



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

495R0080

## HOUSE COMMERCE ENGROSSED NO. **HB 1002** 1/27/2010

Introduced by: Representatives Turbiville and Lederman and Senators Nelson, Maher, Olson (Russell), and Tieszen at the request of the Interim Committee on Alcoholic Beverage Control and Licensing Laws

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the days and hours  
2 that alcoholic beverages may be sold on a licensed premise and who may sell, serve, or  
3 dispense alcoholic beverages on a licensed premise and to revise certain provisions  
4 concerning the power of municipalities and counties to regulate the sale and use of alcoholic  
5 beverages.

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

7 Section 1. That § 35-4-81 be amended to read as follows:

8 35-4-81. No on-sale or off-sale licensee, licensed under subdivisions 35-4-2(3), (4), (5), (6),  
9 (9), (11), ~~and (12)~~, (13), (16), (17), (17A), (18), and (19), may sell, serve, or allow to be  
10 consumed on the premises covered by the license, alcoholic beverages between the hours of two  
11 a.m. and seven a.m. ~~or on Sunday after two a.m., on Memorial Day after two a.m., or at any time~~  
12 ~~on Christmas Day~~. A violation of this section is a Class 2 misdemeanor.

13 Section 2. That § 35-4-81.1 be repealed.

14 ~~35-4-81.1. No off-sale licensee, licensed under subdivisions 35-4-2(3), (5), and (19), may~~



1 ~~sell, or allow to be sold, alcoholic beverages between the hours of twelve midnight and seven~~  
2 ~~a.m. of the following day, or sell, or allow to be sold, distilled spirits or wine on Memorial Day~~  
3 ~~or Christmas Day. In addition, no off-sale licensee may sell, or allow to be sold, alcoholic~~  
4 ~~beverages on Sunday unless the municipality or the county by ordinance allows such sales on~~  
5 ~~Sunday.~~

6 Section 3. That § 35-4-81.2 be repealed.

7 ~~— 35-4-81.2. No licensee licensed under subdivisions 35-4-2(16) and (17) may sell, serve, or~~  
8 ~~allow to be consumed on the premises covered by the license, any malt beverage between the~~  
9 ~~hours of two a.m. and seven a.m. No licensee licensed under subdivision 35-4-2(12) may sell,~~  
10 ~~serve, or allow to be consumed on the premises covered by the license, any wine between the~~  
11 ~~hours of two a.m. and seven a.m. A violation of this section is a Class 2 misdemeanor.~~

12 Section 4. That § 35-4-79 be amended to read as follows:

13 35-4-79. No on-sale licensee may permit any person less than twenty-one years old to loiter  
14 on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such  
15 premises. However, an on-sale licensee licensed pursuant to subdivision 35-4-2(4), (6), (11),  
16 (12), (13), or (16) may permit persons eighteen years old or older to sell and serve or dispense  
17 alcoholic beverages if ~~not~~ less than fifty percent of the gross business transacted by that  
18 establishment is from the sale of ~~food~~ alcoholic beverages and the licensee or an employee that  
19 is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or  
20 dispensed. For the purposes of this section, the term, "to sell and serve alcoholic beverages,"  
21 means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers  
22 as a normal adjunct of waiting tables. The term does not include tending bar or drawing or  
23 mixing alcoholic beverages.

24 A violation of this section is a Class 2 misdemeanor.

1 Section 5. That § 35-4-79.1 be amended to read as follows:

2 35-4-79.1. No off-sale licensee licensed under subdivision 35-4-2(3), (5), (17), or (17A) may  
3 permit any person less than twenty-one years old to sell, serve, or dispense alcoholic beverages  
4 on the licensed premises unless such sales of alcoholic beverages constitutes less than fifty  
5 percent of the gross business transacted by that establishment. If alcoholic beverage sales  
6 constitute less than fifty percent of the gross business transacted by the establishment, the  
7 licensee may permit persons less than twenty-one years old to sell, serve, or dispense alcoholic  
8 beverages if the licensee or an employee that is at least twenty-one years of age is on the  
9 premises when the alcoholic beverage is sold or dispensed.

10 Section 6. That § 35-4-79.3 be repealed.

11 ~~35-4-79.3. No off-sale licensee licensed under subdivision 35-4-2(3) or (5) may permit any~~  
12 ~~person less than twenty-one years old to sell, serve, or dispense alcoholic beverages on the~~  
13 ~~licensed premises.~~

14 Section 7. That § 35-4-2.8 be amended to read as follows:

15 35-4-2.8. An on-sale licensee, licensed under subdivision 35-4-2(4) or (6), may also be  
16 licensed under subdivision 35-4-2(12) or (16), or both. A licensee holding two or more licenses  
17 pursuant to this section may exercise the privileges granted under the license issued pursuant  
18 to subdivision 35-4-2(12) or subdivision 35-4-2(16) ~~during the time specified in § 35-4-81.2.~~

19 Section 8. That § 9-29-7 be amended to read as follows:

20 9-29-7. ~~Every~~ Each municipality ~~shall have power to~~ may prohibit or regulate the transaction  
21 of business in alcoholic beverages; and the use and consumption ~~thereof, and to~~ of alcoholic  
22 beverages, establish the number of on- and off-sale licenses which may be issued; and the fees  
23 to be charged ~~therefor, for the licenses, and~~ provide for reasonable classifications of on-sale and  
24 off-sale licenses ~~and for the issuance of high-point beer on- and off-sale licenses to licensees~~

