



South Dakota Secretary of State

SHANTEL KREBS

State Board of Elections Fall Meeting and Proposed Legislative Changes Minutes

Monday, October 20, 2015

SD Association of County Officials office building
211 East Prospect
Pierre, South Dakota

Conference Call Dial-in Information:
Dial-in Number is 866.410.8397
Conference Code is 2178377981

Secretary Krebs called the meeting to order at 10:04 am (central time).

Present via conference call: Cindy Brugman (Board of Elections member), Dick Casey (Board of Elections member), Drew Duncan (Board of Elections member), Pam Lynde (Board of Elections member), Linda Lea Viken (Board of Elections member), Laurie Martinez (SD Municipal League), CJ Moit (SD Advocacy Services)

Present in person: Secretary Shantel Krebs (Chair, Board of Elections), Kea Warne (Deputy Secretary of State, Election Services), Kristin Kellar (HAVA Coordinator), Rachel Schmidt (Election Coordinator), Christine Lehrkamp (State Election Coordinator), Tom Deadrick (Deputy Secretary of State, Business Services), Bret Healy (Four Directions, Inc.), Bob Mercer (press), Bob Litz (Minnehaha County Auditor) and Jerry Schwarting (Mellette County Auditor).

Board of Elections Members not able to attend: Mitch LaFleur

Quorum present

Motion to approve the minutes of June 15, 2015 meeting by Linda Lea Viken, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye; Dick Casey – Aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Secretary Krebs reviewed the proposed changes to the Help America Vote Act (HAVA) Grant parameters that had earlier been recommended by the HAVA Grant Board.

Drew Duncan asked if the changes were much different from what was originally in the parameters.

Shantel Krebs said that additions had been made. The HAVA Grant Board added more options to the In-Person Absentee Voting Satellite Location Parameters.

Drew Duncan asked if there were any groups that contested the extra parameters.

Shantel Krebs stated that there were no objections and clarified that the Board of Elections does not need to approve the HAVA Grant Board parameters but that she wanted to let them know that she had approved the new parameters.

Kristin Kellar gave an overview of the October 13-14 equipment testing for Election Systems & Software's updated version of the ExpressVote ballot marking device. Two officials from ES&S were present during the testing along with Kea Warne, Christine Lehrkamp, Kristin Kellar and Rachel Schmidt from the Secretary of State's election's division. The reason for the retesting of the equipment was due to an issue found in Maryland with their equipment and more software updates had been added. During the testing, 1,530 ExpressVote cards were marked using four ExpressVote Previewer's, which were then tabulated on a DS850 and DS200. The 1,530 cards were split between five precincts including a split precinct in Precinct One. The ballots for testing were at least 90% fully voted with the remainder containing overvoted and undervoted ballots. All of the testing was successful and met all requirements pursuant to codified law and administrative rule. Kristin Kellar stated that she would send out the certification of the equipment after the meeting.

Motion to approve the overview of the Election Systems & Software by Pam Lynde, second by Linda Lea Viken. Roll call vote: Cindy Brugman- aye; Dick Casey – Aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

The Board of Elections moved on to review the draft of the proposed legislation for the 2016 Legislative Session. Seventeen different items were listed in a packet that the board decided to go through one by one and vote on each change separately.

#1.

Shantel stated that the proposed changes were cleanup language by adding affidavit and signed by the petition sponsor(s).

Linda Lea Viken asked if the board needed to “form provided by the Secretary of State.”

Shantel Krebs stated that it is included later in the statute.

Dick Casey thought that form would need to be prescribed by rule. Also, questioned who is a sponsor and who in rule is included.

Linda Lea Viken asked about the process.

Shantel Krebs said that once the ballot question has been approved for circulation, the sponsors need to be included. The ballot question first goes through the Legislative Research Council where recommendations are made, then to the Attorney General where

a title and explanation is added to the questions and then lastly to the Secretary of State's office to look at form and to get sponsors.

