



South Dakota Secretary of State
SHANTEL KREBS

State Board of Elections
Monday, October 30, 2017
Minutes

Secretary of State's Office 1:00 p.m. CT
Business Services Building
215 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 1:00 pm (Central Time).

Present via conference call: Carri Crum (Board of Elections member), Linda Lea Viken (Board of Elections member) and CJ Moit (SD Advocacy Services)

Present in person: Secretary Shantel Krebs (Chair, Board of Elections), Pam Lynde (Board of Elections member), Rick Knobe (Board of Elections member), Julie Pearson (Pennington County Auditor), Kea Warne (Deputy Secretary of State, Election Services), Kristin Gabriel (HAVA Coordinator), Rachel Soulek (Election Coordinator), Christine Lehrkamp (State Election Coordinator), Tom Deadrick (Deputy Secretary of State, Business Services) and Jason Williams (Public Information Officer).

Board of Election members absent: Margaret Gillespie and Mitch LaFleur

Quorum present.

Secretary Krebs gave an overview of the agenda.

Secretary Krebs asked if there were any changes to the June 15, 2017 Board of Election meeting minutes.

Linda Lea Viken offered three amendments: on page 2, paragraph 6, line 5, add the language "the plate on" after "because"; on page 2, paragraph 7, add the word "asked" after "Viken"; and on page 4, line 6, delete "in per" and add "in-person."

A *motion* was made to approve the June 15, 2017 Board of Election meeting minutes, as amended, by Rick Knobe, second by Pam Lynde. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye. Approved.

Kristin Gabriel gave an update on the 2017 HAVA grant applications by reviewing the *HAVA Overview handout*.

Secretary Krebs reviewed the HAVA Grant Board's denial of Jackson county's HAVA Grant Application and Jackson county's subsequent letter of appeal. The HAVA state plan allows for an appeal process if a HAVA Grant application is denied. The appeal process permits the State Board of Elections to make a final decision regarding the HAVA Grant application.

Kristin Gabriel explained the reason for the denial of the application. When Jackson County applied for the HAVA Grant they had a balance in their county held funds of \$2,245.50. The decision was made to deny the application because they did not have a zero balance in their state-held county funds, a requirement of the HAVA State Plan. Since the application was filed, Jackson county has submitted for a Title II reimbursement that would expend their remaining \$2,245.50 of their state-held county funds which would put them at a zero balance.

Jackson County's appeal letter explains why the auditor missed the deadline for submitting for reimbursement as she was out on medical leave for two months.

Discussion on the appeal-

- Linda Lea Viken asked what is the Secretary's opinion of allowing the funding to go forward in terms of setting a precedent.
 - o Secretary Krebs gave a brief summary on Jackson county and that the Auditor is the only person on staff in the Auditor's office and that she also had a reasonable reason for missing the original deadline.
 - o Due to a lawsuit, Jackson county entered into a Memorandum of Understanding with the Secretary of State's office through the 2022 election cycle to have an in-person absentee satellite site.
 - o Jackson county will use the grant funding for HAVA related expenses not for the in-person satellite site.
- Linda Lea Viken asked if this appeal process is a hearing under SDCL 1-26.
 - o Secretary Krebs explained that in the HAVA state plan, under the HAVA Grant Board section on page 3, outlines briefly what the appeal process is. This is not a hearing under SDCL 1-26.
- Rick Knobe commented that a one-person operation should be considered when making this decision.

A motion to approve the HAVA grant application of \$9,000 for Jackson County, by Pam Lynde, second by Linda Lea Viken. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye. Approved.

Secretary Krebs's gave an overview of the 2018 proposed election related legislation (see the *2018 Draft Proposed Legislation document*).

- **Item #1:** Clarifying the changes to the requirements for a political party to maintain party status will be based off of the 2014 General election and the political party may run a candidate for any statewide office and not just a gubernatorial office.
 - o Rick Knobe- does this include Federal Offices? No this is related to statewide offices only not Federal offices.

A motion to approve by Linda Lea Viken, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye. Approved.

- **Item #2:** removing the language of “direct recording electronic (DRE)” from 12-17B-2 which was put into law after the Help America Vote Act (HAVA) was passed. South Dakota has never used a device that directly records electronically. The Secretary of State's office wants to remove this language to be proactive so that there is no opportunity for a company to try to sell this type of equipment in South Dakota. The draft language defines the kind of election voting equipment systems that may be used and that that equipment cannot be connected to the internet. South Dakota uses paper ballots only.

A motion to approve by Linda Lea Viken, second by Carri Crum. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye. Approved.

- **Item #3** is similar to Item #2 in removing the DRE language.

A motion to approve by Carri Crum, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye. Approved.
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- **Item #4** is also similar to Item #2 in removing the DRE language.