1 ~~holding high-point beer licenses on December 31, 1979, for which the fees to be charged for the~~  
2 ~~various classifications shall be uniform within each class, consistent with the provisions of Title~~  
3 35. ~~The secretary of revenue shall be promptly furnished certified copies of all ordinances and~~  
4 ~~resolutions or amendments thereto adopted relating to the exercise of these powers.~~

5 ~~— No high-point beer license provided for in this section may be transferred as to site.~~

6 Section 9. That subdivision (8) of § 7-8-20 be amended to read as follows:

7 (8) To regulate the transaction of business in alcoholic beverages; and the use and  
8 consumption ~~thereof~~ of alcoholic beverages, to establish the number of on-sale  
9 licenses which may be issued, to provide for reasonable classification of on-sale  
10 licenses and ~~to fix the fees to be charged for the various classifications which shall~~  
11 ~~be uniform within each class, all~~ licenses consistent with the provisions of Title 35:  
12 ~~The secretary of revenue shall be promptly furnished certified copies of all~~  
13 ~~ordinances and resolutions or amendments thereto adopted relating to the exercise~~  
14 ~~of these powers;~~

15

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

286R0171

## HOUSE JUDICIARY ENGROSSED NO. **HB 1081** - 2/1/2010

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise certain court automation surcharges and to declare  
2 an emergency.

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

4 Section 1. That § 16-2-39 be amended to read as follows:

5 16-2-39. In each civil action, proceeding for judicial remedy, and probate proceeding, the  
6 clerk of courts shall collect the sum of ~~twenty~~ forty dollars as a unified judicial system court  
7 automation surcharge. The ~~twenty-dollar~~ forty-dollar surcharge does not apply to a small claims  
8 action. In each small claims action, the clerk of courts shall collect as a unified judicial system  
9 court automation surcharge the sum of ~~six~~ twelve dollars if the amount in controversy is less  
10 than four thousand dollars and ~~eight~~ sixteen dollars if the amount in controversy is four  
11 thousand dollars or more. The surcharge shall be collected from the plaintiff or person  
12 instituting the action or proceeding at the time of filing the first paper. The surcharge shall be  
13 collected by the clerk in the manner in which other fees are collected. However, no surcharge  
14 may be collected for any petition or motion to modify final orders for child support, child  
15 custody, child visitation, or spousal support or in any civil action or proceeding for judicial



1 remedy commenced by the state, a county, a municipality, or a school district.

2 Section 2. That § 16-2-41 be amended to read as follows:

3 16-2-41. In each criminal action, in addition to any other liquidated costs, penalty,  
4 assessment, or fine provided by law, there shall be levied a unified judicial system court  
5 automation surcharge according to the following schedule:

6 (1) Violation of county or municipal ordinances or administrative rules having criminal  
7 penalties, ~~eight~~ seventeen dollars and fifty cents;

8 (2) Violation of state statute classified as a Class 2 misdemeanor, ~~eleven~~ twenty-three  
9 dollars and fifty cents;

10 (3) Violation of a state statute classified as a Class 1 misdemeanor, ~~twenty~~ forty-one  
11 dollars and fifty cents;

12 (4) Violation of a state statute classified as a felony, ~~thirty~~ sixty-one dollars and fifty  
13 cents.

14 Section 3. That § 16-2-41.1 be amended to read as follows:

15 16-2-41.1. In each appeal, intermediate appeal, original proceeding, or other action filed in  
16 the Supreme Court, the clerk of the court shall collect the sum of ~~twenty-five~~ fifty dollars as a  
17 unified judicial system court automation surcharge. However, no surcharge may be collected  
18 in any proceeding commenced in the Supreme Court by the state, a county, a municipality, or  
19 a school district.

20 Section 4. After June 30, 2015, notwithstanding § 16-2-39, in each small claims action, the  
21 clerk of courts shall collect as a unified judicial system court automation surcharge the sum of  
22 six dollars if the amount in controversy is less than four thousand dollars and eight dollars if the  
23 amount in controversy is four thousand dollars or more.

24 Section 5. Whereas, this Act is necessary for the support of the state government and its

- 1 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
- 2 full force and effect from and after its passage and approval.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

627R0311

## HOUSE LOCAL GOVERNMENT ENGROSSED NO. **HB 1082** - 2/2/2010

Introduced by: Representatives Cutler, Feickert, and Schlekeway and Senators Gant, Miles,  
and Tieszen

1 FOR AN ACT ENTITLED, An Act to permit counties to require criminal background checks  
2 for persons seeking employment.

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

4 Section 1. Any county may, by ordinance, require any person over eighteen years of age  
5 seeking employment with the county to submit to a state and federal criminal background  
6 investigation by means of fingerprint checks by the South Dakota Division of Criminal  
7 Investigation and the Federal Bureau of Investigation. The ordinance shall specify which  
8 occupations or positions require a criminal background check. The county may submit  
9 completed fingerprint cards to the Division of Criminal Investigation before the prospective new  
10 employee enters into service. Upon completion of the state and federal criminal background  
11 check, the Division of Criminal Investigation shall forward to the county all information  
12 obtained as a result of the check. Failure to submit or cooperate with the criminal background  
13 investigation is grounds for denial of employment.



# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

561R0368

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1120** - 2/2/2010

Introduced by: Representatives Vanneman, Brunner, Cronin, Dennert, Fargen, Feickert, Greenfield, Hoffman, Hunt, Jensen, Juhnke, Kopp, Krebs, Noem, Olson (Betty), Pitts, Putnam, Rausch, Schlekeway, Sorenson, Street, Turbiville, and Verchio and Senators Hansen (Tom), Bartling, Bradford, Fryslie, Garnos, Knudson, Merchant, Peterson, and Rhoden

1 FOR AN ACT ENTITLED, An Act to revise certain provisions and assessments related to the  
2 South Dakota Oilseeds Council.

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

4 Section 1. That § 38-27-1 be amended to read as follows:

5 38-27-1. Terms used in this chapter mean:

6 (1) "Council," the South Dakota Oilseeds Council;

7 (2) "First purchaser," any person who initially places sunflowers, safflowers, canola, or  
8 flax, whether as an owner, agent, or otherwise, into the channels of trade and  
9 commerce, or who is engaged in the processing of sunflowers, safflowers, canola, or  
10 flax into any form. ~~A grower selling his unharvested sunflowers, safflowers, canola,~~  
11 ~~or flax or delivering his sunflowers, safflowers, canola, or flax from the farm on~~  
12 ~~which they are produced to storage facilities, packing shed, or processing plant,~~  
13 ~~within the state, is not a first purchaser;~~



- 1 (3) "Grower," any person who plants, raises, and harvests sunflowers, safflowers, canola,  
2 or flax from more than ten acres;
- 3 (4) "Hundredweight," a one hundred pound unit or a combination of packages making  
4 a one hundred pound unit or any one hundred pound shipment of sunflowers,  
5 safflowers, or canola based on invoices or bills of lading records;
- 6 (5) "Oilseeds," any ~~and all varieties~~ variety of sunflowers, safflowers, canola (rapeseed),  
7 or flax marketed or harvested within the state;
- 8 (6) "Participating grower," a grower who has not requested a refund from the payment  
9 of assessments on sunflower, safflower, canola, or flax production under this chapter  
10 for a particular year in the last three calendar years, including the current calendar  
11 year;
- 12 (7) "Secretary," the secretary of the South Dakota Department of Agriculture.

13 Section 2. That § 38-27-2 be amended to read as follows:

14 38-27-2. There is hereby established a South Dakota Oilseeds Council. The council is  
15 composed of ~~five~~ seven members who shall be participating growers of ~~sunflowers, one~~  
16 oilseeds. One member who shall be a participating grower of safflowers, one member who shall  
17 be a participating grower of canola, and one member who shall be a participating grower of flax  
18 canola, or flax. All members shall be appointed by the secretary of agriculture. One member  
19 shall reside west of the Missouri River. The secretary of agriculture is an ex officio, nonvoting  
20 member.

21 Section 3. That § 38-27-4 be amended to read as follows:

22 38-27-4. The term of the members shall be for a period of four years, provided that the initial  
23 appointments shall be for staggered terms. ~~Not all members shall be of the same political party.~~  
24 If a member ceases to be a participating grower, the secretary of agriculture shall declare the

1 member's office vacant, and the secretary shall appoint a successor for the balance of the term  
2 of the office vacated.

3 Section 4. That § 38-27-9 be amended to read as follows:

4 38-27-9. This chapter ~~shall not be construed to~~ does not abrogate or limit in any way the  
5 rights, powers, duties, and functions of the Department of Agriculture or any other agency of  
6 the state, but ~~shall be~~ is supplementary ~~thereto to~~ and in aid and cooperation ~~therewith~~ with such  
7 rights, powers, duties, and functions.

8 Section 5. That § 38-27-11 be amended to read as follows:

9 38-27-11. An assessment at the rate of ~~three~~ four cents per hundredweight shall be levied  
10 and imposed upon all sunflowers, safflowers, and canola grown in the state or sold to a first  
11 purchaser, and an assessment at the rate of one cent per bushel shall be levied and imposed upon  
12 all flax grown in the state or sold to a first purchaser. The assessment is due upon any  
13 identifiable lot or quantity of sunflowers, safflowers, canola, or flax.

14 Section 6. That § 38-27-13 be amended to read as follows:

15 38-27-13. Any first purchaser of sunflowers, safflowers, canola, or flax shall file an  
16 application or affidavit with the oilseeds council on forms prescribed and furnished by the  
17 council ~~which~~. The application or affidavit shall contain the name under which the first  
18 purchaser is transacting business within the state, ~~his~~ the first purchaser's place of business, and  
19 the location of loading places of the first purchaser.

20 Section 7. That § 38-27-14 be amended to read as follows:

21 38-27-14. Any first purchaser shall keep ~~as a part of his permanent records~~ a permanent  
22 record of all purchases by the first purchaser of raw sunflowers, safflowers, canola, or flax,  
23 which may be examined by the oilseeds council at any reasonable time. The first purchaser shall  
24 report to the council stating the quantity of sunflowers, safflowers, canola, or flax received by

1 ~~him~~ the first purchaser. The report and remittance of the assessment shall be made at the times  
2 and in the manner prescribed by the council pursuant to rules promulgated pursuant to chapter  
3 1-26.

