

# SOUTH DAKOTA

## POST-ELECTION AUDIT GUIDE



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SECRETARY MONAE L. JOHNSON ELECTIONS MISSION STATEMENT



SOUTH DAKOTA  
SECRETARY OF STATE



*Monae L. Johnson*

**The mission of the South Dakota Division of Elections is to promote and preserve the right to vote by providing a transparent, efficient, successful, and fair voting experience for every eligible citizen in the State of South Dakota.**

## **INTRODUCTION**

South Dakota Codified Law calls for a post-election audit that reviews voted ballots in five percent of voting precincts, comparing the paper record to the results produced by the voting system. The post-election audit in South Dakota will be conducted manually by hand-counting. The post-election audit process will thoroughly review procedures performed before, during, and after the conduct of an election. The review of voted ballots is to verify whether the equipment used to count votes worked properly and yielded the correct result.

## **Q&A ON POST-ELECTION AUDITS**

### **WHAT IS THE TIMELINE FOR COMPLETING THE POST-ELECTION AUDIT?**

Within fifteen days following the completion of the state canvassing of a primary or general election, the auditor of each county shall conduct a post-election audit of the ballots cast in the election.

[SDCL 12-17B-18](#)

### **WHO APPOINTS THE AUDIT BOARD?**

The county auditor shall appoint a county auditing board of sufficient size to promptly complete the audit.

[SDCL 12-17B-18](#)

[ARSD 5:02:23:03](#)

### **DOES THE AUDITING BOARD NEED TO TAKE AN OATH?**

Yes, the members of the post-election auditing board must take an oath.

[SDCL 12-17B-18](#)

[ARSD 5:02:23:01](#)

### **WHAT IS THE MAKEUP OF THE AUDIT BOARD AND REQUIREMENTS FOR BEING A MEMBER?**

The members of the county auditing board may not all be members of the same political party. A member of the county auditing board must be a registered voter in the county in which the audit takes place. An individual may not serve on the county auditing board if the individual is a candidate for the office that is on the ballot being audited. A poll worker may be a member of the county auditing board.

[SDCL 12-17B-18](#)

[ARSD 5:02:23:05](#)

### **WHO PAYS FOR THE POST-ELECTION AUDIT?**

The office of the secretary of state shall reimburse each county for the cost of any post-election audit, as enumerated in [ARSD 5:02:23:15](#)

## **WHAT PERCENT OF PRECINCTS ARE BEING AUDITED?**

The post-election audit must be conducted in five percent of the precincts in the county by manually counting all votes cast in two contests and comparing the results of the manual count to the official results for those precincts presented at the county canvass.

[SDCL 12-17B-20](#)

[ARSD 5:02:23:02](#)

## **HOW AND WHEN ARE PRECINCTS SELECTED FOR THE AUDIT?**

The county auditor shall select the precincts for the audit at random without the use of a computer in public during the meeting of the county canvassing board.

[SDCL 12-17B-20](#)

## **HOW MANY BALLOTS ARE BEING REVIEWED?**

All the ballots in the precincts selected, however, if the combined total of all ballots cast in the precincts selected does not exceed one hundred ballots, then additional precincts must be randomly selected until the total of all ballots exceeds one hundred ballots. For the purposes of this section, the term precinct includes vote centers, but does not include any precinct designated as an absentee precinct.

[SDCL 12-17B-20](#)

## **WHICH CONTESTS WILL BE AUDITED?**

The county auditor shall select the contests for the audit at random without the use of a computer in public during the meeting of the county canvassing board. One contest randomly selected for the audit must be a statewide contest. If there are no statewide contests on the ballot, the auditor shall randomly select another contest on the ballot. If there is only one contest on the ballot, that contest must be audited. The random drawing can be conducted by any means available to the county auditor except by the use of a computer.

[SDCL 12-17B-20](#)

## **IS THE AUDIT OPEN TO THE PUBLIC AND WHO NEEDS TO BE NOTIFIED?**

A post-election audit must be open to the public. Members of the public shall keep a reasonable distance so as to not interfere with the audit process. The county auditor shall post notice of the time and place of the audit in the same manner as a public meeting agenda pursuant to § 1-25-1.1 and provide the notice to the county chair of each political party that has a candidate on the ballot.

