



South Dakota Secretary of State
SHANTEL KREBS

State Board of Elections

Thursday, June 15, 2017

SD Association of County Officials Office 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 10:03 am (Central Time).

Present via conference call: Carri Crum (Board of Elections member), Margaret Gillespie (Board of Elections member), Rick Knobe (Board of Elections member), Mitch LaFleur (Board of Elections member), Linda Lea Viken (Board of Elections member), Bob Litz (Minnehaha County Auditor), Jason Toering (Minnehaha County IT), Julie Pearson (Pennington County Auditor), Mark Manganaro (ES&S State Certification Manager), Angela Ehlers (South Dakota Association of Conservation Districts Executive Director).

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

Quorum present.

Secretary Krebs gave an overview of the agenda and moved agenda item number 6 behind agenda item number 3.

Secretary Krebs asked if there were any changes to the November 16, 2016 Board of Election meeting minutes.

Linda Lea Viken requested to clarify the sentence on page 5 about what needed to be added to Title II and add style and form edits.

A *motion* was made to approve the November 16, 2016 Board of Election meeting minutes, as amended, by Linda Lea Viken, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Margaret Gillespie– Excused; Rick Knobe– Aye; Mitch LaFleur– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Kristin Gabriel gave an overview of the testing process of Election Systems & Software's Voting System version 5.2.2.0 that occurred June 12th and 13th. She stated that various county auditors and staff were present for the testing, ran many ballots and used all of the different voting machines. She talked about the software components and hardware components of the voting system. She gave a run down on all of the equipment and talked about the differences between the AutoMARK and the ExpressVote.

Pam Lynde asked for the cost associated with all of the election equipment.

Kristin Gabriel stated that the cost estimate on the ExpressVote is \$3,500, the DS200 costs \$6,000, DS450 costs \$45,000, and the DS850 costs \$107,000. She further explained that the Secretary of State's office was looking at possibly doing a mass purchase in hopes for some cost savings for all of the counties interested. ES&S was offering trade-in value on the AutoMARKS and the M100 for \$200 each and \$5000 trade-in value on the M650.

Margaret Gillespie asked if there is a data wipe on the equipment before it gets turned into ES&S.

Mark Manganaro explained that the compact flash card which holds the data is removed and the voting equipment itself wouldn't store any information. He stated that most of the equipment is going straight to a recycler.

Kristin Gabriel explained that 250 ballots were tested on both types of ballot marking devices. Six different ballot styles were used and undervotes and overvotes were tested. Did this to ensure that the tabulators were tabulating correctly. She further explained that different races were tested as were different types of ballot measures. Kristin stated that they only had one jam with the ExpressVote and the AutoMARK. The AutoMARK jammed because the plate on the back of the machine wasn't flush with the back of the machine. Once that was correctly put together, it worked for the rest of the testing. The ExpressVote jammed when the user put their hand over where the ballot comes out when it was printing, otherwise it worked the entire time during testing.

Linda Lea Viken asked what alert appears if a voter undervotes.

Kristin Gabriel explained that they are alerted on the screen for both the AutoMARK and the ExpressVote.

Margaret Gillespie stated that a voter also receives an alert on the summary page and it highlights the race they undervoted.

Secretary Krebs stated that it is very clear on what they do and it is clear on the ballot.

Kristin Gabriel stated that the same language is on the AutoMARK and ExpressVote for all alerts and directions. She further explained when the ExpressVote prints out the text on the ballot, it says no selection made if the voter did not vote on that race or issue. A voter could request a new ballot if they did intend to vote that race or question.

Kristin Gabriel gave a description of the automatic tabulating system testing. The 250 optical scan ballots that were marked using the AutoMARKS were then tabulated by a DS850, DS450 and a DS200. The 250 ExpressVote cards that were marked using the ExpressVote were then tabulated by a DS850, DS450 and a DS200. During the testing, the DS850 successfully detected the blank ballots and tabulated the optical scan ballots and the ExpressVote cards at a rate well over the required 15 ballots a minute. During the testing, the DS450 successfully detected the blank ballots and tabulated the optical scan ballots and the ExpressVote cards at a rate well over the required 15 ballots a minute. The DS200 correctly sorted the blank ballots by sorting them to a different side of the ballot box and accurately processed the ballots at a rate of 10 ballots per minute, the required time frame.

Kristin Gabriel talked about the new ballots for the ExpressVote and the color bar. Explained that they are a thermal paper and talked about the different colors of required pre-printed color bars for the different political parties during the primary election. She also explained a new ink that was tested for the ballot stamps, called ClearSnap. This ink is fast drying and there are not anymore issues with the ink smudging on the thermal paper. The ExpressVote ballots also come in many different lengths such as 11, 14, 17 and 19 inches.

Bob Litz wanted to add that he added a red stamp over the bar code of the ExpressVote ballot and the ExpressVote was still able to read the ballot.

Kristin Gabriel also stated that voters don't have to select what ballot they are voting and that the bar codes tell which races and questions they will vote on.