4 Section 8. That § 38-27-18 be repealed.

5 ~~— 38-27-18. If fifteen percent of the participating growers, as disclosed by the records of the~~  
6 ~~oilseeds council for the preceding year, petition the council, the council shall conduct a~~  
7 ~~referendum among the participating growers of the state to determine whether they wish the~~  
8 ~~Legislature to raise or lower the assessment imposed by this chapter. The referendum shall be~~  
9 ~~conducted only among participating growers who have paid all assessments pursuant to this~~  
10 ~~chapter for the preceding year, and the ballots shall be prepared by the council and mailed to~~  
11 ~~each participating grower at least thirty days prior to the last date for filing ballots. In addition,~~  
12 ~~each ballot shall be accompanied by a notice to each participating grower:~~

13 ~~— (1) — Of the date of the filing of the petition by the growers for the referendum and the~~  
14 ~~number of signatures contained thereon;~~

15 ~~— (2) — Of the date and place where the council will open and tabulate the ballots, which date~~  
16 ~~may be not less than five days after the last date for filing the ballots;~~

17 ~~— (3) — Of the last date upon which ballots may be filed with the council, or postmarked if~~  
18 ~~delivered to the council by mail; and~~

19 ~~— (4) — That any participating grower may attend the meeting of the council at the time the~~  
20 ~~ballots are opened and the votes tabulated.~~

21 ~~— If a majority of the participating growers voting upon the question are in favor of the~~  
22 ~~proposed change, the council shall certify the result to the secretary with the request that the~~  
23 ~~secretary prepare a bill to submit to the next legislative session to modify this chapter~~  
24 ~~accordingly. The results of the referendum are advisory only, and the Legislature is not obligated~~

1 ~~to adopt legislation enacting the proposals contained in any referendum.~~

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

930R0417

## HOUSE TRANSPORTATION ENGROSSED NO. **HB 1130** - 2/2/2010

Introduced by: Representatives Van Gerpen, Blake, Bolin, Boomgarden, Brunner, Burg, Carson, Conzet, Cronin, Curd, Cutler, Deadrick, Dennert, Elliott, Engels, Faehn, Fargen, Feickert, Feinstein, Frerichs, Gibson, Gosch, Greenfield, Hamiel, Hoffman, Hunhoff (Bernie), Hunt, Iron Cloud III, Jensen, Juhnke, Killer, Kirkeby, Kirschman, Kopp, Krebs, Lange, Lederman, Lucas, Lust, McLaughlin, Moser, Noem, Novstrup (David), Nygaard, Olson (Betty), Olson (Ryan), Peters, Pitts, Putnam, Rausch, Rave, Romkema, Rounds, Russell, Schlekeway, Schrempp, Sly, Solberg, Solum, Sorenson, Steele, Street, Thompson, Tidemann, Turbiville, Vanderlinde, Vanneman, Verchio, Wink, and Wismer and Senators Adelstein, Abdallah, Ahlers, Bartling, Bradford, Brown, Dempster, Fryslie, Gant, Garnos, Gillespie, Gray, Hansen (Tom), Hanson (Gary), Haverly, Heidepriem, Howie, Hundstad, Hunhoff (Jean), Jerstad, Kloucek, Knudson, Maher, Merchant, Miles, Nelson, Nesselhuf, Novstrup (Al), Olson (Russell), Peterson, Rhoden, Schmidt, Tieszen, Turbak Berry, and Vehle

1 FOR AN ACT ENTITLED, An Act to include the families of certain members of the armed  
2 forces who died in military service as eligible for gold star special license plates.

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

4 Section 1. That § 32-5-109.5 be amended to read as follows:

5 32-5-109.5. Any resident owner of a motor vehicle who is a parent, spouse, sibling, or child  
6 of a member of the United States Armed Forces who died while in service to this country or  
7 who died as a result of the service, as certified by the Department of Military and Veterans  
8 Affairs, may apply to the secretary to receive a maximum of two sets of special license plates



1 which honor the ~~parent~~ parent person as a gold star ~~parent~~ parent family member. Each application shall be  
2 on a form prescribed by the secretary and shall include the certification from the Department  
3 of Military and Veterans Affairs. The special plates shall be numbered and contain a symbol to  
4 be determined by the secretary indicating that the owner is a gold star ~~parent~~ parent family member.  
5 The special plates shall be displayed as set forth in § 32-5-98. The special license plate shall be  
6 reflectorized and validated each year with a sticker in the same manner as a noncommercial  
7 license plate. In addition to the noncommercial license plate fees, an additional fee of ten dollars  
8 shall be charged for the initial issuance of the special license plates. ~~However, no additional fee~~  
9 ~~may be charged for the renewal stickers placed on the special license plates.~~ If it is determined  
10 that the owner does not qualify for the special plates, the plates shall be surrendered to the  
11 county treasurer of the applicant's residence. The treasurer shall notify the secretary who shall  
12 make the necessary changes in the registration file. The special plates may be retained by the  
13 owner's family upon the owner's death, but may not be displayed on the vehicle beyond the  
14 expiration of the plates or renewal stickers. Failure to surrender the special license plates as  
15 required by this section is a Class 2 misdemeanor.