A motion to approve by Pam Lynde, second by Carri Crum. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye. Approved.
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- **Item #5** is also similar to Item #2 in removing the DRE language.

A motion to approve by Pam Lynde, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye. Approved.
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Secretary Krebs's moved on to agenda items 6 and 7 recognizing the Pennington County Auditor Julie Pearson.

Julie Pearson outlined that the SD Association of County Officials (SDACO) approved these three resolutions at their Fall meeting. According to Pearson, SDACO wanted the Secretary of State's office to be aware of them.

- **First resolution discusses changing the word Absentee in codified law to Early Voting.**
 - o Linda Lea Viken asked if the BOE (Board of Elections) could voice support for the resolution.
 - Secretary Krebs explained that they could offer support as a BOE member but not as the full BOE because the resolutions haven't been presented in legislative draft form.
 - o Rick Knobe asked how this resolution would affect military voting.
 - Julie Pearson explained that the intent is not to change anything regarding military voting.
 - o Kea Warne explained that early voting in some states means that polling places are open for 46 days. The Secretary of State's office would ask for a very clear definition of what Early Voting means.
 - Julie Pearson explained that the word Absentee would be replaced by Early Voting but nothing would change regarding polling places being open the full 46 days. Auditors do not want polling places to be open for the full 46 days.
 - o Kea Warne explained that the word Absentee is listed in many, many statutes in state law and administrative rules along with the SD Constitution (Article 7 section 3).
 - o Julie Pearson explains that the voter doesn't understand what absentee means.
 - o Secretary Krebs explains that she doesn't really see a problem with this idea. But she isn't comfortable with voting to support this without seeing the draft legislation. Once the Secretary of State's office were to review the draft legislation we could share it with the BOE.
 - o Rick Knobe and Linda Lea Viken are in support of the resolution.
- **Second resolution outlines allowing Auditors to begin processing, via their absentee ballot precinct, the ballots for two days instead of one, the Monday before election day and on Election day.**
 - o Julie Pearson explains that the prior work would be done on Monday but actual opening and counting of the ballots would still be done on Tuesday.
 - o Kea Warne asked would this be open to the public? Julie Pearson says yes.
 - o Kea Warne asked if the election workers would be marking voters off in the poll book? Julie Pearson says yes.
 - o Secretary Krebs shared her concerns with this. The public will have reservations regarding misunderstanding what is being done prior to election day. There is a lack of trust by the public with election processes and counting of ballots.

- **Third resolution outlines wanting to validate absentee ballot applications and envelope signatures by the auditor's office prior to Election day.**
 - This would allow the auditor's office to deal with any issues early since the election workers are not able to do that election day.
 - Julie Pearson stated there would be more consistency in reviewing signatures because only two people would review compared to many election workers on election day.
 - Secretary Krebs asked if the language would be "shall" or "may?" Kea Warne stated that if you give the option that means voters would be treated differently. Julie Pearson stated it would be "shall."
 - Kea Warne asked if this would affect cities, schools and special districts? Julie Pearson explained that their intent was to have this just affect elections run by the county.
 - Secretary Krebs does have concerns with this also and would like to see the draft legislation before any decisions are made.
 - CJ Moit with SD Advocacy Services, stated that those in the disability community may not have consistent signatures from day to day and her group would like to be considered with the drafting of this legislation.

Julie Pearson presented another idea (not a resolution) that was pulled from the SDACO resolutions. The idea was emailed to the Secretary of State's office this summer and the Secretary of State's office was not in favor of it. Julie Pearson decided she would then bring the idea to the Board of Elections to review.

- Julie Pearson outlines the timeframe for a county special election. For a special election, the absentee voting period is 46 days. Julie Pearson says there is not enough time to create the ballot, print and ship the ballots in time to begin absentee voting 46 days prior to the election. If there are challenges to the petitions, then receiving the ballots in time for absentee voting to begin would be delayed further.
- In state law, a county special election must be held within 60 days of the petitions being filed or within 60 days of the governing board setting the election date. Another consideration would be to extend the 60 days to hold a special election to 90 days.
- Julie Pearson asks that the BOE share what needs to be done for their proposal to get support from the BOE.
- Kea Warne explains that Title 12 applies to every local jurisdiction unless they have a specific statute within their chapter of law. Julie Pearson would like 46 days of absentee voting changed to 15 days like city and schools.
- Kea Warne asked why SDACO wouldn't bring this?
 - Julie Pearson said that since the Secretary of State didn't agree with the change she is going this route to bring it to the BOE to see if they would support it but she is not bringing it on behalf of SDACO.

