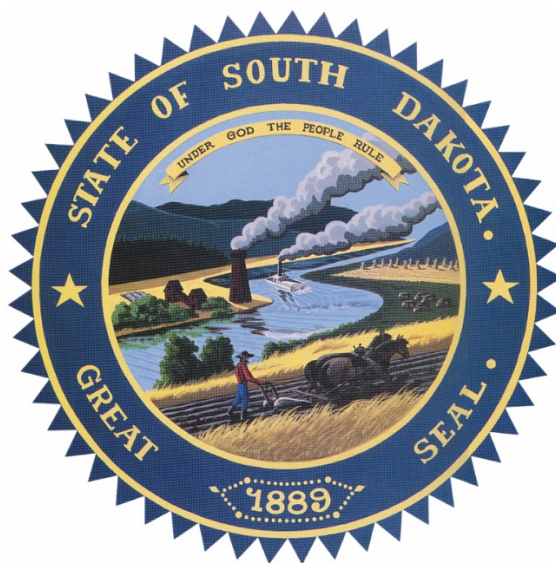


MUNICIPAL AND SCHOOL RECOUNT MANUAL



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South Dakota Codified Laws (SDCL)

http://sdlegislature.gov/Statutes/Codified_Laws/default.aspx

South Dakota Administrative Rules (ARSD)

<http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=05:02>

Title 12-21 does not apply to city and school recounts. If your jurisdiction’s attorney advises you to follow 12- 21, you will find those statutes starting on page 8.

RECOUNTS

Recounts occur when the official canvassed results of a race are within a certain margin of votes. If this margin of votes is met, the recount will proceed if requested by the necessary person(s). A recount procures a speedy and correct determination of the true and actual count of all ballots cast at an election and which ballots are valid. (SDCL 12-21-1)

A recount is a second counting of the ballots. It does not address possible legal deficiencies in the conduct of an election. These would be dealt with in an election contest through the court system.

Recounts are governed by Codified Law and Administrative Rule.

There are four different types of recounts for cities and schools. The following is a listing of recounts that can occur, the process to obtain the recount, and the necessary procedures to conduct a recount.

Candidates for any office, nomination or position involved in any recount may appear, personally or by a representative, and shall have the opportunity to witness the opening of ALL ballot boxes and the count of ALL the ballots. If the recount is for a referred or submitted question, any registered voter shall have the same opportunity as outlined above. (SDCL 12-21-26)

Municipal Candidate Recount

Purpose: This type of recount is used for a specific municipal candidate's race.

Office Sought: Mayor, Alderman, City Council Member, City Commissioner, Trustee

Involved Parties: Candidate, Municipal Finance Officer, Recount Board

Criteria:

- Must be a specific municipal candidate.
- Election margin not exceeding two percent of total votes cast for all candidates or by a margin of five (5) votes or less.
 - **Example**
 - Vote for one or more candidates.
 - 500 total votes are cast.
 - 2% of 500 (500×0.02) = 10
 - Thus, the election must be within 10 votes to request a recount.

Who Requests: A tied or losing candidate.

Recount Request: Written request.

File With: Municipal Finance Officer

Deadline: Within five (5) days after the official canvass (*do not count the day of the canvass in the five days nor do you count weekends or holidays; SDCL 12-1-17*)

- Example: If the official Canvass is on a Tuesday, then by 5pm on the following Tuesday the recount request is due.

Code Cited: SDCL 9-13-27.2 & 9-13-27.3

Steps to Filing this Request

Candidate

1. Writes request for recount.
2. Submit the request to the municipal finance officer.
3. Within THREE days of the Finance Officer receiving the request for a recount, each candidate selects a member for the recount board.
4. Within THREE days of the Finance Officer receiving the request for a recount, each candidate shall agree to the additional member appointed by the finance officer (if one is necessary).

Municipal Finance Officer

1. Shall set the time and place for the recount to occur within TEN calendar days of the date of the receipt of the recount request. (SDCL 9-13-27.3)
2. If the recount board consists of an even number of persons, the finance officer shall appoint one additional recount member that is mutually agreed upon by each candidate.
3. Delivers the ballot box containing the ballots to the recount board.
4. If a tie exists after the recount the finance officer shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. (SDCL 9-13-27.2)

Recount Board *(Title 12 procedures start on page 8)*

1. Questions on the recount shall be determined by majority vote of the recount board. (SDCL 9-13-27.3)

Municipal Ballot Question Recount

Purpose: This type of recount is used for a municipal ballot question.