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

537R0319

## SENATE ENGROSSED NO. **SB 13** - 1/21/2010

Introduced by: The Committee on Local Government at the request of the State Board of Elections

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

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

4 Section 1. That § 2-1-10 be amended to read as follows:

5 2-1-10. Each person, who circulates and secures signatures to a petition to initiate a  
6 constitutional amendment or other measure or to refer legislation to the electors, shall sign a  
7 verification before filing the petition with the officer in whose office it is by law required to be  
8 filed. The verification shall prescribe that the circulator made reasonable inquiry and, to the best  
9 of the circulator's knowledge, each person signing the petition is a qualified voter of the state  
10 in the county indicated on the signature line and that no state statute regarding the circulation  
11 of petitions was knowingly violated. The State Board of Elections shall prescribe the form for  
12 the verification. The verification shall be complete and the affixing of the circulator's signature  
13 shall be witnessed and notarized by a notary public commissioned in South Dakota or other  
14 officer authorized to administer oaths pursuant to § 18-3-1. Any person who falsely swears to  
15 the verification provided for in this section is guilty of a Class 1 misdemeanor.



1 Section 2. That § 6-16-5 be amended to read as follows:

2 6-16-5. If the proposed district contains less than one thousand eligible voters as defined in  
3 § 6-16-6, the county auditor shall set a date, time, and location for a meeting to be held within  
4 the district to conduct an election on the question of formation of the special district. The date  
5 may not be more than sixty days after the appropriate board declares that the application for  
6 incorporation is valid. The auditor shall appoint three judges of election, one of whom shall  
7 serve as the superintendent, to conduct the election. The vote upon the question of incorporation  
8 shall be by ballot which conforms to a ballot for a statewide question except that the statement  
9 required to be printed on the ballot shall be prepared by the state's attorney. After the vote is cast  
10 and counted, the judges shall prepare a certification showing the whole number of ballots cast,  
11 together with the number voting for and the number voting against incorporation, and shall  
12 return the certification to the county auditor. If a majority, or if it is a water project district at  
13 least sixty percent, of the votes cast on the question of formation is in favor, an election shall  
14 be conducted by those present at the same meeting to elect the initial board of directors or  
15 trustees.

16 Section 3. That § 6-16-5.2 be amended to read as follows:

17 6-16-5.2. If a majority, or if it is a water project district at least sixty percent, of the votes  
18 cast in an election conducted pursuant to § 6-16-5.1 is in favor on the question of formation of  
19 the special district, an election shall be conducted by the county auditor within sixty days after  
20 the official canvass to elect the initial board of directors or trustees. The election shall be  
21 conducted pursuant to Title 12. The county auditor shall publish a notice of vacancy no later  
22 than fifty days prior to the election. Circulation of nominating petitions may begin upon  
23 completion of the official canvass of the election to form the district. Nominating petitions shall  
24 be filed with the county auditor by 5:00 p.m. at least thirty days before the election. The

1 nominating petitions shall contain signatures of at least twenty-five registered voters in the  
2 district. Absentee ballots shall be made available to the voters no later than twenty days before  
3 the date of election. The election shall be canvassed by the county commission.

4 Section 4. That § 7-18A-11 be amended to read as follows:

5 7-18A-11. The right to propose an ordinance or resolution shall be exercised by filing with  
6 the auditor a petition in proper form containing the proposed ordinance or resolution, signed by  
7 the required number of qualified voters of the county. The signer or circulator of the petition  
8 shall add the signer's place of residence and the ~~date~~ month and day of signing. The signer's post  
9 office box number may be given in lieu of a street address if the signer lives within a  
10 municipality of the second or third class. ~~A date may be written in full or may be written using~~  
11 ~~standard abbreviations, including numerals.~~

12 Section 5. That § 9-13-14.1 be amended to read as follows:

13 9-13-14.1. If a vacancy exists on a municipal governing body, the remaining members shall  
14 appoint a replacement to serve until the next annual municipal election, or the vacancy may be  
15 filled by special election for the remainder of the unexpired term as provided in § 9-13-14.2. In  
16 the aldermanic form of municipal government, the appointment ~~must~~ shall be a person from the  
17 same ward of the ~~first or second~~ class municipality. If electing a person to fill the remainder of  
18 the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the  
19 publication required by § 9-13-6.

20 Section 6. That § 9-13-14.2 be amended to read as follows:

21 9-13-14.2. The governing body of any municipality may, by ordinance enacted prior to the  
22 vacancy, require that any vacancy on the governing body or in the office of the mayor is to be  
23 filled by a special election called for that purpose to be conducted as provided in § 9-13-14 and  
24 this section. No such special election may be held less than ninety days before the annual

1 municipal election. The finance officer of the municipality shall publish a notice in the official  
2 newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by  
3 special election, the date of the election, and the time and place where nominating petitions may  
4 be filed for the office. The notice shall be published once each week for two consecutive weeks  
5 beginning at least sixty days before the date of the special election. Nominating petitions for the  
6 vacancy shall be prepared and filed as provided in § 9-13-7, may not be circulated more than  
7 sixty days before the date of the special election, and shall be filed at least thirty days before the  
8 date of the special election. A notice of the special election shall be published as provided in  
9 §§ 9-13-13 and 9-13-14.