Linda Lea Viken asked why we are adding this.

Shantel Krebs stated to make the process clearer and to know who all of the sponsors are.

Linda Lea Viken wanted to know if subsection 5, 12-27-6 is related to a committee.

Shantel Krebs explained that a committee could be an individual and that they would have to form a committee to circulate.

Linda Lea Viken said that she was still confused about the different committee.

Shantel Krebs said that is was a ballot question committee.

Kea Warne stated that none of the forms are prescribed by rule and that on the form there is a checkbox to indicate if you are a PAC or a ballot question committee. Said that it helps the Secretary of State's office for clarification purposes.

Shantel Krebs stated that under subsection 4, the Secretary of State's office would like contact information for everyone.

Dick Casey asked if there was a difference between sponsor and circulator.

Shantel Krebs said that yes, the sponsor is the proponent person(s) in favor of supporting the measure and the circulator is the person out there getting signatures.

Drew Duncan stated his concern that there is no definition of petition sponsor and doesn't want to have issues come up from lack of a definition.

The board decided to move #1 to the bottom so that a definition could be made.

#2.

The board had the same issue, lack of definition, with number 2 and moved on to item #3.

#3.

Shantel said that this proposed change came from Julie Pearson (Pennington County Auditor). The new added language would help the county with costs in the circumstance where it if the eligible voters are defined as landowners only for the special district to be formed, the notices of voter registration do not need to be published.

Motion to approve item #3 by Linda Lea Viken, second by Dick Casey. Roll call vote: Cindy Brugman- aye; Dick Casey – aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#4.

Shantel Krebs stated that item #4 was new language that had been passed in 2015 and had been brought forth by Sue Gange of Fall River County. This had been missed during adding amendments during session. This way a county does not have to print separate ballots if they are using the optical scan ballots.

Motion to approve item #4 by Drew Duncan, second by Pam Lynde. Roll call vote: Cindy Brugman- aye; Dick Casey – Aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#5.

Shantel Krebs stated that the changes made on this item needed to be made so that it matched what was in administrative rule so that contrasting colors can be used

Drew Duncan asked if everything in the first paragraph, after elections in the last sentence be removed. He felt that it was redundant language.

Shantel stated that it should be left in for consistency.

Motion to approve item #4 by Drew Duncan, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye; Dick Casey – Aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#6.

Shantel Krebs stated that the terms Independent (IND), Independent candidate and Other needed definitions for the purpose of clarity. When county auditors are filling out voter registrations, it would allow for easier clarification and recognition.

Linda Lea Viken recommended adding “not recognized by the State of South Dakota” in subsection 18 after the word party.

Motion to amend item #6 by Linda Lea Viken, second by Drew Duncan. Roll call vote: Cindy Brugman- aye; Dick Casey – Aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Motion to approve item #6 as amended by Linda Lea Viken, second by Dick Casey. Roll call vote: Cindy Brugman- aye; Dick Casey – Aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved as amended.

#7.

Shantel Krebs stated that due to the referral of Senate Bill 69, cannot have a specific date until the outcome is made.

Linda Lea Viken asked why this wasn't included before

Shantel Krebs stated that SB 67 was hinged upon this date and can't have new language until the outcome is known. Also, wondered if an emergency clause would be needed.

Drew Duncan asked why does this need to be taken out since most of the language was policy driven. Wondered if part of it could be kept. Drew made a motion to change the language stricken out and have it read, "Any challenge to the certification or rejection of a nominating petition for a primary election shall be made in circuit court takes precedence over other cases in circuit court. Any part appealing the circuit court order to the Supreme Court shall file a notice of appeal within ten days of the date of the notice on the entry of the circuit court order."

Linda Lea Viken stated that she was concerned with the circuit courts and it stating that you have to go through court.

Drew Duncan stated that it is up to the person to decide if they want to challenge.

Kea Warne went through the whole process of what the Secretary of State does during this situation and said that she agreed with Drew's assessment.

