a vote. Nor may any person solicit the voter to show the voter's ballot. Immediately after marking the ballot the voter shall fold and refold the ballot, if necessary, leaving the official stamp exposed.

Section 36. That § 12-18-28 be amended to read as follows:

12-18-28. When a ballot is ready for deposit in the ballot box, the member of the precinct election board in charge of the ballot box, without opening the ballot or permitting it to be opened or examined except to ascertain that the ballot is a single ballot, shall deposit the ballot in the ballot box. The voter may place the voter's voted ballot in the ballot box to insure the privacy of the voter's vote after showing the official stamp on the ballot to the member of the precinct election board in charge of the ballot box.

Section 37. That § 12-19-12 be amended to read as follows:

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

Section 38. That § 12-19-48 be amended to read as follows:

12-19-48. If an absentee ballot is delivered to an absentee ballot counting board after the polls are closed the absentee ballot may not be counted or opened, but a member of the absentee ballot counting board shall immediately endorse on the envelope the following: Received after closing of

polls, and sign the person's name on the envelope and return the absentee ballot with the other ballots to the officer in charge of the election.

Section 39. That § 12-20-1 be amended to read as follows:

12-20-1. As soon as the polls are closed, the precinct superintendent and precinct deputies shall immediately deliver the ballot boxes, registration book, pollbook, and other election supplies, including voided and unused ballots, to the counting board, if appointed, and sign a certificate of transmittal and receipt as prescribed by the State Board of Elections. The members of the precinct election board or the counting board, if appointed, shall then immediately proceed to count publicly, in the presence of all persons desiring to attend the count, the votes received at the polls, and continue without adjournment until the count is completed. In counting the votes, the members of the precinct election board or counting board shall use the tally sheets provided.

Section 40. That § 12-20-2 be amended to read as follows:

12-20-2. The box shall be opened and the ballots taken out, sorted so that all ballots on certain candidacies and issues are separately identified, and counted by the members of the precinct election board unopened, except to ascertain if each ballot is single. If two or more ballots are found folded together and present the appearance of a single ballot, the ballots shall be laid aside until the count of ballots is completed. Upon the comparison of the count with the pollbook and registration list, or in machine precincts, with the number of return envelopes from absentee voters, and the appearance of the ballots, if a majority of the members of the precinct election board are of the opinion that the ballots folded together were voted by one voter, the ballot shall be endorsed, duplicate ballot of one voter not counted. If the ballot count does not agree with the number of votes in the pollbook, a comparison of the voters in the pollbook and the registration list shall be made and the correction of any mistakes shall be made.

Section 41. That § 12-20-3 be amended to read as follows:

12-20-3. Following the comparison of the pollbook and registration list in § 12-20-2, if the ballots

in the box exceed the number of names in the pollbook, the ballots shall be replaced in the box, after any of the ballots folded together are canceled, and one of the precinct deputies shall publicly draw therefrom as many ballots, unopened, as equal to the excess.

Section 42. That § 12-20-5 be amended to read as follows:

12-20-5. The votes for the several candidates shall be counted in the order in which the candidates occur upon the ballots. At least two precinct deputies, of opposite political parties, shall scrutinize each ballot with the precinct superintendent acting to break any tie vote of the two precinct deputies ruling on a ballot. As the vote is announced two precinct deputies shall make the mark required on the tally sheets.

Section 43. That § 12-20-8 be amended to read as follows:

12-20-8. The precinct superintendent and precinct deputies, in counting the votes, shall endeavor to record the intention of the voter. The precinct superintendent and precinct deputies shall then hold the intention of the voter to be to vote for the candidate or candidates before whose name the voter has placed a mark.

Section 44. That § 12-20-11 be amended to read as follows:

12-20-11. When the vote count is complete, the members of the precinct election board shall enter upon the blank list the true number of votes cast in the precinct for each person, measure, law, or amendment which appears upon the official ballot, and shall enclose the completed list in the envelope described in § 12-20-10. The precinct superintendent or precinct deputy chosen to deliver the election returns to the officer in charge of the election shall return the completed list separate from any other envelopes or wrappers returned at the time the election returns are delivered.