[SDCL 12-17B-21](#)

[ARSD 5:02:23:07](#)

## **DO THE RESULTS OF THE AUDIT NEED TO BE PUBLISHED?**

The county auditor shall send the results of the post-election audit to the secretary of state and present the results of the audit to the county commission at its next meeting. The results of the audit shall be included in the minutes of the county commission meeting.

The secretary of state shall publish the results of the post-election audit on the secretary of state's website.

[SDCL 12-17B-22](#)

## **DO IMPACTED CANDIDATES NEED TO BE NOTIFIED?**

If the results of the post-election audit show a discrepancy in the results greater than the margin by which any contest for elected office on the ballot in the county was decided, the auditor shall notify the candidates for that office. Any candidate who receives a notification from the county auditor shall have an additional seven days from the date from when the auditor sends the notification to file a verified petition requesting a recount of the official returns pursuant to §§ [12-21-10](#) or [12-21-11](#). The petition may be filed regardless of the margin by which the contest was decided.

[SDCL 12-17B-23](#)

## **WHAT IF THE CONTEST I SELECT TO AUDIT ALREADY HAD A RECOUNT?**

If a recount of any contest is conducted in a county, the county auditor is not required to conduct a post-election audit.

[SDCL 12-17B-24](#)

## **WHAT HAPPENS TO THE BALLOTS AFTER THE AUDIT HAS BEEN COMPLETED?**

The county auditor shall reseal and retain the ballots upon the completion of a post-election audit pursuant to § [12-20-31](#).

### **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.

## **HOW SHOULD I BE SEALING THE BALLOTS AND MACHINES?**

Please refer to [ARSD 05:02:09:01.04](#) to see how you should seal tabulating equipment.

Please refer to [ARSD 5:02:16:37](#) to see how you should seal the ballot box.

## **WHEN PERFORMING THE AUDIT, WHAT GUIDLEINES SHOULD BE USED FOR DETERMINING IF A MARK COUNTS AS A VOTE?**

Only those marks that the tabulator would count are to be counted by the audit.

[ARSD 5:02:23:09](#)



# BEST PRACTICES FOR BEFORE, DURING AND AFTER A POST-ELECTION AUDIT

Below are tips and best practices for running efficient and effective post-election audits.

## WHERE SHOULD I START?

### Room Preparation

- Designate a secure area for staging ballot storage containers for all scanned ballots that have been verified, sealed, and added to the ballot manifest (see below what a ballot manifest should entail).
- Ensure there is enough room in the facility to accommodate both staff and observers while retrieving and examining ballots. If space is limited, consider retrieving ballots where they are stored and transferring the ballots selected for audit to an alternate location for the examination and recording portion of the audit. Be sure to follow all chain of custody protocols.

### Supplies

In addition to the ballots and ballot accounting documentation mentioned in the later sections, you will need the following for the day of the audit:

- To have all your supplies and ballots organized. .
- Reconciliation reports
- Batch tracking form (see example below) that you can use to help keep track of your ballots We recommend printing these in large, bolded print so they can easily be identified.

Tracking Sheet	
<b>Precinct ID</b>	4
<b>Container ID</b>	1
<b># of ballots</b>	145

**Prepared by** \_\_\_\_\_

Name / Date

- Batch labels (header sheets, folder labels, etc.) to help organize if needed.
- Ballot storage container(s) and labels for those container(s).
- Ballot manifest (see example below)

Example of Ballot Manifest		
<b>Precinct Number</b>	<b>Container ID</b>	<b># of ballots</b>
1	Box 1	125
2	Box 2	127
3	Box 3	150
4	Box 4	145
5	Box 5	136

- Ballot receipt for official ballots ([ARSD 5:02:23:06](#))
- Chain of custody logs and extra seals for verifying sealed ballot containers, resealing ballot containers, and recording new seal numbers
  - In some jurisdictions, the label on the container has been designed to double as the chain of custody log. (i.e., it has a place for individuals to sign and a list of who has handled the container)
- Scissors (if needed to cut plastic security seals on ballot containers)
- Tally sheets ([ARSD 5:02:23:11](#))
- Auditing procedure guidelines for each post-election audit board member ([ARSD 5:02:23:09](#))
- Printer (for printing lists and audit reports) (optional)
- Pens for checking off ballots retrieved for audit.
  - Pens and ballots in the same work area can be viewed as a security risk. Consider limiting any pens used during the audit to something unique, like gold, or a color such as red that may not be recognized as a mark by the ballot scanner and different than what voters used to mark ballots.
- Labeled tubs or folders to house ballots or batches of ballots selected for audit.
- Rubber fingers
- Oaths for your workers to take ([ARSD 5:02:23:01](#))