10 Section 7. That § 9-13-25 be amended to read as follows:

11 9-13-25. In any municipality, the person having the highest number of votes for any office  
12 shall be declared elected. However, the governing board of any municipality may, on or before  
13 the first of October in the year preceding, approve an ordinance ~~prescribing the~~ requiring a  
14 secondary election procedures as found in to be conducted pursuant to § 9-13-27.1 and section  
15 8 of this Act.

16 Section 8. That chapter 9-13 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 If a municipality has passed an ordinance requiring a secondary election and no candidate  
19 in a race involving three or more candidates receives a majority of the votes cast in the race, a  
20 secondary election shall be held three weeks from the date of the first election. At the secondary  
21 election, the only persons voted for shall be the two candidates receiving the highest number of  
22 votes at the first election. However, if there is a tie for second place in the first election and  
23 there is no tie for first place, all tying second place candidates shall be placed along with the first  
24 place candidate on the ballot for the secondary election. The secondary election shall be held

1 at the same polling places and shall be conducted, returned, and canvassed in the same manner  
2 as the first election. The result shall be declared and entered in the minutes of the municipality  
3 in the same manner as the first election. The person receiving the highest number of votes at the  
4 secondary election is elected.

5 Section 9. That § 12-4-34 be amended to read as follows:

6 12-4-34. If a statute refers to registered voters, it does not include those in the inactive  
7 registration file unless specifically included. However, any voter in the inactive registration file  
8 may sign a petition.

9 Section 10. That § 12-4-37 be amended to read as follows:

10 12-4-37. The secretary of state shall establish a computerized system for maintaining and  
11 utilizing the voter registration file and transmitting voter registration information from each  
12 county auditor to the Office of the Secretary of State. ~~Each county auditor shall furnish the~~  
13 ~~current master registration file of voters as provided in § 12-4-9 in computer format to the~~  
14 ~~secretary of state by January 1, 2002.~~ Each county auditor shall transmit any changes thereafter  
15 to the master registration file or the absentee voter log to the secretary of state on a daily basis.

16 Section 11. That § 12-6-51.1 be amended to read as follows:

17 12-6-51.1. If no candidate for United States Senate, United States House of Representatives,  
18 or Governor in a race involving three or more candidates receives thirty-five percent of the votes  
19 of the candidate's party, a secondary election shall be held three weeks from the date of the first  
20 primary election. At the secondary election the only persons voted for shall be the two  
21 candidates receiving the highest number of votes at the first election. However, if there is a tie  
22 for second place in the first primary election and there is no tie for first place, all tying second  
23 place candidates shall be placed along with the first place candidate on the ballot for the  
24 secondary election. The secondary election shall be held at the same polling places, be

1 conducted, returned, and canvassed and the results declared in the same manner as the first  
2 election. However, if the secondary election does not have a federal race, the electronic ballot  
3 marking system is not required and hand-counted ballots may be used. The person receiving the  
4 highest number of votes at the secondary election is nominated as the candidate for the party.

5 Section 12. That § 12-14-1.1 be amended to read as follows:

6 12-14-1.1. ~~It shall be the duty of officials~~ The official in charge of ~~a local elections to~~  
7 election shall notify the county auditor at least ~~thirty~~ forty-five days preceding ~~their a local~~  
8 ~~elections~~ election, of the precinct, ward, representation area, or external boundary changes if any  
9 have been made.

10 Section 13. That § 12-16-1 be amended to read as follows:

11 12-16-1. The county auditor shall provide printed ballots for ~~every~~ each election in which  
12 the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a  
13 primary election shall contain the name of ~~every~~ each candidate who has filed for nomination  
14 and is approved. The printed ballots for the election of officers shall contain the name of ~~every~~  
15 each candidate whose nomination has been certified or filed with the county auditor in the  
16 manner provided by law unless ~~they are~~ the candidate is deemed elected by having no  
17 opposition. The names of the candidates shall appear on the ballot exactly as listed in the  
18 declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed  
19 on paper of a different color from the official ballot but in the same form. The sample ballots  
20 and official ballots shall be printed and in the possession of the county auditor not later than ~~six~~  
21 ~~weeks~~ forty-five days prior to a primary or general election. The county auditor shall also  
22 prepare the necessary ballots if any question is required to be submitted to the voters of the  
23 county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to  
24 12-16-11, inclusive.

1 Section 14. That § 12-19-2 be amended to read as follows:

2 12-19-2. An absentee voter desiring to vote by mail may apply to the person in charge of the  
3 election for an absentee ballot. The application or request shall be made in writing and be signed  
4 by the applicant and shall state the applicant's voter registration address. The application or  
5 request shall contain an oath verifying the validity of the information contained in the  
6 application or request. The oath shall be administered by a notary public or other officer  
7 authorized by statute to administer an oath. If the application or request does not contain an  
8 oath, the application or request shall be accompanied by a copy of the voter's identification card  
9 as required by § 12-18-6.1. The copy of the voter's identification card shall be maintained by the  
10 person in charge of the election. However, the voter's identification card is not available for  
11 public inspection. The application or request may be used to obtain an absentee ballot for all  
12 elections in that calendar year conducted by the jurisdiction receiving the application or request  
13 if so indicated. ~~If the application or request is from a voter identified as being covered by the~~  
14 ~~Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1,~~  
15 ~~2006, an absentee ballot shall be provided to the voter for each federal election through the next~~  
16 ~~two general elections.~~ The ballot shall be sent to the voter's residence, as shown in the voter  
17 registration file or any temporary residence address designated in writing by the voter, at the  
18 time of applying for the absentee ballot. If the application or request is for a primary, general,  
19 or other statewide election from a voter identified as being covered by the Uniformed and  
20 Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2010, the voter  
21 may designate on the application for the ballot to be sent electronically. The person in charge  
22 of the election shall stamp the application with the date it was received. The person in charge  
23 of the election shall preserve a record of the name, mailing address, and voting precinct of each  
24 applicant and, except as provided by § 12-19-45, deliver a copy of the record to the

1 superintendent of the election board of the home precinct of the applicant.

