

## Honorable Board of Election Members,

The South Dakota County Auditors have been reviewing the administrative rules to be considered on September 27<sup>th</sup>, 2023. The following County Auditors request that the board of elections consider the following comments and suggested changes. Thank You.

These comments are supported by the following County Auditors:

Susan Urban, Aurora County

Tamara Brunken, Bon Homme County

Pam Petrak, Brule County

Lisa Perman, Campbell County

Christine Tarbox, Clark County

Brenda Hanten, Codington County

Susan Kiepke, Davison County

Phyllis Barker, Douglas County

Aimee Law, Faulk County

Julie Bartling, Gregory County

Doug DeBoer, Hand County

Kathy Glines, Harding County

Thomas Oliva, Hughes County

Shannon Fagerhaug, Jerauld County

Brenda McGruder, Lawrence County

Geralyn Sherman, McCook County

Megan Biel, Marshall County

Jenny Galbraith, Mellette County

Tawny Heinemann, Moody County

Sara Stadler, Perkins County

Kristi Fritz, Roberts County

Theresa Hodges, Spink County

Susan Lamb, Sully County

Misty Dahl, Turner County

Patty Hojem, Yankton County

Jill Hanson, Beadle County

Lynn Heupel, Brown County

Annie Capp, Butte County

Jason Gant, Charles Mix County

Carri Crum, Clay County

Tammy Bertolotto, Corson County

Karli Zimmerman, Day County

Keith Schurr, Edmunds County

Sue Ganje, Fall River/Oglala Lakota Counties

Stacey Pinney, Haakon County

Lesla Trabing, Hanson County

Diane Remmers, Hutchinson County

Marilyn Ring, Hyde County

Echo Steffensen, Kingsbury County

Sheri Lund, Lincoln County

Lindley Howard, McPherson County

Helen Hall Jensen, Meade County

Susan Connor, Miner County

Cindy Mohler, Pennington County

Sarita Waldner, Potter County

Kami Moody, Sanborn County

Philena Burtch, Stanley County

Barb Desera, Tripp/Todd Counties

Jackie Sieverding, Union County

### 5:02:23:02. Post-Election Audit Definitions.

(3) "Board Member," ~~A member of the post election auditing board cannot be a person who worked as an election worker in the election being audited.~~ Members must be registered voters in the county where the audit is taking place and may not all be the same political party. A minimum of three board members shall be appointed, more members may be appointed at the discretion of the county auditor. No member may be a candidate for office that is on the ballot being audited;

(7) "Precinct," Any county using vote centers in accordance with SDCL 12-14-17 should consider a vote center, a precinct for the purposes of the post-election audit.

We believe the first portion of the rule is unnecessarily excluding some of the county's most reliable and passionate election workers. The second line originally makes it sound like all members must be from all different political parties (only one democrat, only one republican, etc.). It should also be clear that a minimum of 3 board members should be appointed but the county auditor can appoint as many board members as the feel necessary to complete the audit.

Precinct should also be defined to include vote center. OR each rule that includes 'precinct' should be edited to 'precinct or vote center'

**5:02:23:03. Notice of appointment of Post-Election Auditing board.** – no changes

**5:02:23:04. Signing of oaths.** – no changes

**5:02:23:05. Staff for post-election auditing board.** – no changes, but we believe the staff time for the hours spent assisting the post-election auditing board should be a reimbursable expense to the counties.

**5:02:23:06. Post-election auditing board receipt for official ballots.** The post-election auditing board's receipt for the official precinct ballots must be in the following form:

(Here list the official precinct ballots received)

As auditors we believe we should be handing over the sealed ballot box that contains the precinct(s) that were randomly selected at canvass to be audited. Therefore, the auditing board would verify that the correct ballots from the random precinct(s) selected for audit were presented to the auditing board. For clarity we recommend adding 'precinct'.

**5:02:23:07. Public vote count.** In the presence of all persons desiring to attend the post-election audit vote counting, the post-election auditing board shall immediately proceed to publicly ~~hand~~ manually count the votes and shall continue without adjournment until the count is completed.

The word 'hand' should be stricken and replaced with manual to stay consistent in the language in 12-17B-20. 'Hand' counting implies that the post-election audit board can take voter intent into consideration. The word 'manual' makes it clear that the board cannot consider voter intent and instead should only consider the parameters laid out in section 1 of this rule. We would also request that any accompanying manuals and training material for

the post-election strike the word 'hand' and replace with 'manual' for clarity and consistency. We also request that it is stressed throughout the training that the post-election audit board is manually counting therefore they **cannot** consider voter intent.

**5:02:23:08. Opening receptacle or container.** The sealed receptacle or container must be unsealed opened, and the ballots taken out and sorted by precinct (if necessary) so that all ballots on the post-election audit contests and questions are separately identified,

It should be specified that the ballots should be presented to the post-election audit board sealed. Then the post-election audit board should unseal. Sorting or not sorting should be up to each board's discretion and should not be mandated by rule. We believe the only sorting that should be mandated is to sort the precinct being audited from other precinct's ballots that may be stored in the same receptacle or container and were not drawn to be audited.

**5:02:23:09. Auditing procedures. The following procedure shall be used in auditing a precinct by hand Manually counting the ballots:**

(3) The post-election auditing board shall certify the results as manually hand-counted for the Post-Election Audit by completing the Certificate of Post-Election Audit as provided in § 5:02:23:13. The Certificate of Post-Election Audit shall be filed with the county auditor.

The word 'hand' should be stricken and replaced with manual to stay consistent in the language in 12-17B-20. 'Hand' counting implies that the post-election audit board can take voter intent into consideration. The word 'manual' makes it clear that the board cannot consider voter intent and instead should only consider the parameters laid out in section 1 of this rule. We would also request that any accompanying manuals and training material for the post-election strike the word 'hand' and replace with 'manual' for clarity and consistency. We also request that it is stressed throughout the training that the post-election audit board is manually counting therefore they **cannot** consider voter intent.