- Pam Lynde shared that extending the 60 days to 90 days may not make voters happy especially if it's a referendum election.
- Kea Warne and the Secretary of State's office is concerned with reducing the number of days a voter has to absentee vote.
- Julie Pearson says if it's changed to 15 days then it isn't consistent with other elections that are 46 days.
- Secretary Krebs asked what the disagreement was amongst the SDACO members? Julie Pearson said originally, they wanted to reduce the absentee voting period to 15 days, then when the Secretary of State's office said they do not support reducing the number of days, their association couldn't agree and did not vote on a resolution. Julie Pearson says that they are asking for guidance on what it should be then.
- Kea Warne stated that state law says 46 days.
- Secretary Krebs noted that 15 days is in the city and school respective chapters of state law now not within Title 12.
- Julie Pearson says there are two ways to do this - extend the 60 days to 90 days for when the election has to be held or reduce the number of days to vote absentee for special elections to 15 days from 46 days.
- Pam Lynde stated that another issue could be is how would the legislators view this proposal?
- Secretary Krebs said she is concerned about whether the BOE should get in the middle of the County Auditors not agreeing on this issue.
- Rick Knobe asked if there is any disagreement amongst the BOE regarding the timeframe for a special election and absentee voting being 46 days being hard for Auditors to comply with. No there was not. He feels that there needs to be a change because there is a law on the books that the Auditors can't comply with.
- Carri Crum says there needs to be a resolution and she would support the 90 days more than changing it to 15 days.
- Linda Lea Viken stated that the rules don't have to be precisely the same because these aren't Federal elections. She has no concerns with going to 15 days.
- A reminder by Secretary Krebs that only 5 of the 7 board members are present to discuss this proposal.
- Rick Knobe asked Linda Lea Viken if she felt that there should be a concern about a push back from voters because of reducing the number of absentee voting days. She said she does not believe there would be.
- Voters want to begin voting as soon as possible per the three Auditors present.
- Pam Lynde says that 15 days seems really short for absentee voting compared to 46 days.

- Rick Knobe proposed that more research be done and draft legislation be created for both scenarios then discussions with Legislators need to take place. He suggested that the county folks work on this.
 - Rick Knobe also asked for the Secretary of State staff to provide comments on the legislation.
 - Secretary Krebs stated that the legislators will come to the Auditors to ask what they want and if they are still divided that could be an issue for them.
 - Secretary Krebs asked if the BOE wants to have a vote now instead of holding another meeting.
- Proposal by Linda Lea Viken, to have Julie Pearson draft legislation to shorten the timeframe of absentee voting to 15 days for special elections, second by Carri Crum.
 - Rick Knobe asked what the cost differential to the counties would be to shorten the days. Carri Crum said that she may not have to hire the additional staff person for as long of a timeframe.
 - Linda Lea Viken is suggesting going this route because voters want to get special elections done quickly instead of extending the timeframe from 60 to 90 days.

Roll call vote on the motion by Linda Lea Viken: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Nay.
Approved.

Kea Warne gave an overview of the statewide voter equipment purchase. 31 counties will be using new voting equipment in the 2018 elections and another five to 10 are still considering purchasing new equipment. The new ballot marking device (required by the federal Help America Vote Act (HAVA) to have one ballot marking device in every polling) is called the ExpressVote (EV). The counties that are purchasing new equipment will be replacing their old ballot marking devices, the AutoMARKs that were purchased in 2005, with the EV's. Counties purchasing the EV's are also purchasing new ballot tabulating machines. The cost of this purchase was \$1,577,700.00 and the funds came from county general funds, state held county HAVA funds and state held HAVA funds.

The board moved to item 9 on the agenda and the Rules Hearing opened 3:01pm (CT).

See the *Draft Proposed Administrative Rules document* for the list of rules and changes.

Secretary Krebs explained that the following rules were reviewed and approved at the June 15, 2017 Board of Elections and Rules Hearing. Due to one of the three papers we publish rule hearing notices in (Capital Journal) failing to publish the notice, the Legislative Rules Review Committee would not approve most of the rules presented to them because the publication of notices didn't comply with state law. The committee was willing to grant us latitude and

approved three of the rules. But the rest of the rules were reverted which caused us to publish the notice again in three papers and bring back the reverted rules to BOE to approve again.

A *motion* to approve the reverted rules (listed below) as a package by Linda Lea Viken, second by Pam Lynde. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

05:02:03:14, 05:02:04:13, 05:02:04:17, 05:02:04:18, 05:02:04:19, 05:02:06:01,
05:02:06:10, 05:02:06:17, 05:02:06:20, 05:02:06:26, 05:02:06:27, 05:02:06:28,
05:02:08:00.01, 05:02:08:00.02, 05:02:08:36, 05:02:08:37, 05:02:08:38, 05:02:09:04.04,
05:02:10:01.02, 05:02:19:05

Secretary Krebs explained the amendment to administrative rule 5:02:10:08 (UOCAVA envelopes) was approved at the June meeting and reverted. Since the June meeting the Secretary of State’s office has made a few amendments.