Involved Parties: Voters, Municipal Finance Officer, Recount Board

Criteria:

- Must be a municipal ballot question.
- Election margin not exceeding two percent of total votes cast for that question.
 - For example, 1,000 total votes are cast.
 - 2% of 1,000 (1,000*.02) = 20
 - Thus, the election must be within 20 votes to request a recount.

Who Petitions: Three (3) registered voters of the municipality.

Petition: Petition form ARSD 5:02:19:10

File With: Municipal Finance Officer

Deadline: Within five (5) days after the official canvass (*do not count the day of the canvass in the five days nor do you count weekends or holidays; SDCL 12-1-17*)

- Example: If the official Canvass is on a Tuesday, then by 5pm on the following Tuesday the recount petition is due.

Code Cited: SDCL 9-13-27.4

Steps to Filing this Petition

Voters

1. Three (3) registered voters file the petition for recount (ARSD 5:09:19:10).
2. Petition must be notarized and submitted to the municipal finance officer.

Municipal Finance Officer

1. Shall set the time and place for the recount to occur within TEN days of the date of the receipt of the recount petition. (SDCL 9-13-27.3)
2. Within THREE days of the Finance Officer receiving the petition for a recount, the Finance Officer appoints the recount board consisting of one person on each side of the question and one person mutually agreed upon by the other two appointed. (SDCL9-13-27.4)
3. Delivers the ballot box containing the ballots to the recount board.

Recount Board *(Title 12 procedures start on page 8)*

1. Questions on the recount shall be determined by majority vote of the recount board. (SDCL 9-13-27.3)

School Board Candidate Recount

Purpose: This type of recount is for a specific school board candidate's race.

Office Sought: School Board Member

Involved Parties: Voters, Business Manager of the school district, Recount Board

Criteria:

- Must be a specific school board candidate.
- Election margin not exceeding two percent of total votes cast for all candidates.
 - **Example**
 - Vote for one or more candidates.
 - 400 total votes are cast.
 - 2% of 400 (400×0.02) = 8
 - Thus, the election must be within 8 votes to request a recount.

Who Requests: A tied or losing candidate.

Recount Request: Written request.

File With: School Business Manager

Deadline: Within five (5) days after the official canvass (*do not count the day of the canvass in the five days nor do you count weekends or holidays; SDCL 12-1-17*).

- Example: If the official Canvass is on a Tuesday, then by 5pm on the following Tuesday the recount request is due.

Code Cited: SDCL 13-7-19.1 & 13-7-19.2

Steps to Filing this Request:

Candidate

1. Losing candidate submits a request for recount.
2. Files request with the business manager.
3. Each candidate selects a recount board member.
4. Each candidate shall agree to the recount member appointed by the business manager.

Business Manager

1. Shall set the time and place for the recount.
2. If the recount board consists of an even number of persons, the business manager shall appoint one additional recount member that is mutually agreed upon by each candidate.
3. Delivers the ballot box containing the ballots to the recount board.
4. If a tie exists after the recount the business manager shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. (SDCL 13-7-19-.1)

Recount board *(Title 12 procedures start on page 8)*

1. Shall proceed expeditiously with the recount until completed.
2. Questions on the recount shall be determined by majority vote of the recount board.
(SDCL 13-7-19.2)
3. Compensation for recount board shall be paid out of the general fund of the school district and the compensation is set by the school board, to be not less than the minimum wage established by SDCL 60-11-3. (SDCL 13-7-19.4)

School Ballot Question Recount

Purpose: This type of recount is used for a school district ballot question.

Involved Parties: Voters, Business Manager of the school district, Recount Board

Criteria:

- Must be a school district ballot question.
- Election margin not exceeding two percent of total votes cast for that question.
 - For example, 700 total votes are cast.
 - 2% of 700 (700×0.02) = 14
 - Thus, the election must be within 14 votes to request a recount.

Who Petitions: Three (3) registered voters of the school district.

Petition: Petition ARSD 5:02:19:10

File With: School Business Manager

Deadline: Within five (5) days after the official canvass (*do not count the day of the canvass in the five days nor do you count weekends or holidays; SDCL 12-1-17*)

- Example: If the official Canvass is on a Tuesday, then by 5pm on the following Tuesday the recount petition is due.

Code Cited: SDCL 13-7-19.3

Steps to Filing this Petition

Voters

1. Three (3) voters fill out the petition.
2. Petition must be notarized and submitted to the school business manager.

Business Manager

1. Shall set the time and place for the recount.
2. Appoints the recount board consisting of one person on each side of the question and one person mutually agreed upon by the other two appointed.
3. Delivers the ballot box containing the ballots to the recount board.