## Staffing

- Choosing your election workers is a very important task.
  - If you can, try not to use election workers who worked your election. You don't want to run into any conflicts of interest with your audit.
  - Reach out to veteran groups and have them participate.
  - Try your local chamber of commerce, rotary groups, community service groups and other groups to see if individuals would be willing to serve.
  - Communicate with your cities and schools to see if they have workers they would recommend.
- You will need
  - Staff assigned to verify ballot container labels are completed correctly.
  - Staff assigned to enter information from ballot containers into the ballot manifest.
  - Staff assigned to validate data in the ballot manifest by performing a reconciliation.
- You need to appoint a county auditing board of sufficient size to promptly complete the audit. Think about how you conduct your recounts and how many staff members that takes.



- We recommend having an odd number. You can have multiple odd-numbered teams conducting the audit.
- You will need to create a Notice of Appointment of post-election auditing board. ([ARSD 5:02:23:03](#))
- All of your workers will need to sign an oath. ([ARSD 5:02:23:04](#) and [5:02:23:01](#), [SDCL 12-17B-18](#))

## LEADING UP TO THE ELECTION

### Think Ahead on How You Will Handle Ballot Accounting

- Review the ballot accounting practices conducted in your jurisdiction. This includes batch tracking forms, reconciliation/tally sheets, and chain of custody forms and procedures. Make sure you have a good understanding of all this, know where everything is located within your county and that everything is secure.
- You should also include a review of how and where ballots will be stored securely. This should be done on a regular basis.
- Polling location reconciliation forms, mail/absentee ballot batch tracking forms, and chain of custody logs should be reviewed, or audited, prior to a post-election audit or in conjunction with it. This includes verifying the information from these forms is transferred to batch and container labels.

### Other Pre-Election Items to Complete

- Work with the South Dakota Secretary of State's office and/or ES&S on standards for creating a test deck that will reveal programming errors in your equipment and confirm that your equipment is running correctly. See Administrative Rule: [5:02:09:01.02. Test of tabulating equipment.](#)
- Spend time at the front end making sure that all of your equipment is labeled and has clear instructions on where it will be used. Create a delivery checklist to ensure that everything is going out to the correct precinct.
- Make sure to test all your equipment!
  - Make sure the machine is handling mismarked and blank ballots correctly.
- If you are using epollbooks, make sure you have a paper pollbook printed.
  - Make sure your election workers know how to check-in voters and are documenting correctly in the pollbook.
- Well before the election, make sure to review and update your contingency plans!
  - Update contacts
  - Give notice to your local contacts about your election.
    - IT
    - Sheriff
    - States attorney

- Postmaster
  - Etc...
- Go through different scenarios beforehand to ensure you are prepared!
- Know who to contact if you need equipment help.
- Ensure you have enough supplies at your polling locations and in your office.
  - Ballot box seals, ballot box, appropriate voting signage, etc.
- Establish strict chain of custody procedures, clear instructions for staff, know who has access to supplies, have lists who is at each polling place and have a list of your poll workers.
  - Develop chain of custody procedures and checklists to require the multi-person review and signature rule for all proofing and ballot verifications.
- Develop a master checklist to verify and store, in chronological order, all your documentation for every election.
- Follow the South Dakota Election Calendar for reminders, notices, and deadlines.
- Every day, you should be reconciling your ballots, ensuring they are secure and that everything is accounted for.

## **TRAINING ELECTION WORKERS**

- The county auditor shall provide administrative support and staff for the post-election auditing board. ([ARSD 5:02:23:05](#))
- Choose workers who meet the requirements of [SDCL 12-17B-18](#).
- Training your election workers is key to a successful election and post-election audit. Inattention or failure to follow established procedures and statutes can affect all your post-election activities, from ballot reconciliation to audits.
- Please have your post-election workers use this guide for understanding the process. Think of the audit as a manual recount of a precinct.
- Make sure your workers know the definitions in South Dakota Administrative Rule for post-election audits. ([ARSD 5:02:23:02](#))
- Have your election day workers document and call the person in charge of the election with any information on incidents that transpired during the day at the polls. This can help you later if you run into a discrepancy.
- Always have your post-election workers double check everything!