2 Section 15. That § 12-19-10 be amended to read as follows:

3 12-19-10. Upon receipt of the sealed return envelope containing the voted ballots, the person  
4 in charge of the election shall keep it in a safe place without opening the envelope or breaking  
5 the seal thereof and shall, except as provided by § 12-19-42, deliver it to the precinct  
6 superintendent of election of the voter's home precinct. The person in charge of the election  
7 shall have the absentee ballots delivered with the election supplies, or if received later, then  
8 prior to the close of the polls. If the election board is not otherwise engaged in official duties,  
9 or if there are absentee ballots not processed when the polls close, immediately thereafter, the  
10 board shall carefully compare the statement on the reverse side of the official return envelope  
11 with the written application received from the officer in charge of the election without opening  
12 or breaking the seal of the return envelope. If the ballot is contained in a combined absentee  
13 ballot application/return envelope, the comparison of the statement and the application shall be  
14 omitted. The board shall enter the voter's name on the election pollbook and mark the  
15 registration list if:

- 16 (1) The ballots received were voted by the voter whose name appears on the statement;  
17 (2) The voter is registered in such precinct and has not previously voted in that precinct  
18 at the election; and  
19 (3) The written application and statement were both signed by the voter.

20 The board shall then open the envelope without opening, unfolding or examining the ballots  
21 the envelope may contain, stamp the ballots with the official stamp, and deposit the ballots with  
22 the other ballots cast at the election. If the board determines that an absentee ballot envelope  
23 cannot be opened because the envelope does not meet the requirements for opening, the reason  
24 shall be written on the envelope, signed by a member of the board, and the envelope placed in

1 a larger envelope for unopened absentee ballots. No person may, prior to the counting of the  
2 votes, open, unfold or examine any ballot, or make any communication to any person  
3 concerning the markings or contents of the ballot. A violation of the preceding sentence is a  
4 Class 2 misdemeanor.

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

6 12-19-12. If an absentee ballot is delivered to a polling place after the polls are closed, the  
7 absentee ballot may not be counted or opened, ~~but a member of the precinct election board shall~~  
8 ~~immediately endorse on the envelope the following: Received after closing of polls, and sign~~  
9 ~~the person's signature thereto and return the absentee ballot with the other ballots to the officer~~  
10 ~~in charge of the conduct of the election.~~

11 Section 17. That § 12-19-14 be amended to read as follows:

12 12-19-14. Any voter who, having procured an official ballot or ballots or Uniformed and  
13 Overseas Citizens Absentee Voting Act (UOCAVA) ballot link as provided in §§ 12-19-1 to  
14 12-19-12, inclusive, intentionally disposes ~~them~~ of a ballot in any manner other than as provided  
15 in ~~said~~ such sections or provides the UOCAVA ballot link to any other person is guilty of a  
16 Class 2 misdemeanor. The UOCAVA ballot link is the internet URL for accessing an  
17 electronically provided absentee ballot.

18 Section 18. That § 12-19-47 be amended to read as follows:

19 12-19-47. The Absentee Ballot Counting Board, during the time prescribed in § 12-19-46,  
20 shall ~~carefully compare the statement on the reverse side of the official return envelope with the~~  
21 ~~written application received from the officer in charge of the election without opening or~~  
22 ~~breaking the seal of the return envelope. If the ballot is contained in a combined absentee ballot~~  
23 ~~application/return envelope, the comparison of the statement and the application shall be~~  
24 ~~omitted. If the board is satisfied that the ballots received were voted by the voter whose name~~

1 ~~appears on the statement and that the voter is registered in such precinct and has not previously~~  
2 ~~voted in that precinct at the election, the board shall enter the voter's name on the election~~  
3 ~~pollbook. After opening the envelope without opening, unfolding, or examining the ballots~~  
4 ~~contained in the envelope, the board shall affix to the ballots the official stamp and deposit the~~  
5 ~~ballots in the proper ballot box and count the ballots in the manner prescribed by the State Board~~  
6 ~~of Elections. No person, prior to the counting of the votes, may open, unfold, or examine any~~  
7 ~~ballot, or make any communication to any person concerning the markings or contents of the~~  
8 ~~ballot. A violation of the preceding sentence is a Class 2 misdemeanor process each absentee~~  
9 ~~ballot as required by § 12-19-10.~~

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

11 12-19-48. If an absentee ballot is delivered to an absentee ballot counting board after the  
12 polls are closed the absentee ballot may not be counted or opened; ~~but a member of the absentee~~  
13 ~~ballot counting board shall immediately endorse on the envelope the following: Received after~~  
14 ~~closing of polls, and sign the person's name on the envelope and return the absentee ballot with~~  
15 ~~the other ballots to the officer in charge of the election.~~

16 Section 20. That § 12-20-2.1 be amended to read as follows:

17 12-20-2.1. If the ballot box ~~for any precinct~~ is opened ~~prior to~~ for ballot counting at the  
18 precinct, each provisional ballot envelope and each unopened absentee ballot shall be removed,  
19 placed, and sealed in the provisional or unopened absentee ballot return envelope and returned  
20 ~~unopened~~ to the person in charge of the election with the other election supplies.