Recount board *(Title 12 procedures start on page 8)*

1. Shall proceed expeditiously with the recount until completed.
2. Questions on the recount shall be determined by majority vote of the recount board. (SDCL 13-7-19.2)
3. Compensation for recount board shall be paid out of the general fund of the school district and the compensation is set by the school board, to be not less than the minimum wage established (SDCL 60-11-3, SDCL 13-7-19.4)

Recount Board Procedures

THE PROCEDURES OUTLINED BELOW ARE FOUND IN TITLE 12, TITLE 9 FOR MUNICIPALITIES AND TITLE 13 FOR SCHOOL DISTRICTS HAVE MINIMAL STATUTES THAT GOVERN RECOUNTS WITHIN THEIR JURISDICTIONS. IF A MUNICIPALITY OR SCHOOL DISTRICT RECOUNT BOARD DETERMINES, WITH THE ADVICE OF THE JURISDICTIONS ATTORNEY, TO FOLLOW CHAPTER 12-21 RECOUNTS, BELOW ARE THE PROCEDURES.

- The recount board may recess from time to time; however, the recount shall not reconvene, nor shall the ballots be handled until the appointed time for reconvening. Notice of time and place of meeting shall be given to all three members of the recount board.
- The finance officer or school business manager shall be responsible for providing administrative support and staff for the recount board.
- The finance officer or school business manager shall take precautions to ensure against tampering with the ballots.
- The recount shall proceed as expeditiously as reasonably possible until completed. (SDCL 12-21-25)

Disputed Ballots

- If any such candidate or any such representative, protests the ruling of such board as to any ballot, such ballot shall be adequately identified by the board as an exhibit and segregated by the board as a disputed ballot. (SDCL 12-21-27)
- At the end of the recount of each precinct, the undisputed ballots shall be returned to the ballot box and resealed, and the disputed ballots, if any, shall be certified pursuant to (SDCL 12-21-33, SDCL 12-21-31).
- See page 14 for **Recount Supplies list**.

Recounting of Ballots

- The recount board will follow ARSD 5:02:16- for the process on counting **hand counted** paper ballots (not optical scan ballots):
 - The recount board, before assuming its duties, shall execute the oath of office.
 - In the presence of all persons desiring to attend the recount, the counting board shall immediately proceed to publicly count the ballots and votes received at the polls and shall continue without adjournment until the count is completed. The counting board may not exclude or prohibit any member of the public from witnessing any portion of the vote counting, so long as that person's conduct is not disruptive.
 - The counting board shall use the tally sheets prescribed by 5:02:17:07 in the vote counting.
 - The counting board shall begin the vote count by counting the ballots in the manner prescribed in 5:02:16.

- 5:02:16:06. Opening the ballot box. The ballot box shall then 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 counting board unopened, except to ascertain if each ballot is single.
- 5:02:16:07. Folded ballots separated. If two or more ballots are found folded together presenting the appearance of a single ballot, the ballots shall be laid aside until the count of the ballots is completed. If, upon the comparison of the count of the pollbook and after considering the appearance of the ballots, a majority of the counting board is of the opinion that the folded ballots were voted by one voter, the ballots shall be stapled together and endorsed as "duplicate ballot of one voter not counted."
- 5:02:16:08. Duplicate ballots. For the purpose of determining the proper number of ballots in the box, any ballots folded together determined to be duplicate ballots of one voter shall be counted as a single ballot. There are two types of duplicate ballots as follows:
 - (1) If a voter was given two or more identical ballots stuck together and voted only one of them, the voted ballot shall be counted. The election or counting board will find the duplicate ballots folded together in the ballot box with the ballot stamp on the back copy and the votes marked on the top copy; and
 - (2) If a voter was given two or more identical ballots stuck together and voted more than one of them, none of the voted ballots may be counted.
- 5:02:16:10. Unstamped ballots. In the counting of the official vote, any ballot not covered by § 5:02:16:07, 5:02:16:08, or 5:02:16:09.01 which is not endorsed by the official stamp is void and may not be counted. All such ballots shall be endorsed "unstamped ballot."
- 5:02:16:11. Separation of ballots. The counting board shall next proceed to further separate the ballots.
- 5:02:16:12. Order of vote counting. The counting of votes for each candidate shall be in the same order as the candidates appear on the ballot.
- 5:02:16:14. Scrutiny of ballots by counting board. At least two precinct deputies of the counting board of opposite political parties shall scrutinize each ballot to determine the vote on that ballot. The precinct superintendent shall break any tie on a ballot.
Note: the requirement of opposite political parties does not apply to city and school elections because they are non-partisan elections.
- 5:02:16:15. Tally of ballots. As the vote is announced, one counting board member shall make the required mark on the tally sheet in the pollbook and another counting board member shall make the required mark on the duplicate tally sheet.
- 5:02:16:17.01. Write-in votes not counted. As each ballot is being examined to determine how the vote was cast for each office, the counting board shall determine if

any write-in was placed on the ballot. The write-in may not be counted as a vote, but all other valid marks shall be counted as votes.