## **AFTER THE ELECTION**

Make sure you are organizing and storing your ballots in way that will make handling the post-election audit easy for you and your staff. Have precincts banded together if you have more than one precinct in a secure container or receptacle.

When ballots are transferred from the polling location to the central location, they should be locked and sealed in a storage container (bag, box, or bin) that is labeled with the following:

- a. Polling location name or number (such as a precinct number)
- b. Container ID number (unique number assigned to the ballot storage container)
- c. Total number of ballots sealed in the container (taken from the reconciliation form or closing reports)
- d. Security seal number
- e. Name or initials of the individual(s) who verified the quantity of ballots and sealed the container.

## **AT THE CANVASS**

- Choose a random selection process to pick which precincts are being audited and which contests will be audited. The county auditor shall select the precincts for the audit at random without the use of a computer in public during the meeting of the county canvassing board. ([SDCL 12-17B-20](#))
  - Example: Drawing precincts out of hat.
- Reach out to all candidates/sponsors whose races were selected. (call, email, mail) – Do your due diligence to contact them.

## **BALLOT REVIEW AND VERIFICATION AT THE POST-ELECTION AUDIT**

- The county auditor shall provide administrative support and staff for the post-election auditing board. ([ARSD 5:02:23:05](#))
- The auditor or designated staff need to make sure you have all the materials and ballots ready for your post-election auditing board.
- Make sure all your workers have signed their oaths, ([ARSD 5:02:23:01](#)) and that the notice of appointment of post-election auditing board is completed. ([ARSD 5:02:23:03](#))
- The post-election auditing board will need to complete the post-election auditing board receipt for official ballots. ([ARSD 5:02:23:06](#))
- The sealed receptacle or container must be unsealed and the ballots taken out, and sorted by precinct. ([ARSD 5:02:23:08](#))

- Ensure all post-election audit board members are aware which contests need to be examined and recorded.
  - If the voter’s choices are not clear, and the post-election audit board members cannot agree on what constitutes a valid mark, they can indicate “disagreement” on the tally sheet.
- Auditing board members should only consider marks that the tabulator would count for the audit, not voter-intent.
  - This ensures ballots are counted during the audit the same way they were counted for the election.
- At the post-election audit, the post-election auditing board shall publicly manually count the votes and only adjourn after the count is completed and the certificate of post-election audit signed.
- One recommendation is to have the post-election audit workers sort the ballots selected for the audit by how the voters voted. Example: All votes for Candidate A in one pile and all votes for Candidate B in another pile. This method will help mitigate the wrong tally by being counted for a candidate. Hand-marked paper ballots may require the post-election audit board to make decisions about voter intent.
- If public observers are loud or disruptive, please ask them to be quiet. If it continues, call law enforcement. The workers need a space conducive to the important and detail-oriented work being conducted. ([ARSD 5:02:23:07](#))

**HERE ARE THE AUDITING PROCEDURES AS OUTLINED IN [ARSD 5:02:23:09](#)**

The following procedure must be used in auditing a precinct by manually counting the ballots:

- (1) The post-election auditing board shall review ballots for proper marking procedure according to the voting instructions below. The post-election auditing board shall determine the votes to count as follows:
  - (a) A mark that is inside the oval on an optical scan ballot is counted as a vote;
  - (b) Any mark on an optical scan ballot that does not touch the oval and is not in the oval may not be counted as a vote;
  - (c) A mark on an optical scan ballot that touches two or more ovals is an over-vote and not counted;
  - (d) A write-in vote may not be counted; and
  - (e) Express votes are to be counted as shown on the Express vote ballot;
- (2) A majority vote of the post-election auditing board shall determine any question arising from the post-election audit; and

(3) The post-election auditing board shall certify the results as manually counted for the post-election audit by completing the certificate of post-election audit as provided in § [5:02:23:12](#). The board shall file the certificate of post-election audit with the county auditor.