Shantel reviewed the amendment made by Drew Duncan.

Motion to amend item #7 by Drew Duncan, second by Dick Casey. Roll call vote: Cindy Brugman- nay; Dick Casey – aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – nay, Secretary Krebs- nay. Failed.

Linda Lea Viken made a motion for the language to state the following, "Any challenge to the certification or rejection of a nominating petition for a primary election made in circuit court takes precedence over other cases in circuit court. Any part appealing the circuit court order to the Supreme Court shall file a notice of appeal within ten days of the date of the notice on the entry of the circuit court order."

Motion to amend item #7 by Cindy Brugman, second by Pam Lynde. Roll call vote: Cindy Brugman- aye; Dick Casey – aye, Drew Duncan – naye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#8.

Shantel Krebs stated that this statute needs to be repealed because she feels there should not be an age limit on a person's right to vote. Right now we are capping them. Also stated that this is redundant language to 12-4-4.4.

Motion to approve item #8 by Linda Lea Viken, second by Dick Casey. Roll call vote: Cindy Brugman- aye; Dick Casey – aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#9.

Shantel Krebs stated that item #9 was needed to correct a statutory reference. 2-1-2 had been repealed and this cleanup language was needed.

Motion to approve item #9 by Dick Casey, second by Linda Lea Viken. Roll call vote: Cindy Brugman- aye; Dick Casey – aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#10.

Shantel Krebs explained that subsection (4) has never been done and the Secretary of State's office has never prescribed the form and that subsection (6) never is received by the Secretary of State's office.

Linda Lea Viken asked what was the point of subsection (6).

Shantel Krebs stated that jurisdictions should not have to go through the Secretary of State's office for approval.

Dick Casey asked if a jurisdiction could go rouge.

Shantel Krebs stated that the form is already in statute and the Secretary of State's office knows which jurisdictions are using the vote centers. If you are using a vote center, you will be using E-poll books.

Linda Lea Viken asked which counties used vote centers.

Shantel Krebs stated that Sully, Hyde, Pennington, Brown, Potter, Hughes and Yankton counties use vote centers.

Motion to approve item #10 by Drew Duncan, second by Linda Lea Viken. Roll call vote: Cindy Brugman- aye; Dick Casey – aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#11.

Shantel Krebs stated that item #11 is a local control issue and needs to be repealed. She stated that it is not the role of the Secretary of State's office to conduct the election.

Linda Lea Viken asked what would happen if this was repealed.

Kea Warne said that the Secretary of State's office would provide training, they could choose to deputize someone and the county auditor could assist.

Linda Lea Viken asked who decides if there is an emergency.

Shantel Krebs stated that the only emergency right now is weather and that you can only postpone for one week. Stated that Sioux Falls had an April 2013 ice storm that caused this to take effect. The person in charge of the election may call the meeting of the governing board who would then meet and decide to postpone for a week.

Motion to approve item #11 by Linda Lea Viken, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye; Dick Casey – aye, Drew Duncan – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#12.

Shantel Krebs stated that the purpose of subsection (4) would help clarify what is needed for the statement of organization. Under subsection (6), the Secretary of State's office has never had a committee file as a corporation and don't see it as necessary. Stated that she wants to have this option taken off the form and basically what she wants to see happen is taking the check box off of the form. Most of them don't know what they are checking when they fill out that box and don't realize they aren't actually incorporating. Then she stated that subsection (7) should be taken out because of the financial information that is being asked for isn't necessary. Especially concerned with asking for financial information because of the threat of identity theft that is so prevalent.

Linda Lea Viken asked if this information would be taken off the form and who uses it.

Kea Warne said that the Secretary of State's office does not use it but is not sure if the Attorney General's office uses the information.

Shantel Krebs moved on to the top of page 9 where language was added so that the information would be sent to the last treasurer on file. Had noted that previously have had some confusion with people not getting notified about their statements of organization. She stated that adding this language to the form would match what was already in statute.

