

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0144

## HOUSE ENGROSSED NO. **HB 1026** - 1/16/2008

Introduced by: The Committee on Local Government at the request of the Office of the  
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain provisions and procedures concerning  
2 elections.

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

4 Section 1. That § 6-8B-4 be amended to read as follows:

5 6-8B-4. The governing body shall publish notice of the election once each week for two  
6 consecutive weeks in all official newspapers designated by the public body or if there is no  
7 official newspaper, a newspaper of general circulation serving the public body. The second  
8 notice shall be published ~~at least twenty~~ not less than four nor more than ten days before the  
9 election.

10 ~~Notice~~ The notice shall state the maximum amount of bonds to be issued, the purpose for  
11 which bonds are to be issued, and other matters the governing body determines to be necessary.

12 Section 2. That § 9-10-6 be amended to read as follows:

13 9-10-6. ~~In all commission-governed municipalities within thirty~~ Within sixty days after an  
14 election directing the employment of a manager, ~~unless an annual election occurs within sixty~~  
15 ~~days thereafter~~ in any commission-governed municipality, a special election shall be called and



1 held to elect ~~such~~ the nine commissioners. A plurality vote in the election of commissioners  
2 ~~shall be~~ is sufficient to elect the commissioners.

3 ~~They~~ The commissioners shall qualify as provided by law and organize by electing ~~one of~~  
4 ~~their number~~ a commissioner to act as mayor until the first regular meeting of the board in the  
5 ~~next ensuing May, and thereupon such board shall succeed the board of commissioners then~~  
6 ~~servin~~ g month following the first annual election of commissioners. At the first regular meeting  
7 in ~~May of each year they~~ the month following the annual election, the commissioners shall elect  
8 ~~one of their number~~ a commissioner to act as mayor for a term of one year.

9 ~~Such~~ The board ~~shall have~~ has the same powers conferred upon ~~boards~~ the board of  
10 commissioners in a commission-governed municipality pursuant to chapter 9-9.  
11 Except as otherwise provided in this chapter, the board shall be governed by the provisions of  
12 the law relating to a commission-governed municipality.

13 Section 3. That § 9-11-8 be amended to read as follows:

14 9-11-8. The question of changing the form of government ~~having been once~~ may not be  
15 voted upon ~~shall not be~~ again submitted within ~~two years thereafter~~ one year after the election  
16 held pursuant to § 9-11-6.

17 Section 4. That § 9-13-21 be amended to read as follows:

18 9-13-21. The finance officer shall prepare and furnish, at the expense of the municipality,  
19 all official ballots. The quantity of ballots provided shall be at least ten percent more than the  
20 number of voters at the last comparable election. The ballots shall be white in color, of good  
21 quality of print paper, printed in black ink, and in the English language only.

22 The ballots for municipal elections shall be available for absentee voting no later than fifteen  
23 days prior to election day. If the ballots are for a secondary election, the ballots shall be  
24 available no later than seven days prior to the secondary election day.

1 The names of the candidates for each office to be voted for in the precinct shall be arranged  
2 without any other designation than that of the office for which they are candidates. If more than  
3 one member of the governing body is to be elected, the ballot shall contain instructions as to  
4 how many candidates for the governing body are to be voted for. The finance officer shall  
5 determine, by lot, each candidate's position on the ballot. Each candidate may be present or  
6 represented when the position on the ballot is being determined.

7 No candidate's name may be printed upon the official ballot unless the candidate has been  
8 nominated as provided in this chapter.

9 Section 5. That § 9-13-28 be amended to read as follows:

10 9-13-28. The ~~auditor or clerk~~ finance officer, within two days after the result of the election  
11 is declared, shall notify each person elected to office of the person's election. If a person does  
12 not qualify within ten days after the first meeting of the month next succeeding the election, the  
13 office shall become vacant.

14 Section 6. That chapter 12-1 be amended by adding thereto a NEW SECTION to read as  
15 follows:

16 If any state court finds that a declaration of candidacy on a nominating petition is not valid,  
17 the candidacy shall be invalidated as of the date of filing. If the invalidation creates a vacancy  
18 which continues to exist after a primary election, the vacancy may be filled as provided in  
19 §§ 12-6-56 and 12-6-57.

20 Section 7. That § 12-1-7.1 be repealed.

21 ~~—12-1-7.1. The county auditor shall report to the secretary of state prior to each primary and  
22 general election on forms provided by the secretary of state whether the county uses paper  
23 ballots or an automated tabulating system and its type.~~

24 Section 8. That § 12-6-51.1 be amended to read as follows:

1       12-6-51.1. If no candidate for United States Senate, ~~congressman~~ United States House of  
2 Representatives, or Governor in a race involving three or more candidates receives thirty-five  
3 percent of the votes of ~~his~~ the candidate's party, a secondary election shall be held ~~two~~ three  
4 weeks from the date of the first primary election. At the secondary election the only persons  
5 voted for shall be the two candidates receiving the highest number of votes at the first election.  
6 However, if there is a tie for second place in the first primary election and there is no tie for first  
7 place, all tying second place candidates shall be placed along with the first place candidate on  
8 the ballot for the secondary election. The secondary election shall be held at the same polling  
9 places, be conducted, returned, and canvassed and the results declared in the same manner as  
10 the first election. The person receiving the highest number of votes at the secondary election is  
11 nominated as the candidate ~~of his~~ for the party.