- As the vote is announced by a post-election auditing board member, another board member must make the appropriate mark on the post-election audit tally sheet prescribed in § [5:02:23:11](#). Yet another board member shall make the appropriate mark on a duplicate post-election audit tally sheet. ([5:02:23:10](#))
- Recommendation: Have two audit board members do the tallying, then you can confirm they came to the correct number or not. Segment the ballots into stacks when counting. Have each batch be a certain number. (ex. 25, 50) Have the board members switch tasks between tallying, reading, and observing.

## **CONCLUDE THE AUDIT**

- Confirm that all ballots or batches selected have been audited.
- Send the report to the Secretary of State and they will make the final audit reports available on their website. ([SDCL 12-17B-22](#))
  - Counties are recommended to post on their webpages as well (not required).
  - List out any findings or discrepancies. (if any)
- The results of the audit shall be included in the minutes of the county commission meeting.
- The county auditor shall reseal and retain the ballots upon the completion of a post-election audit.
- Make sure to complete the certificate of post-election audit. ([ARSD 5:02:23:12](#))
- Make sure to save all receipts associated with the audit. The county auditor shall submit expenses from the post-election audit to the secretary of state for reimbursement. The auditor shall use the forms designated by the secretary of state for this purpose. (These forms will be sent out after each primary and general election by the Secretary of State's office)
- Reimbursable expenses for the audit, are:
  - (1) Board member pay for conducting the audit and for training prior to the audit, not to exceed twenty-five dollars per hour worked but no less than minimum wage;
  - (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) Publication costs, no more than one hundred seventy-five dollars;
  - (5) Ballot storage costs, no more than seventy-five dollars;
  - (6) Travel (mileage) costs at the state per diem rate for every mile traveled;
  - (7) Meal reimbursement at state per diem meal rates; and

(8) Auditor and auditor's staff actual wages for hours spent training and assisting the post- election audit board.

- Expenses related to or associated with the primary or general election are not reimbursable post-election expenses. To avoid confusion, expenses that are not covered are costs related to media programming, ballot printing, ballot shipping, equipment maintenance, statewide ballot question publications, purchasing of election equipment (express votes, tabulators), polling place signage, testing costs, election day workers, postage, and insurance on voting equipment.



## STATUTES

### **12-17B-18. Post-election audit--Auditing board--Members--Promulgation of rules.**

Within fifteen days following the completion of the state canvassing of a primary or general election, the auditor of each county shall conduct a post-election audit of the ballots cast in the election following the procedures listed in this section and §§ 12-17B-19 to 12-17B-25, inclusive. The county auditor shall appoint a county auditing board of sufficient size to promptly complete the audit.

The members of the county auditing board may not all be members of the same political party. A member of the county auditing board must be a registered voter in the county in which the audit takes place. An individual may not serve on the county auditing board if the individual is a candidate for the office that is on the ballot being audited.

The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, prescribing the oath that each member of a county auditing board must take prior to discharging any duties.

**Source:** SL 2023, ch 50, § 1.

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### **12-17B-19. Post-election audit--Payment of costs--Promulgation of rules.**

The office of the secretary of state shall reimburse each county for the cost of any post-election audit required by §§ 12-17B-18 to 12-17B-25, inclusive. The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, administering the reimbursement process and defining reimbursable expenses and reimbursement rates for post-election audits.

**Source:** SL 2023, ch 50, § 2.

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### **12-17B-20. Post-election audit--Procedure--Precinct defined.**

The post-election audit must be conducted in five percent of the precincts in the county by manually counting all votes cast in two contests and comparing the results of the manual count to the results for those precincts at the county canvass. The county auditor shall select the precincts for the audit at random without the use of a computer in public during the meeting of the county canvassing board. If the combined total of all ballots cast in the precincts selected does not exceed one hundred ballots, then additional precincts must be randomly selected until the total of all ballots exceeds one hundred ballots. For the purposes of this section, the term precinct includes vote centers, but does not include any precinct designated as an absentee precinct.

The county auditor shall select the contests for the audit at random without the use of a computer in public during the meeting of the county canvassing board. One contest randomly selected for the audit must be a statewide contest. If there are no statewide contests on the ballot, the auditor randomly shall select another contest on the ballot. If there is only one contest on the ballot, that contest must be audited.

**Source:** SL 2023, ch 50, § 3.

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### **12-17B-21. Post-election audit open to the public--Notification.**

A post-election audit conducted pursuant to §§ 12-17B-18 to 12-17B-25, inclusive, must be open to the public. Members of the public shall keep a reasonable distance so as to not interfere with the audit process. The county auditor shall post notice of the time and place of the audit in the same manner as a public meeting agenda

pursuant to § 1-25-1.1 and provide the notice to the county chair of each political party that has a candidate on the ballot.