21 Section 21. That § 12-20-7 be amended to read as follows:

22 12-20-7. Any ballot or part of a ballot from which it is impossible to determine the voter's  
23 choice by using standards defined by the State Board of Elections shall be void and may not be  
24 counted. ~~If the voter's marks on a ballot are sufficiently plain to determine the voter's intention~~

1 ~~it is the duty of the precinct deputies to count such vote.~~ The State Board of Elections shall  
2 promulgate rules, pursuant to chapter 1-26, defining standards for determining voter intent.

3 Section 22. That § 12-21-24 be amended to read as follows:

4 12-21-24. ~~It shall be the duty of any person or official having custody of ballot boxes~~  
5 ~~containing the ballots to be recounted to produce the same before such board for the purposes~~  
6 ~~of such recount upon notice so to do from the county auditor~~ The county auditor shall provide  
7 the pollbooks, automatic tabulating system election night print outs, sealed ballot boxes, any  
8 provisional ballots which were determined countable pursuant to § 12-20-13.2, any uncounted  
9 provisional ballots, and any unopened absentee ballot envelopes to the recount board. The  
10 recount board is authorized to make a determination whether any provisional ballots or absentee  
11 ballots which were determined not to be countable, shall be counted, and those votes shall be  
12 added to the recount tally.

13 Section 23. That § 12-22-2 be amended to read as follows:

14 12-22-2. ~~Such~~ A contest may be instituted by any candidate for a public office, other than  
15 a candidate for ~~United States Senator, Representative in Congress, member of the Legislature,~~  
16 ~~or delegate to, or representative in any other body, convention, committee, or tribunal, which~~  
17 ~~has the final right to determine the qualifications of its members. Legislative contests.~~ A  
18 legislative contest shall be instituted as provided in § 12-22-26.

19 Section 24. That § 13-7-6 be amended to read as follows:

20 13-7-6. No candidate for elective school board membership may be nominated unless such  
21 person is a resident voter of the school district and unless a nominating petition has been filed  
22 on such person's behalf with the business manager of the school district. The nominating  
23 petition shall be filed no later than five p.m. on the Friday thirty-nine days before the date of the  
24 election. ~~However, if the nominating petition is from a candidate for a vacancy on a new school~~

1 ~~board within a newly created school district entity pursuant to § 13-6-62, the nominating petition~~  
2 ~~shall be filed no later than thirty days prior to the date of the election.~~ The petition is considered  
3 filed if it is mailed by registered mail by five p.m. on the Friday thirty-nine days before the  
4 election. A formal declaration of a candidate shall be signed by the candidate before the  
5 circulation of the petition. The petition shall be signed by not less than twenty voters of the  
6 school district or if the school district is divided into school board representation areas, the  
7 petition shall be signed by not less than twenty voters who reside within the school board  
8 representation area. No petition may be circulated until ten weeks prior to the election. There  
9 shall be added by either the signer or the circulator the signer's place of residence and date of  
10 signing. The petition shall be verified under oath by the person circulating it. The filing of the  
11 nominating petition shall constitute nomination and will entitle the candidate to have the  
12 candidate's name placed on the ballot for the term the candidate specifies on the petition only  
13 upon verification signed by the business manager that the nominating petition contains the  
14 minimum number of signatures and that the candidate is a resident voter.

15 Section 25. That chapter 13-7 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17 If the nominating petition is from a candidate for a vacancy on a new school board within  
18 a newly created school district entity pursuant to § 13-6-62, the nominating petition shall be  
19 circulated no more than sixty days prior to the date of the election and filed no later than thirty  
20 days prior to the date of the election.

21 Section 26. That § 31-12A-15 be amended to read as follows:

22 31-12A-15. In each road district an annual election of officers shall be held on the first  
23 Tuesday in May at a place in the district as the board of trustees shall designate. ~~The~~ Unless  
24 otherwise specified, the election shall be conducted according to chapter 8-3, at a meeting of the

1 registered voters who reside in the road district.

2 Section 27. That § 34-47-2 be amended to read as follows:

3 34-47-2. If the voters of both the rural fire protection district and ambulance district approve  
4 a consolidation pursuant to § 34-47-1, the districts shall be consolidated into an emergency  
5 services district on the following January first. After the voters of each district approve the  
6 consolidation and before the consolidation takes effect, the voters of both districts shall meet  
7 together and elect a five-member board of emergency services. Board members shall serve until  
8 their successors are elected and qualified. Three members of the first board shall serve two-year  
9 terms and two members shall serve one-year terms, to be determined by lot at the first board  
10 meeting. Subsequent members of the board shall be elected by the voters at the annual meeting  
11 to serve two-year terms. Unless otherwise specified, an emergency services district board  
12 member election shall be conducted pursuant to chapter 8-3. At its first meeting each year the  
13 board shall elect a president, vice president, and secretary-treasurer.