Section 45. That § 12-20-18 be amended to read as follows:

12-20-18. After the votes have been counted, the members of the precinct election board shall set down in the pollbook and duplicate tally sheet on forms therein prescribed by the State Board of Elections the name of each person voted for, the office for which the person received votes, and the

number of votes each person received, the number of votes each person received shall be expressed at length.

Section 46. That § 12-20-20 be amended to read as follows:

12-20-20. The counted ballots shall be sorted in the manner provided in § 12-20-2 and wrapped, sealed, and deposited in the ballot box. The precinct superintendent and precinct deputies, after the counting of ballots and deposit of the ballots counted in the ballot box, shall properly seal, with seals furnished pursuant to § 12-16-26, any ballot box opening and the place where the clasp and box connect, and each place where a ballot box may be opened before turning the ballot box over to the person deputed to deliver it. A violation of this section is a Class 1 misdemeanor.

Section 47. That § 12-20-21 be amended to read as follows:

12-20-21. The sealed ballot box, together with the pollbook and duplicate tally sheet, registration lists, and the envelope containing the unofficial returns and all supplies and returns required, shall be returned by the precinct superintendent or a precinct deputy designated by the precinct superintendent, to the officer in charge of the election immediately after completion of the vote count. No person may deface, destroy, or tamper with the ballot box, envelope, pollbook, duplicate tally sheet, or registration lists or remove any seals. A violation of this section is a Class 6 felony.

Section 48. That § 12-20-28 be repealed.

Section 49. That § 12-26-21 be amended to read as follows:

12-26-21. A person who intentionally disobeys a lawful command of a precinct superintendent or precinct deputy of any election, given in the execution of the person's duty as such at an election, is guilty of a Class 2 misdemeanor.

Section 50. That § 12-26-22 be amended to read as follows:

12-26-22. No person may cause any disturbance or breach of the peace, or engage in disorderly conduct in violation of § 22-13-1, or use threats of violence, whereby an election is impeded or hindered, or whereby the lawful proceedings of the precinct superintendent or precinct deputies,

ballot counters, or canvassers of an election, in the discharge of the person's duty, are interfered with.

A violation of this section is a Class 2 misdemeanor.

Section 51. That § 12-26-24 be amended to read as follows:

12-26-24. A precinct superintendent or precinct deputy who intentionally excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at the election, is guilty of a Class 2 misdemeanor.

Section 52. That § 12-26-25 be amended to read as follows:

12-26-25. No precinct superintendent, precinct deputy, member of any counting board, member of any board of canvassers, messenger, or other officer authorized to take part in or perform any duty in relation to any count, canvass, or official statement of the votes cast at any election, may intentionally make any false count or canvass of the votes, or make, sign, publish, or deliver any false return of the election, knowing it to be false. No such person may intentionally deface, destroy, or conceal any statement or certificate entrusted to the person's care. A violation of this section is a Class 2 misdemeanor.

Section 53. That § 12-26-27 be amended to read as follows:

12-26-27. A person who gives or offers a bribe to any precinct superintendent, precinct deputy, canvasser, or other officer of an election as a consideration for doing or omitting to do any act in violation of the person's official duty in relation to such election, is guilty of a Class 2 misdemeanor.

Section 54. That § 13-7-12 be amended to read as follows:

13-7-12. Each voting precinct shall be presided over by an election board consisting of a minimum of two precinct deputies and one precinct superintendent appointed by the school board. Members of school boards may serve on election boards.

Each precinct superintendent and precinct deputy other than members of school boards shall receive compensation as shall be fixed by the school board and paid from the district treasury.

An Act to allow the precinct superintendent to assign duties to the members of an election board and to consolidate the position of judge and clerk.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1018

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1018

File No. _____

Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 19__

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State