- Linda Lea Viken has concerns about taking the voting residence language out of 05:02:10:08.
- Kea Warne explained that there is no Federal Law that allows us to ask for this information when we do not ask for that information from other absentee voters.
- It was further explained that absentee voters are checked to make sure they are registered voters before they are sent a ballot.

A *motion* was made to approve rule 5:02:10:08, as amended, by Rick Knobe, second by Linda Lea Viken. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained the amendment to administrative rule 05:02:10:01 (absentee ballot application) was approved at the June meeting and reverted. Since the June meeting the Secretary of State’s office has made a few amendments.

- Linda Lea Viken asked how does an auditor know if the person is a military voter.
- The Auditors present explained that there is no way to know. It’s up to the honesty of the voter.
- Kristin Gabriel suggested that a few statements in section 6 need to be combined.
- Kea Warne suggests removing the following language from section 6 “~~if you checked yes to any of the above suggestions, complete this section (#6).~~”
- Kea Warne also suggests amending this language by adding the following underscored language: Email address **(military and overseas citizens only)**
- Pam Lynde asked when these rules take effect. Kea Warne explained they take effect 20 days after approval by the legislative rules review committee which will meet on November 14, 2017.

A *motion* was made to approve rule 5:02:10:01, as amended by Pam Lynde, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained the amendment to administrative rule 5:02:08:07.01 (affidavit for completed ballot question petitions) was not a part of the June meeting. She is asking to clarify on the affidavit that the title of ballot measure be listed.

A *motion* was made to approve rule 5:02:08:07.01, as amended by Rick Knobe, second by Linda Lea Viken. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained the amendment to administrative rule 5:02:08:07.02 (affidavit for a ballot question to be circulated) was not a part of the June meeting. She is asking to clarify on the affidavit that the title of the ballot measure be included along with clarifying that a complete address be provided by the sponsor.

- Rick Knobe asked if a sponsor phone number can be put on this? Kea Warne explained that the phone number is listed on the circulator handout.

A *motion* was made to approve rule 5:02:08:07.02 as amended by Rick Knobe, second by Linda Lea Viken. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained the amendment to administrative rule 5:02:03:18 (voter registration statistics) was not a part of the June meeting. An additional question from the Election Assistance Commission survey (federal mandate for this survey after each General election) required the Secretary of State’s office to add this language to rule for it to be captured.

A *motion* was made to approve rule 5:02:03:18, as amended, by Carrie Crum, second by Pam Lynde. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained the *new rule* 05:02:03:26 (NCOA list maintenance notice). This rule clarifies the notice to be sent during the list maintenance which is not the same notice sent outside of list maintenance.

- Linda Lea Viken asked how we know whether someone has updated their information or not if they moved. How do we know they’ve moved?
- Kea Warne explained that our voter registration system tracks every status change on a voter’s record, so programming is in place to run a query that checks to see if a voter has an update to their record.
- Linda Lea Viken explains that her comments deal more with grammar.
- Proposed language change adds two “ands” and changes a “have” to “has”:

5:02:03:26. National Change of Address Notice. The national change of address notice must be sent to any voter in the active registration file who has failed to vote AND has not updated the voter's registration information AND has not replied to a confirmation mailing at least once during the last preceding four consecutive years and have HAS a National Change of Address within the jurisdiction

with the United States Post Office. The postal endorsement must be: forwarding service requested. This notice must be mailed to these voters as required by SDCL 12-4-19 and must contain the following:

A *motion* was made to approve rule the *new rule 05:02:03:26 as amended*, by Linda Lea Viken, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained the *new rule 05:02:03:27* (Voter registration list maintenance notice). This rule clarifies the notice to be sent during list maintenance which is not the same notice sent outside of list maintenance.

- Proposed language change by Linda Lea Viken:

5:02:03:27. Voter registration list maintenance confirmation notice. The confirmation mailing notice shall be a double postcard stating that the voter's registration may be canceled if the card is not returned by the voter registration deadline for the next primary election. In addition, the card shall state that if the information on the return card is correct, the voter must sign and return the card by the voter registration deadline for the next primary election OR the voter's registration will become inactive.

A *motion* was made to approve rule the *new rule 05:02:03:27 as amended*, by Rick Knobe, second by Carri Crum. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Rules hearing concluded at 3:53 p.m. (CT).

Secretary Krebs asked if there were any public comments. There were none.

The Board of Elections proceeded to general remarks. Secretary Krebs explained the process for getting the rules to the Legislative Rules Review Committee. County Auditor training occurs November 8-9. The next BOE meeting won't be until July of 2018.

Motion to adjourn, Pam Lynde, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Rick Knobe– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

The South Dakota Board of Elections adjourned at 3:57 pm (CT).