12       Section 9. That § 12-6-51.3 be amended to read as follows:

13       12-6-51.3. Within twenty-four hours after the completion of the canvass, the secretary of  
14 state shall certify runoff candidates, listed in the order determined by a drawing of names, to all  
15 county auditors ~~and include a ballot which may be duplicated.~~

16       Section 10. That § 12-6-51.4 be repealed.

17 ~~—12-6-51.4. Any other provision of this chapter notwithstanding, the members of the county~~  
18 ~~commission may, by resolution, choose to hold the secondary election authorized pursuant to~~  
19 ~~§ 12-6-51.1 in conjunction with a regular school district election, and with a general municipal~~  
20 ~~election if the municipality has chosen to combine with the school district pursuant to §§ 9-13-~~  
21 ~~1.1 and 13-7-10. The combined election shall be held on the first Tuesday after the third~~  
22 ~~Monday of June. All expenses of a combined primary runoff, school district, and municipal~~  
23 ~~election shall be shared in a manner agreed upon by the governing bodies of the school district,~~  
24 ~~the municipality, and the board of county commissioners. All other governmental~~

1 ~~responsibilities associated with holding elections under the provisions of chapters 9-13, 12-6,~~  
2 ~~and 13-7 shall be shared as agreed upon by the governing bodies.~~

3 Section 11. That § 12-14-12 be repealed.

4 ~~— 12-14-12. Five days after the close of voter registration for each primary and general~~  
5 ~~election, each county auditor shall report to the secretary of state the number of election~~  
6 ~~precincts throughout the county.~~

7 Section 12. That § 12-17B-1 be amended to read as follows:

8 12-17B-1. Terms used in this chapter mean:

- 9 (1) "Automatic tabulating equipment," the apparatus necessary to automatically examine  
10 and count votes as designated on ballots, ~~punch cards~~, or entered directly into a  
11 computer by means of a touch screen or other data entry device and data processing  
12 machines which can be used for counting these votes and tabulating results;
- 13 (2) "Ballot," paper ballots containing the names of candidates and statements of  
14 measures to be voted on;
- 15 (3) "Counting location," any location selected by the person in charge of the election for  
16 the counting of votes cast in an election. A counting location shall be within the  
17 territorial jurisdiction of such person unless there is no suitable tabulating equipment  
18 available within the jurisdiction. However, in any event, all counting locations shall  
19 be within this state;
- 20 (4) "Direct recording electronic," a voting system which records votes by means of a  
21 ballot display provided by electro-optical devices that can be actuated by the voter,  
22 that process the data by means of a computer program, and that records voting data  
23 in internal memory devices;
- 24 (5) "Electronic ballot marking system," any electronic device which marks votes on a

1 ballot;

2 (6) "Optical scan," a procedure in which votes are tabulated by means of examining  
3 marks made in voting response locations on the ballots with an optical mark reader  
4 (OMR);

5 (7) "Resolution board," a board at an automatic tabulating location comprised of a  
6 representative from each political party having a candidate on the ballot and whose  
7 candidate on the county-wide ballot at the last general election received at least  
8 fifteen percent of the votes. The county auditor may request additional board  
9 members balanced evenly by party. If the resolution board consists of more than one  
10 member from each party, the party shall designate which member of the party shall  
11 serve as co-leader of the resolution board. The co-leaders shall ensure that each board  
12 member is conducting resolution board duties uniformly and in accordance with  
13 applicable statutes and administrative rules. The board shall determine the disposition  
14 of those ballots which cannot be properly counted by the tabulating equipment and  
15 observe the activities at the counting location on behalf of ~~their~~ the board member's  
16 respective party affiliation. In strictly nonpartisan elections, the resolution board shall  
17 be comprised of two persons who are not employees of the jurisdiction conducting  
18 the election and shall be appointed by the person in charge of the election.

19 Section 13. That § 12-17B-13.1 be amended to read as follows:

20 12-17B-13.1. If automatic tabulating equipment is located at a polling place for processing  
21 ballots while the polls are open, the equipment may not be operated in a manner which returns  
22 an over-voted or partially under-voted ballot to the voter. The equipment shall be operated in  
23 a manner which returns any ballot that appears to the tabulating equipment to be blank or has  
24 any possible mark which the tabulating equipment cannot determine. If ~~a blank~~ the ballot is

1 returned to the voter, the voter may choose to remark ~~that the~~ ballot, obtain a new ballot, or ~~have~~  
2 ~~the ballot resubmitted as a blank~~ resubmit the ballot.