**Source:** SL 2023, ch 50, § 4.

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**12-17B-22. Publication of results.**

The county auditor shall send the results of the post-election audit to the secretary of state and present the results of the audit to the county commission at its next meeting. The results of the audit shall be included in the minutes of the county commission meeting.

The secretary of state shall publish the results of the post-election audit on the secretary of state's website.

**Source:** SL 2023, ch 50, § 5.

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**12-17B-23. Post-election audit--Notice to candidates impacted--Recount petition.**

If the results of the post-election audit show a discrepancy in the results greater than the margin by which any contest for elected office on the ballot in the county was decided, the auditor shall notify the candidates for that office. Any candidate who receives a notification from the county auditor shall have an additional seven days from the date from when the auditor sends the notification to file a verified petition requesting a recount of the official returns pursuant to §§ 12-21-10 or 12-21-11. The petition may be filed regardless of the margin by which the contest was decided.

**Source:** SL 2023, ch 50, § 6.

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**12-17B-24. Post-election audit not required with particular recounts.**

If a recount of any contest is conducted in a county, the county auditor is not required to conduct a post-election audit pursuant to § 12-17B-18.

**Source:** SL 2023, ch 50, § 7.

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**12-17B-25. Post-election audit--Ballots secured.**

The county auditor shall reseal and retain the ballots upon the completion of a post-election audit pursuant to § 12-20-31.

**Source:** SL 2023, ch 50, § 8.

# ADMINISTRATIVE RULES

## CHAPTER 05:02:23

### POST-ELECTION AUDITS

#### Section

05:02:23:01	Oath of post-election audit board.
05:02:23:02	Definitions.
05:02:23:03	Notice of appointment of post-election auditing board.
05:02:23:04	Signing of oaths.
05:02:23:05	Staff for post-election auditing board.
05:02:23:06	Post-election auditing board receipt for official ballots.
05:02:23:07	Public vote count.
05:02:23:08	Opening receptacle or container.
05:02:23:09	Auditing procedures.
05:02:23:10	Tally of ballots.
05:02:23:11	Post-election audit tally sheets.
05:02:23:12	Certificate of post-election audit.
05:02:23:13	Reserved.
05:02:23:14	Reserved.
05:02:23:15	Reimbursement of post-election audit costs.

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**05:02:23:01. Oath of post-election audit board.** Before performing any duty pertaining to the post-election audit of an election, each post-election audit board member shall make the following oath or affirmation:

I, (name), do solemnly swear (or affirm) that I will, to the best of my ability, impartially perform the duties of post-election audit board member in good faith according to law, and that I meet the qualifications to serve as a member of the post-election audit board.

**Source:** 50 SDR 12, effective August 8, 2023.

**General Authority:** SDCL [12-1-9\(11\)](#), [12-17B-18](#).

**Law Implemented:** SDCL [12-17B-18](#).

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**05:02:23:02. Definitions.** Terms used in this chapter mean:

- (1) "Counted ballot," a voted ballot counted by the post-election auditing board in at least one contest;
- (2) "Seal," A security mechanism using strategically placed serialized or tamper-evident materials that alert officials if a device used in the elections process has potentially been altered or accessed without authorization;
- (3) "Board member," A member of the post-election auditing board meeting the requirements of SDCL [12-17B-18](#);
- (4) "Over vote," a race in which more votes were cast on a ballot than allowed for that race;
- (5) "Voted ballot," a ballot placed in the ballot box at any time;
- (6) "Write-in vote," a name written on a ballot in an attempt to indicate a vote for that person; and
- (7) "Manual count," as defined by counting other than be electronic device.

