



## 2023 South Dakota Legislature

# House Bill 1106

SENATE STATE AFFAIRS ENGROSSED

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: **Representative Mulally**

1 **An Act to revise certain provisions pertaining to poll watchers.**

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

3 **Section 1. That § 12-18-9 be AMENDED:**

4 ~~12-18-9. Any person, except a candidate who is on the ballot being voted on at~~  
 5 ~~that polling place, may be present at any polling place for the purpose of observing the~~  
 6 ~~voting process. Any person may be present to observe the counting process. A candidate~~  
 7 ~~who is on the ballot being voted on at a polling place may only be present to cast the~~  
 8 ~~candidate's vote during voting hours. A number of poll watchers shall be permitted for~~  
 9 ~~each candidate at a primary election or political party and independent candidate at a~~  
 10 ~~general election pursuant to § 12-18-8.1. Each polling place shall be arranged in a manner~~  
 11 ~~that permits each poll watcher to be positioned in a location where the poll watcher can~~  
 12 ~~plainly see and hear what is done within the polling place~~

13 At a general, primary, or special election pursuant to § 12-18-8.1, any candidate,  
 14 party, or ballot question committee as defined in § 12-27-1 is entitled to have a poll  
 15 watcher present at any polling place for the purpose of observing the voting and counting  
 16 process. This section may not apply to a candidate who is on the ballot being voted on at  
 17 a polling place, and the candidate may only be present to cast the candidate's vote during  
 18 voting hours.

19 The observation areas may not be less than three feet nor more than six feet from  
 20 the table at which voters announce their name and address to be issued a ballot at the  
 21 polling place. The observation areas must be so positioned to permit any poll watcher to  
 22 plainly see and hear all public aspects of the voting process.

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

24 **Section 2. That § 12-1-3 be AMENDED:**

25 **12-1-3.** Terms used in this title mean:

- 1 (1) "Candidate," a person whose name is on the ballot or who is entitled to be on the  
2 ballot to be voted upon for nomination or election at any election;
- 3 (2) "Election," any election held under the laws of this state;
- 4 (3) "Election officials," state and local officials charged with the duty of conducting  
5 elections and the canvass of returns;
- 6 (4) "Elector," a person qualified to register as a voter, whether or not the person is  
7 registered;
- 8 (5) "Electronic pollbook," an electronic system containing both the registration list and  
9 pollbook;
- 10 (6) "General election," the vote required to be taken in each voting precinct of the  
11 state on the first Tuesday after the first Monday in November of each even-  
12 numbered year;
- 13 (7) "Paid circulator," any person who receives money or anything of value for collecting  
14 signatures for a petition;
- 15 (8) "Party office," an office of a political party organization as distinct from a public  
16 office;
- 17 (9) "Person in charge of an election," or "person charged with the conduct of an  
18 election," the county auditor in all cases except local elections for a municipality,  
19 school district, township, or other political subdivision, in which case it is the officer  
20 having the position comparable to the auditor in that unit of government if not  
21 specifically designated by law;
- 22 (10) "Petition," a form prescribed by the State Board of Elections, which contains the  
23 question or candidacy being petitioned, the declaration of candidacy if required and  
24 the verification of the circulator. If multiple sheets of paper are necessary to obtain  
25 the required number of signatures, each sheet shall be self-contained and  
26 separately verified by the circulator;
- 27 (11) "Petition circulator," a resident of the State of South Dakota as defined under § 12-  
28 1-4, who is at least eighteen years of age who circulates nominating petitions or  
29 other petitions for the purpose of placing candidates or issues on any election  
30 ballot;
- 31 (12) "Political party," beginning with the 2014 general election and each general election  
32 thereafter, a party whose candidate for any statewide office received at least two  
33 and one-half percent of the total votes cast for that statewide office in either of the  
34 two previous general election cycles;

- 1 (13) "Pollbook" or "poll list," a list containing in numerical order the names of all persons  
 2 voting at the election and type of ballot voted;
- 3 (14) "Polling place," a designated place voters may go to vote;
- 4 (15) "Poll watcher," a person appointed to observe the conduct of an election on behalf  
 5 of a candidate, a political party, or a ballot question committee;
- 6 ~~(15)~~(16) "Primary" or "primary election," an election held at which candidates are  
 7 nominated for public office;
- 8 ~~(16)~~(17) "Public office," an elected position in government;
- 9 ~~(17)~~(18) "Registration list," a list of eligible voters;
- 10 ~~(18)~~(19) "Registered mail," does not include certified mail;
- 11 ~~(19)~~(20) "Registration officials," the county auditor and deputies and other persons  
 12 authorized to assist in registration pursuant to chapter 12-4;
- 13 ~~(20)~~(21) "Vote center," a polling place when the precinct has been defined as the entire  
 14 jurisdiction and an electronic pollbook is utilized;
- 15 ~~(21)~~(22) "Voter," a person duly registered to vote or one who is performing the act of  
 16 voting;
- 17 ~~(22)~~(23) "Independent (IND)" or "no party affiliation (NPA)," any currently registered  
 18 voter who writes independent, I, Ind, no party affiliation, no party, no choice,  
 19 nonpartisan, or line crossed off in the choice of party field on the voter registration  
 20 form and any individual who is not currently registered to vote who leaves the  
 21 choice of party field blank on the voter registration form;
- 22 ~~(23)~~(24) "Independent candidate," notwithstanding the definition of independent as  
 23 stated in this chapter, any registered voter regardless of party affiliation who  
 24 declares to be an independent candidate for public office pursuant to this chapter;
- 25 ~~(24)~~(25) "Other," any voter who writes a political party not recognized in South Dakota  
 26 in the choice of party field on the voter registration form.

27 **Section 3. That chapter 12-20 be amended with a NEW SECTION:**

28 The process of sorting, validating, and counting of ballots must be open to poll  
 29 watchers for the purpose of observing the process. Poll watchers shall keep a reasonable  
 30 distance from ballots and identification information to protect the privacy of voters. No  
 31 record associating an individual voter with a ballot may be created. The State Board of  
 32 Elections shall promulgate rules, pursuant to chapter 1-26, setting the number of poll  
 33 watchers allowed for the sorting, validating, and counting of ballots.

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

1 **Section 4. That chapter 12-21 be amended with a NEW SECTION:**

2 A meeting of a recount board pursuant to this chapter must be open to the public.

3 Members of the general public shall keep a reasonable distance from ballots.

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