**5:02:23:10. Tally of ballots.** As the vote is announced by a post-election auditing board member, one post-election auditing board member shall make the required mark on the post-election audit tally sheet outlined in § 5:02:23:12. Another post-election auditing board member shall make the required mark on a duplicate post-election audit tally sheet.

Is it implied that the two tally sheets should match or be recounted if a mistake is made? Perhaps language should be added to state, "if the tally sheet and the duplicate tally sheet do not match the auditing board should recount to find the discrepancy."

**5:02:23:11. Use of tally sheets.** – no changes

**5:02:23:12. Post-Election Audit Tally sheets.** – no changes

**5:02:23:13. Certificate of Post-Election Audit.** – no changes

**5:02:23:14. Procedure for placing post-election audit voted ballots in the ballot receptacle or container.** After the audit has been completed, the post-election auditing board shall place the audited voted ballots in the ballot receptacle or container ~~keeping them separated in wrappers or envelopes~~ and sealed as provided in § 5:02:23:15.

We see no need to mandate wrapping and keeping separate.

**5:02:23:15. Form of the seal.**

Where ballots are ~~manually counted by hand~~ for a post-election audit, upon returning ballots to a receptacle or container after counting, the post-election auditing board shall sign these seals and affix the seals to the receptacle or container openings and upon all places where the receptacle or container may be opened except where the openings are sealed with a metal seal.

Please remove the word 'hand' and replace with 'manual' to provide clarity and consistency with the SDCL.

**REWRITTEN 5:02:23:16. Reimbursement of post-election audit costs.** The county auditor shall submit expenses from the post-election audit to the secretary of state for reimbursement. The auditor shall submit ~~proof of paid invoices~~ and use the forms designated by the secretary of state for this purpose.

Reimbursable expenses for the audit, are:

(1) ~~actual~~ board member pay for conducting the audit and for training prior to the audit, not to exceed \$25/hour but no less than minimum wage; ~~no more than two hundred fifty dollars per day;~~

(2) supplies, ~~including postage,~~ no more than ~~two~~ hundred dollars;

(3) rental costs for the location to conduct the audit, no more than two hundred fifty dollars per day;

\_\_\_\_\_ (4) actual publication costs, no more than one hundred seventy-five dollars per legal newspaper;

\_\_\_\_\_ (5) ballot storage costs, no more than seventy-five dollars; and

\_\_\_\_\_ (6) travel (mileage) at the applicable IRS rate, but no less than state per diem rate for every mile paid by the county; ~~traveled greater than ten miles;~~

(7) meal reimbursement at state per diem meal rates;

(8) Auditor and Auditor's Staff actual wages for hours spent training and assisting the

### Post Election Audit Board.

We believe the limits should be set so every audit expense the county **actually** incurs is reimbursed.

- Member pay we recommend language in \$/hour vs. a set per day amount to avoid having to revisit often.
- Meal reimbursement should be included since the board is not allowed to adjourn.
- Mileage should be reimbursed to the member if the county incurred the cost regardless of distance traveled by the board member. We would like to county to be reimbursed for their actual expenses (if a county pays state rate) or up to IRS rate whichever is less.

**5:02:03:14. Acknowledgement notice for invalid or incomplete voter registration applications. –**  
no changes

### **5:02:05:02.01. Instructions to the voters using optical scan ballots.**

There are several areas in the rule that say "Use only the pencil or marker given to you!" We would ask that these areas are revised to say "Use only the blue or black ink pen pencil or marker given to you!"

**5:02:10:04. Instructions to absentee voters.** All ballots mailed or delivered to absentee voters shall include instructions that read as follows:

TO THE VOTER:

☑ Mark your ballot privately.

Fill in the oval ( ) next to the name or ballot question, with a blue or black ink pen. Use only the pencil or marker given to you!

To provide an absentee voter with a 'pencil or marker' we would need to mail one. Please remove this portion of the instruction and replace 'pencil or marker' with 'blue or black ink pen'.

**5:02:10:09. Nursing facility, assisted living center, or hospital absentee voting.**

The ~~receptacle ballot box~~ used at a facility must be sealed at the auditor's office prior to transporting to a facility and may only be used for absentee voting at a facility.

While at the facility, the auditor or the auditor's designee shall place the completed absentee ballot into ~~a sealed receptacle ballot box~~. If the ~~receptacle ballot box~~ is used at more than one facility, the auditor must maintain a log of the facilities and the date of the voting.

The ~~receptacle ballot box~~ must be transported to the auditor's office by the auditor or the auditor's designee and secured in accordance with SDCL ch 12-20 and § 5:02:16:37.

Changing the language from 'ballot box' to receptacle allows for a wider variety of sealable ballot containers that may be more portable but would not require a county to use its conventional election day 'ballot box' unless they so choose.

**5:02:16:01.01. Ballot box security.**

The person in charge of the election may place a receptacle or container within ~~the building that contains~~ the person's office for voters to return a voted absentee ballot. If a receptacle or container is used, the person in charge of the election, or the person's designated staff must ensure the receptacle or container is:

(3) Audited ~~at least daily~~, to verify that the number of ballots received ~~each day~~ match the number of ballots shown as received in Total Vote; and

We believe there should be accommodations made for different administrative building's layouts. 'Within' the person's office is not possible in every administrative building. We believe the rule should be more inclusive to include anywhere within the administrative building that houses the person in charge of the elections office.

The daily requirement should be removed so auditing frequency can remain an individual county management decision. 'Daily' may not be possible or necessary in all Auditors offices.