Linda Lea Viken noted her concern about the candidate not being notified.

Kea Warne stated that back in 2008, through administrative process for campaign finance, made the treasurer responsible and they receive the notifications.

Motion to approve item #12 by Dick Casey, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye; Dick Casey – aye, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

*Drew Duncan had left the conference call around 2:50pm

#13.

Shantel Krebs stated that the changes made on item #13 were to help clarify who needed to submit campaign finance disclosure statements. She stated that under subsection (6) that statewide ballot questions that did not meet the signature requirements need to be terminated since there is no reason for them to still be formed after they failed.

*Dick Casey stated that he needed to leave the conference call and did so at 3:05.

Linda Lea Viken was confused on which reports need to be filed with the Secretary of State's office and motioned to add "year end report for a" to the beginning of subsection (1) on the top of page 10.

Motion to amend item #13 by Linda Lea Viken, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Linda Lea Viken had a question on subsection (7) on page 10 on why independent statewide candidates do not have to file.

Kea Warne stated they do not have to file because they don't have a primary but they will file a pre-general report. She then stated to take out "statewide" on subsection (2) on page 9 since there is another section that refers to it.

Motion to amend item #13 by Linda Lea Viken, second by Pam Lynde. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Motion to approve item #13 as amended by Linda Lea Viken, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#14.

Shantel Krebs stated that under item #14, which was new legislation passed in 2015, so that if you lost your primary you would file a post-primary (non-winner) report. This was language that had not gotten added during session.

Linda Lea Viken stated that in this chapter the language was very redundant and gave the whole board and members present a good laugh.

Linda Lea Viken asked if under subsection (29) on the bottom of page 12 should include an affidavit.

Kea Warne stated that she didn't want another document have to be notarized for individuals.

Motion to approve item #14 by Linda Lea Viken, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#15.

Shantel Krebs mentioned the due diligence of the Secretary of State's office sending out notices to no avail and not having any response. Said that it is important to add this language so that termination is possible after using all avenues of contact.

Linda Lea Viken made a motion to change the word hits to incurs in the new language.

Motion to amend item #15 by Linda Lea Viken, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Motion to approve item #15 as amended by Linda Lea Viken, second by Pam Lynde. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#16.

Shantel Krebs stated that county, municipality, school district or other political subdivisions should not have to file with the Secretary of State's office and that this should be done locally. Stated that jurisdictions have not been doing this and does not want them to be out of compliance.

Motion to approve item #16 by Linda Lea Viken, second by Pam Lynde. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#17.

Shantel Krebs stated that this was clean-up language that was done earlier in #5.

Motion to approve item #17 by Cindy Brugman, second by Pam Lynde. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#1.

The Board of Elections moved back to #1 to define a petition sponsor

Kea Warne stated the definition for a petition sponsor as “any person(s) who proposes the placement of a ballot measure on the ballot.”

Motion to amend item #1 by Cindy Brugman, second by , Pam Lynde. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Motion to approve item #1 as amended by Linda Lea Viken, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#2.

The Board of Elections moved on to #2 and added the same language as was added in #1.

Motion to amend item #1 by Cindy Brugman, second by , Pam Lynde. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Motion to approve item #1 as amended by Linda Lea Viken, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

#18.

Shantel Krebs explained that they were carrying over the definition of petition sponsor from 12-1-3.

Motion to approve item #18 by Linda Lea Viken, second by Pam Lynde. Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved. Secretary Krebs opened for any public comments. No additional comments from the public.

The next Board of Election meeting will be planned for April of 2017.

Motion to adjourn at 3:44 by Linda Lea Viken, second Cindy Brugman.

There was no further discussion on this motion.

Roll call vote: Cindy Brugman- aye;, Pam Lynde- aye; Linda Lea Viken – aye, Secretary Krebs- aye. Approved.