**Source:** 50 SDR 63, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-18](#).

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**05:02:23:03. Notice of appointment of post-election auditing board.** The notice of appointment of a post-election auditing board must be in the following form:

STATE OF SOUTH DAKOTA )

) SS NOTICE OF APPOINTMENT

COUNTY OF \_\_\_\_\_ )

TO

\_\_\_\_\_ Auditing Board Member, \_\_\_\_\_ party  
\_\_\_\_\_ Auditing Board Member, \_\_\_\_\_ party  
\_\_\_\_\_ Auditing Board Member, \_\_\_\_\_ party  
\_\_\_\_\_ Auditing Board Member, \_\_\_\_\_ party  
\_\_\_\_\_ Auditing Board Member, \_\_\_\_\_ party  
\_\_\_\_\_ Auditing Board Member, \_\_\_\_\_ party

(add/remove lines as necessary)

You are appointed as a member of the post-election audit for the 20\_\_\_\_ (primary or general) election in \_\_\_\_\_, \_\_\_\_\_ County, on (June or November) \_\_\_\_\_, 20\_\_\_\_. Please report to \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. the day of the post-election audit. If you are unable to serve, please notify the county auditor immediately.

The post-election audit training will be held at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m.

Witness my hand and the seal of this county, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
County Auditor

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-18](#).

**05:02:23:04. Signing of oaths.** A member of the post-election auditing board shall sign the oath or affirmation of office prescribed in § [5:02:23:01](#) before performing any duties of a member of the board.

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-18](#).

**05:02:23:05. Staff for post-election auditing board.** The county auditor shall provide administrative support and staff for the post-election auditing board.

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-18](#), [12-17B-22](#).

**05:02:23:06. 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:

STATE OF SOUTH DAKOTA

\_\_\_\_\_ COUNTY  
\_\_\_\_\_ PRECINCT

We, the Post-Election Auditing Board Members, do hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the post-election audit for the (Primary or General) election held on \_\_\_\_\_, 20\_\_\_\_, we received from \_\_\_\_\_, County Auditor, a sealed package containing the following official precinct ballots:

(Here list the official precinct ballots received)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

for the purpose of conducting a post-election audit.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Post-Election Auditing Board member  
Post-Election Auditing Board member  
Post-Election Auditing Board member  
Post-Election Auditing Board member  
Post-Election Auditing Board member

(add additional lines when necessary)

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-18](#).

**05:02:23:07. Public vote count.** At the post-election audit, the post-election auditing board shall publicly manually count the votes and only adjourn after the count is completed and the certificate of post-election audit signed. The post-election auditing board may only exclude or prohibit a member of the public from witnessing any portion of the post-election audit if that person's conduct is disruptive.

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-18](#).

**05:02:23:08. Opening receptacle or container.** The sealed receptacle or container must be unsealed and the ballots taken out, and sorted by precinct.

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-18](#), [12-17B-20](#), [12-17B-25](#).

**05:02:23:09. Auditing procedures.** The following procedure must be used in auditing a precinct by manually counting the ballots:

(1) The post-election auditing board shall review ballots for proper marking procedure according to the voting instructions below. The post-election auditing board shall determine the votes to count as follows:

(a) A mark that is inside the oval on an optical scan ballot is counted as a vote;

(b) Any mark on an optical scan ballot that does not touch the oval and is not in the oval may not be counted as a vote;

(c) A mark on an optical scan ballot that touches two or more ovals is an over-vote and not counted;

(d) A write-in vote may not be counted; and

(e) Express votes are to be counted as shown on the Express vote ballot;

(2) A majority vote of the post-election auditing board shall determine any question arising from the post-election audit; and

(3) The post-election auditing board shall certify the results as manually counted for the post-election audit by completing the certificate of post-election audit as provided in § 5:02:23:12. The board shall file the certificate of post-election audit with the county auditor.

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL 12-1-9(4)(11).

**Law Implemented:** SDCL 12-17B-18, 12-17B-20, 12-17B-22.

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**05:02:23:10. Tally of ballots.** As the vote is announced by a post-election auditing board member, another board member must make the appropriate mark on the post-election audit tally sheet prescribed in § 5:02:23:11. Yet another board member shall make the appropriate mark on a duplicate post-election audit tally sheet.

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL 12-1-9(4)(11).

**Law Implemented:** SDCL 12-17B-20.

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**05:02:23:11. Post-election audit tally sheets.** As shown below, a post-election audit tally sheet must contain a series of horizontal and vertical grid lines to form boxes of suitable size to contain five tally marks each, four of which may be upright and the fifth crossing the others at an oblique angle. Each fifth vertical grid line in the ruling must be red, so that five boxes for tally marks are contained between two red lines. Sufficient space must be provided in the left margin of each post-election audit tally sheet to legibly print or write in ink the name of the contest audited, with the name of the individual candidates or ballot question answers listed in the same order as on the official ballots used in the election. Sufficient space must be allowed in the right margin of the post-election audit tally sheet to legibly print or write in ink the total votes for each candidate or ballot question answer counted.