3 Any central count automatic tabulating equipment ~~containing~~ shall contain the capability to  
4 out-stack ballots and shall be operated in a manner to out-stack any ballot which appears to the  
5 tabulating equipment to be blank or has any possible mark which the tabulating equipment  
6 cannot determine. If the ballot contains ~~votes from which the voter's intent may be legally~~  
7 ~~determined, the~~ any such mark, the resolution board shall examine the mark and make a  
8 determination of any individual vote according to the rules promulgated pursuant to chapter 1-  
9 26 by the state board of elections. The resolution board shall make a duplicate ballot as  
10 prescribed in § 12-17B-14 which shall be counted by the automatic tabulating equipment.

11 Section 14. That § 12-18-3 be amended to read as follows:

12 12-18-3. Except for sample ballots and materials and supplies necessary for the conduct of  
13 the election, no person may, in any polling place or within or on any building in which a polling  
14 place is located or within one hundred feet from any entrance leading into a polling place,  
15 maintain an office ~~or communications center~~ or public address system, or use any  
16 communication or photographic device in a manner which distracts, interrupts, or intimidates  
17 any voter or election worker, or display campaign posters, signs, or other campaign materials  
18 or by any like means solicit any votes for or against any person or political party or position on  
19 a question submitted. No person may engage in any practice which interferes with the voter's  
20 free access to the polls or disrupts the administration of the polling place, or conduct, on the day  
21 of an election, any exit poll or public opinion poll with voters within one hundred feet of a  
22 polling place. A violation of this section is a Class 2 misdemeanor.

23 Section 15. That § 12-18-9.1 be amended to read as follows:

24 12-18-9.1. The superintendent of elections may order poll watchers and voters waiting to

1 vote to position themselves where ~~they~~ the poll watchers and voters cannot see into voting  
2 booths, read identifying numbers on photo identification cards, or interfere with voters in the  
3 act of voting or with the official actions of the election board. A violation of such an order is  
4 a Class 2 misdemeanor.

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

6 12-18-12. Before delivering a ballot to any voter the member of the precinct election board  
7 in charge of the ballots shall stamp on ~~the back and near the top~~ of the ballot the official stamp  
8 provided for that purpose as follows:

9 (1) On a hand-counted ballot, on the back and near the top of the ballot; and

10 (2) On an optical scan ballot, the location indicated by the person in charge of the  
11 election.

12 Section 17. That § 12-21-2 be amended to read as follows:

13 12-21-2. The county recount board of each county which conducts a recount authorized by  
14 this chapter shall consist of a recount referee and two voters of the county to be appointed by  
15 the presiding judge of the circuit court for that county, and shall provide for representation of  
16 the two political parties with the largest party registration in that county. The recount referee  
17 shall be a duly qualified member of the bar of the State of South Dakota and a member of the  
18 political party which polled the largest number of votes for Governor in the county in the last  
19 gubernatorial election. ~~All members~~ Prior to serving, each member of the recount board shall  
20 take an oath that the member will act in good faith and with impartiality. The state board of  
21 elections shall prescribe the oath to be taken.

22 Section 18. That § 12-21-32 be amended to read as follows:

23 12-21-32. ~~Forthwith upon~~ Upon the conclusion of the recount of all ballots to be recounted  
24 the county recount board shall certify the result. The certificate ~~must~~ shall be signed by at least

1 two members of ~~such~~ the board, attested under seal by the county auditor. ~~Such~~ The certificate  
2 shall set forth in substance the proceedings of the board and appearances of any candidates or  
3 representatives, shall adequately designate each precinct recounted, the vote of ~~such~~ each  
4 precinct according to the official canvass ~~thereof~~ previously made as to the office, nomination,  
5 position, or question involved, and the correct vote of such precinct as to ~~such~~ the office,  
6 nomination, position, or question as determined by ~~such~~ the board through ~~such~~ the recount.  
7 ~~Such~~ The certificate shall be made in duplicate, and either the original or duplicate original  
8 ~~forthwith~~ shall be transmitted to the secretary of state by ~~registered or certified~~ mail in any  
9 recount affecting a certificate to be issued by the secretary of state.

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

11 13-7-13. The business manager of the school district shall provide proper ballots, pollbooks,  
12 voting booths, and necessary supplies as required by law to the proper election officials on  
13 election day. The ballots shall be similar in form to those authorized by law for municipal  
14 elections. The quantity of ballots provided shall be at least ten percent more than the number  
15 of voters at the last comparable election. No party affiliation may appear on the ballot and the  
16 names of the candidates for the respective vacancies shall be printed on the ballot. Each  
17 candidate's position on the ballot shall be chosen by lot by the business manager and each  
18 candidate may be present or represented when the position on the ballot is being determined.  
19 The ballots for school elections shall be available for absentee voting no later than fifteen days  
20 prior to election day.