- 5:02:16:17.02. Counting imperfectly marked paper ballots. A mark that touches the circle or square on a paper ballot shall be counted as a vote; any mark that does not touch the circle or square and is not in the circle or square may not be counted as a vote.
- 5:02:16:21. Voter's intent to be determined. If in accordance with this chapter it is impossible to determine the voter's intent on any ballot or part of a ballot, that portion of the ballot shall be void and shall not be counted as to those races for which the voter's intent cannot be determined.
- All questions arising on such recount shall be determined by majority vote of such board, and at least two members of such board shall always be present. When only two members are present, the presence of the third member may be required for determining any disputed question on which the two members present are unable to agree. (SDCL 12-21-23)
- The recount board is authorized to decide whether any provisional ballots or absentee ballots which were determined not to be countable shall be counted, and those votes shall be added to the recount tally. (SDCL 12-21-24)
- If the city or school is using **automated tabulating equipment (optical scan ballots)**, they will follow the procedures below (ARSD 5:02:09:05):
 - The Counting Board examines each ballot to determine if official stamp has been placed on the ballot and may not count any vote on an unstamped ballot.
 - The recount board shall review ballots for proper marking procedure according to the voting instructions. The recount board shall determine the voter's intent based on the standards found in ARSD 5:02:09:22.
 - 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.
 - The recount board shall review each ballot to determine if there are any write-in votes. Any write-in vote may not be counted but all other votes for which the voter's intent can be determined shall be counted.
 - The recount board shall examine the ballots reviewed by the resolution board to determine the correctness of the initial rejection or duplication. The recount board shall rule on whether each mark is to be counted or rejected according to 5:02:09:22.
 - The recount board shall test the automatic tabulating equipment according to 5:02:09:01.02. The board may conduct additional tests of the equipment including a comparison with hand-counted results from a precinct.
 - 5:02:09:01.02. Test of tabulating equipment. The person in charge of the election shall conduct tests of the automatic tabulating equipment as required in SDCL 12-17B-

5 and 12-17B-12. The tests shall be conducted by processing a pre-audited group of ballots in a test deck marked to record a predetermined number of valid votes for each candidate and each measure. A tally sheet shall be created prior to the machine count to fully show how the sample of ballots is marked and what the machine vote totals must be to prove an errorless count. If more than one ballot is used in the election, a test deck shall be made for each ballot that is unique in any way. The test deck(s) shall include for each office and ballot question:

- (1) One or more ballots with a vote for each candidate and each side of a ballot question;
- (2) One or more ballots which have votes in excess of the number allowed by law for each office and question; and
- (3) One or more ballots which contain an undervote.

At least twenty-five test ballots shall be included in the total of all test decks. Individual test decks for individual ballots shall be of sufficient size to prove the accuracy of the system. If absentee ballots are to be received folded, at least ten percent of the test ballots in any individual test deck shall be similarly folded. The person conducting the test of the tabulating equipment shall date and sign the printout, verifying that the results of the machine's printed paper vote totals exactly match the tally sheet from which the sample of ballots was marked. The test deck(s), tally sheet, and signed printout must be secured and retained with the official ballots.

The test procedure shall include the processing of at least one ballot completely blank to verify that the machine is correctly configured according to SDCL 12-17B-13.1.

If more than one tabulating machine is to be used in the election, each machine shall be fully tested according to the ballot(s) which each machine will be used to count in the election.

In addition to these tests, any test deck may be processed any time before or after completion of the official count.

- The recount board shall count the ballots with the automatic tabulating equipment. A hand count may be conducted to verify the accuracy of the count by the automatic tabulating equipment. If any discrepancy is found, the discrepancy shall be resolved before the recount is concluded. If any vote cannot be accurately counted by the automatic tabulating equipment but can be hand counted, the hand count tally of that vote shall be added to the count by the automatic tabulating equipment.
- Any question arising on the recount shall be determined by majority vote of the recount board.
- The recount board shall certify the new returns as printed by the automatic tabulation equipment or as hand counted as the "Official Returns" for the election by completing the

Certificate of Recount as provided in 5:02:19:08. This form can be found at the back of this manual.

