

South Dakota Provisional Ballot Processing Criteria for City Finance Officers or School Business Managers (SDCL 12-20-5.1 and 12-20-13.1 through 13.4)

Following Election Day, the **person in charge of the election** is responsible for determining whether a provisional ballot should be **counted**. You may need to work with your county auditor to decide.

Provisional ballots ARE NOT opened or counted on election night.

Whether you use hand counted paper ballots or optical scan ballots, the election workers must place all the provisional ballot envelopes unopened in the Provisional and Uncounted Absentee Ballot Return Envelope (ARSD 5:02:16:44) and returned to you.

The **day after the election** you must “diligently investigate” to **determine** if the voter was legally entitled to cast a ballot in that precinct.

Use the information provided by the voter on the affirmation (on the envelope) to begin your investigation. Ask the county auditor to assist you with this determination.

R-113—Provisional ballot envelope. 5:02:05:22

Voter's Affirmation for a Provisional Ballot

My voter registration was completed on or about the following date and was left with the following person or agency for delivery to the country auditor: _____

My name is _____, I reside at _____

my mailing address is _____ My date of birth is _____

my SD driver license number is _____, my daytime telephone number is _____

and my evening telephone number is _____

If I do not have a South Dakota driver license the last four digits of my social security number are _____

I understand if the election authority determines that I am not registered in this precinct and therefore not eligible to vote in this precinct, my vote will not be counted. I further understand that my vote may not be secret if only one provisional ballot is cast in the precinct. I declare or affirm under penalty of perjury that I registered and am eligible to vote in this precinct.

Signature of Voter _____ Date _____

To be completed by a precinct election worker:
Precinct number _____ Type of ballot provided to voter _____

Signature of precinct worker _____

Source: 29 SDR 177, effective July 2, 2003; 31 SDR 214, effective July 4, 2005; 33 SDR 230, effective July 1, 2007. General Authority; SDCL 12-18-40. Law Implemented: SDCL 12-18-40.

To determine which provisional ballots should be counted all **FOUR** statements below must be **satisfied** and then the **ballot would be counted**:

- Voter was registered in that precinct by the voter registration deadline, and;
- Voter's identity has been verified, and;
- Voter has not been removed from the voter list, and;

If you determine that there are provisional ballots which must be counted, a provisional ballot counting board must be appointed (SDCL 12-20-13.1). Follow SDCL 12-15-1 for the process to appoint the board. The provisional ballot counting is done prior to your canvass. **Even if you just have one provisional ballot you still must follow this process.**

Provisional ballot counting board (minimum of three people) meets one hour prior to the official canvass.

- The board may consist of election board members that worked on election day or any registered voter in your jurisdiction.
- The provisional ballot counting board shall **count** the provisional ballots which you have certified as countable. The board will complete a Certification of Provisional Ballot Count (ARSD 5:02:17:13).

- The provisional ballot county board is not determining if a provisional ballot should be counted. You've already determined that.
- Your canvassing board will add the tally from this certification to the tallies on the canvass sheet.

Below is the format you will use – the top portion requires that you must provide a table with the following information – so you will want to create a spreadsheet with all the information for 1-4 below. You can then attach the spreadsheet to the certificate – they can be on separate sheets.

- (1) Precinct Name;
- (2) Name of candidate or ballot question;
- (3) Number of votes received in figures; and
- (4) Number of votes received in words.

Reminder - you must also create a spreadsheet for the tally sheet of the provisional ballots. Here is a sample spreadsheet showing the information you need to provide:

Precinct Name	Name of Candidate or Ballot Question	Number of Votes received in figures	Number of votes received in words
Precinct 1	Steve Jones	4	Four
Precinct 4	Tom Smith	1	One

Sample Certification of Provisional Ballot Count:

STATE OF SOUTH DAKOTA)
) SS
 COUNTY OF _____)

We (list names), appointed as the provisional ballot counting board or provisional ballot resolution board in the jurisdiction of _____ for the _____ election held on the ____ day of _____, 20 _____, hereby certify that the foregoing is a true abstract of the provisional votes which were counted for this jurisdiction.

Sworn to before me this _____ day of _____, 20_____.

 Person in Charge of the Election

You are required to **send a notice within ten days** after the official canvass, to each provisional voter, advising whether the provisional ballot was counted. (SDCL12-20-13.1 through 13-4)

5:02:05:24. The notice sent to the mailing address of a person who has cast a provisional ballot shall contain:

- (1) Voter's name;
- (2) Voter's mailing address;
- (3) Election at which the ballot was cast;
- (4) Whether the ballot was counted;
- (5) If the ballot was not counted, the reason why it was not counted; and
- (6) A telephone number for further information.

A paper or electronic copy of the notice shall be maintained by the official in charge of the election for the time period defined in SDCL 12-20-31.

A paper or electronic copy of the notice shall be kept by the person in charge of the election for the time period defined in SDCL 12-20-31:

- 60 days if no Federal race in on the ballot
- 22 months if there is a Federal race on the ballot

12-20-13.1. Means of counting provisional ballots--Appointment of officials. The person in charge of the election shall decide if the provisional ballots are to be counted by hand or by automated tabulating equipment. If a decision is made to count the ballots by hand, a provisional ballot counting board shall be appointed as provided in § 12-15-1. If the provisional ballots are to be counted by automated tabulating equipment, a resolution board and tabulation machine operators shall be appointed as provided in chapter 12-17B.

NOTE: If your provisional ballot counting board counts the optical scan ballot(s) by hand you must follow administrative rule 5:02:09:22 on what constitutes a mark:

5:02:09:22. Counting imperfectly marked optical scan ballots. A mark that touches the oval on an optical scan ballot shall be counted as a vote; any mark that does not touch the oval and is not in the oval may not be counted as a vote.

12-20-13.2. Counting provisional ballots--Certification. The provisional ballot counting board or resolution board and tabulation machine operators shall convene one hour prior to the convening of the canvassing board. The provisional ballots, which the person in charge of the election has determined are not invalid according to § 12-20-5.1, shall be counted. Upon completion of the count, the provisional ballot counting board or resolution board shall complete a certification of provisional ballot count and give the certification to the canvassing board. The certification form shall be prescribed by the State Board of Elections.

12-20-13.3. Counting provisional ballots--Alternate time. The person in charge of the election may establish an alternative time prior to the official canvass for provisional ballot counting provided that notice of the time and location is given to the county party chairperson of each political party for primary, secondary, and general elections and to each candidate for any other election.

12-20-13.4. Counting provisional ballots--Notice. Within ten days after the official county canvass each person voting by provisional ballot shall be sent by the person in charge of the election a notice advising whether the provisional ballot was counted. The notice shall be prescribed by the State Board of Elections.