**POST-ELECTION AUDITING TALLY SHEET**

**ELECTION:** \_\_\_\_\_

**AUDIT DATE:** \_\_\_\_\_

**COUNTY AND PRECINCT:** \_\_\_\_\_ **# OF BALLOTS** \_\_\_\_\_  
 Received from Auditor

**CONTEST NAME:** \_\_\_\_\_

CANDIDATE NAME OR QUESTION	TOTAL VOTES:								

CANDIDATE NAME OR QUESTION	TOTAL VOTES:								

(add as many candidate names and tally boxes as necessary)

**AUDITING BOARD MEMBER:** \_\_\_\_\_  
 (PRINT)

\_\_\_\_\_  
 (SIGN)

**AUDITING BOARD MEMBER:** \_\_\_\_\_  
 (PRINT)

\_\_\_\_\_  
 (SIGN)

(add as many lines as necessary)

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-20](#).

**05:02:23:12. Certificate of post-election audit.** The certificate of post-election audit must be in the following form:

STATE OF SOUTH DAKOTA )

) SS CERTIFICATE OF POST-ELECTION AUDIT

COUNTY OF \_\_\_\_\_ )

WE, THE UNDERSIGNED members of the post-election auditing board, do hereby certify the results of the audit for the following specified candidates or questions \_\_\_\_\_ for the election held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. We completed the audit on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Precinct _____			
	Total Votes	Total Yes	Total No
Candidate Name	_____		
Candidate Name	_____		
Ballot Question Name		_____	_____

The following is a brief description of the proceedings of this post-election audit:  
Signed by a majority of the post-election auditing board:

\_\_\_\_\_  
Post-Election Auditing Board Member

\_\_\_\_\_  
Post-Election Auditing Board Member

\_\_\_\_\_  
Post-Election Auditing Board Member

(add more board member lines as necessary)

Attested under SEAL by the \_\_\_\_\_ County Auditor:

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-18](#), [12-17B-20](#), [12-17B-22](#).

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**05:02:23:13. Reserved.**

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**05:02:23:14. Reserved.**

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**05:02:23:15. 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 use the forms designated by the secretary of state for this purpose.

Reimbursable expenses for the audit, are:

(1) Board member pay for conducting the audit and for training prior to the audit, not to exceed twenty-five dollars per hour worked but no less than minimum wage;

(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) Publication costs, no more than one hundred seventy-five dollars;

(5) Ballot storage costs, no more than seventy-five dollars;

(6) Travel (mileage) costs at the state per diem rate for every mile traveled;

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

(8) Auditor and auditor's staff actual wages for hours spent training and assisting the post- election audit board.

Expenses related to or associated with the primary or general election are not reimbursable post-election expenses. To avoid confusion, expenses that are not covered are costs related to media programming, ballot printing, ballot shipping, equipment maintenance, statewide ballot question publications, purchasing of election equipment (express votes, tabulators), polling place signage, testing costs, election day workers, postage, and insurance on voting equipment.

**Source:** 50 SDR 66, effective December 5, 2023.

**General Authority:** SDCL [12-1-9\(4\)\(11\)](#).

**Law Implemented:** SDCL [12-17B-9](#).

# SOUTH DAKOTA ELECTION WORKER CODE OF CONDUCT

## SOUTH DAKOTA ELECTION WORKER

# CODE OF CONDUCT

**I**

### INTEGRITY

Every election will be held with the highest integrity.

**N**

### NEUTRALITY

Uphold neutrality and bipartisan views.

**T**

### TEAMWORK

Work diligently to collaborate as a team for a positive election experience.

**E**

### EDUCATE

Educate all voters on the voting process.

**G**

### GUIDANCE

Provide guidance to your voters with a friendly attitude.

**R**

### RIGHT TO VOTE

All citizens have the right to vote with confidence in our election process.

**I**

### IMPARTIAL

All poll workers shall be impartial.

**T**

### TRAINING

Actively participate in the quality training provided for poll workers.

**Y**

### YOUR VOTE COUNTS

Reassure every voter that their vote counts!