- Board may recess; however, the recount shall not reconvene, nor shall ballots be handled until the appointed time for reconvening. (ARSD 5:02:19:01)

Completion of Recount

1. The recount board completes Certificate of Recount which lists both the results from the official canvass and the results from the subsequent recount. (ARSD 5:02:19:08 & SDCL 12-21-32).
2. The Certificate of Recount is maintained in the office of the Finance Officer or School Business Manager.
3. The finance officer or school business manager will seal up the ballots and keep them sealed for sixty days pursuant to SDCL 12-20-31:

SDCL 12-20-31. Destruction of ballots and pollbooks--Period for which held--Pending recount or contest. The officer in charge of an election may destroy voted ballots and pollbooks from a nonfederal election sixty days following the election at which such ballots were voted. However, they may not be destroyed if any recount or contest of such election is pending. The officer in charge of an election may destroy voted ballots, pollbooks and all other election material relating to a federal election twenty-two months after the election at which the ballots were voted. For the purpose of this section, a federal election is any election to nominate or elect persons to the United States Congress or other national elected position, including national issues or questions. If a ballot is used for a federal election and a state or local election, the ballots and all other election material shall be maintained for twenty-two months. All federal election material may be removed from the ballot box if it is maintained in such a manner as to guarantee the safety and integrity of such material.

4. Any disputed ballots shall be recorded on the Certificate of Disputed Ballots (ARSD 5:02:19:09) and delivered to the person in charge of the election along with the disputed ballots. (SDCL 12-21-33)
5. The governing board of the municipality or the school board will canvass the results of the recount.
6. If such corrected abstract by the recount board shows no change in the result as previously found on the official returns, no further action shall be taken. But if there is a change in such result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated as the case may be, which certificate shall be signed by at least two members of such board and shall set forth the nomination or election of such person as to such office or position.

(SDCL 12-21-37)

Additional Information upon Recount Completion

- Any certificate of nomination or election issued under the provisions of this chapter shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued. The holder of any certificate of nomination or election issued under this chapter shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had. (SDCL 12-21-41)
- The determination, as provided in this chapter, of a corrected and changed result upon a recount as to any referred or submitted question shall have the effect of superseding and rendering null and void the result as found upon the original canvass. (SDCL 12-21-42.)
- Whenever the ballots cast in any precinct have been recounted as to any office, nomination, petition, or question, such ballots **shall not thereafter**, except as specifically provided in 12-21-45, be recounted as to the same office, nomination, position, or question. (SDCL 12-21-44)
- When a tie vote between candidates is found to exist after a recount has been performed, it shall be the duty of the person in charge of the election to fix a time and place for the drawing of lots by the candidates involved in the tie vote, giving reasonable notice of the time and place to each of the candidates. Each such candidate may appear at the time and place designated either in person or by a representative, the candidate or candidates entitled to the certificate or certificates of nomination or election shall be determined by drawing of lots in the manner directed by such authority, and the certificate or certificates of nomination or election shall be issued accordingly.

RECOUNT SUPPLIES:

- **Oath for Recount Board** (ARSD 05:02:19:11)
- **Official Returns** (Canvass sheet)
- **Resolution Board Log and replaced ballots** (not applicable to hand-counted ballots)
- **For each precinct:**
 - Registration list
 - Pollbook (if you had an absentee ballot precinct, include the poll list for that)
 - Ballot recap sheet
 - Sealed ballot boxes
 - Any provisional ballots that were determined to be counted and uncounted
 - Any unopened absentee ballot envelopes
- **Certificate of disputed ballots** (ARSD 05:02:19:09)
- **Envelope for disputed ballots** (there isn't anything in ARSD for this, but you will need some sort of envelope to put these disputed ballots in)
- **Certificate of Recount** (ARSD 05:02:19:08)
- **Ballot box seals**

Additional supplies ONLY for those using OPTICAL SCAN BALLOTS

- Ballot jogger (if needed)
- Automatic tabulating system (DS200, DS450 or DS850) election night print outs
- Test Deck with printout of test deck results
- Official Returns (canvass sheet) printed from Total Vote (the canvass sheet from Total Vote is only used if the jurisdiction's election results were entered into this system). If not, then you will use the same spreadsheet as listed above.

Here are some extra suggested items to have on hand during the recount:

- Box cutter
- Paper clips
- Rubber bands
- Post-it notes
- Scotch tape
- Copy of Recount manual (<https://sdsos.gov/>)
- Sharpie markers
- Notebook for each Recount Board member
- Pens/Pencils