Kristin Gabriel asked for approval of the certification of Election Systems and Software (ES&S) EVS 5.2.2.0

A motion was made to approve the certification of Election Systems and Software (ES&S) EVS 5.2.2.0, by Carri Crum, second by Pam Lynde. Roll call vote: Carri Crum– Aye; Margaret Gillespie– Excused; Rick Knobe– Aye; Mitch LaFleur– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

The board moved to item 6 on the agenda. Kristin Gabriel gave an overview of HAVA funds and HAVA Grant Applications. She stated that the current balance of HAVA funds is \$9,019,238.12. She stated that the original funding came from two sources; \$13 million from Title II and \$5 million from Title I. Of the remaining funds, 1/3 of Title I is left and 2/3 of Title II is remaining.

Money was initially allotted based on how many registered voters each county had. Some counties still have county held funds and they are used for election purposes. She stated that there are 10 counties that do not have any funding left and that they are able to apply for additional funding every other year. They may apply for a total of \$9,000 for federal elections. Four of those 10 jurisdictions have applied, so far, for the \$9,000. Two counties have applied for in-person satellite site grant funding (Dewey County in Eagle Butte and Buffalo County in Fort Thompson). Kristin explained that the HAVA Board will review the grant applications.

Linda Lea Viken asked if the state plan is on the Secretary of State's website.

Secretary Krebs stated that the state plan is on her website and includes all of the updates that have been made to the state plan.

Secretary Krebs gave an overview of the HAVA audit submitted on May 26, 2017. Stated that it was a very stressful process. The audit firm performed random spot checks, requested expenses from various years, different payrolls and to see everything the office has spent money on. She further explained that the audit firm visited a couple counties and did an in-person visit to the Secretary of State's office.

Linda Lea Viken asked how successful Secretary Krebs felt about the audit.

Secretary Krebs stated she felt pretty successful with the audit. She said they did have to do a lot of digging and did find a lot of the information requested. For example, they had to find a letter that former Secretary of State Chris Nelson sent out to high school for voter registration. It was determined that it should not have been paid for with federal funds. She further explained that the office has to file federal reports all the time and they are constantly making sure that the interest earned on the account is accumulating correctly. She stated that the audit was quite the task to complete, especially during a federal election year.

The board moved to item 4 on the agenda and Secretary Krebs explained that currently there are 11 ballot measures that have received Legislative Research Council (LRC) comments, 7 have received Attorney General Comments and 4 of them have been approved by the Secretary of State's office for circulation. She further explained that all of this information is posted on the Secretary of State's website. She stated that some sponsors are still working with LRC and we could potentially have 14-15 ballot measures. Secretary Krebs also told the board about the large petition that the office received which is 3 feet by 3 ½ feet.

Secretary Krebs moved to item 5 on the agenda and gave an update on legislation from the 2017 legislative session. She stated that all four Board of Election bills passed and were signed by the governor. She gave a brief summary of all of the actions taken on SB 54 and a few other bills proposed by legislators that passed. She stated that many of the changes for the rules hearing were due to passed legislation from the 2017 Legislature.

The board moved to item 7 on the agenda and the rules hearing opened 11:01am (CT).

Julie Pearson asked how the Board of Elections would take each item.

Secretary Krebs stated they would take each item up one at a time.

Secretary Krebs explained the changes to administrative rule 5:02:03:14. This specified a 30 day deadline date for a voter to return the invalid/incomplete voter registration acknowledgment notice to provide consistency with all county auditors and comply with signed House Bill 1036 from the 2017 Legislative Session.

Julie Pearson asked about the date so they know how to be able to track the 30 day deadline.

Pam Lynde stated she believed there was a date on the document printed out from TotalVote.

Mitch LaFleur asked about clarifying the language to say 30 days from the date of the notification sent.

Linda Lea Viken stated that the language needs more clarification.

Mitch LaFleur made a substitution motion to add the language, "within 30 days from the date set forth on the notice."

Maggie Gillespie stated she wanted to make sure the language and timeframe fit into all of the windows the Secretary of State's office follows.

Linda Lea Viken wanted to clarify that all the dates were correct in the rule.

Secretary Krebs stated that all of the dates were correct.

Julie Pearson thought the date needed more clarification and needed to specify the notice.

Secretary Krebs clarified the language the board decided on, "within 30 days from the date set forth on the acknowledgment notice."

A motion was made to approve rule 5:02:03:14, as amended, by Linda Lea Viken, second by Pam Lynde. Roll call vote: Carri Crum– Aye; Margaret Gillespie– Aye; Rick Knobe– Aye; Mitch LaFleur– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained the changes to administrative rule 5:02:04:13 and that the intent of this rule was to change the name of a Secondary Election to Runoff Election due to signed House Bills 1036 and 1037.

A *motion* was made to approve rule 5:02:04:13, by Pam Lynde, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Margaret Gillespie– Excused; Rick Knobe– Aye; Mitch LaFleur– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained that rule 5:02:04:17 was being changed to add judicial office to be listed in the notice of deadline for filing nominating petitions for the primary election which should have been included in the past.

Julie Pearson made the suggestion to add “for the General Election” on the heading of the notice. She also suggested omitting courthouse in the last paragraph and change it to auditor’s office since not all auditor’s offices are in the county court house. Julie Pearson also suggested changing all the times in the notice to local time.

Secretary Krebs explained that the time would be able to stay 5 pm central time since the offices mentioned in this notice are all filed with the Secretary of State’s office which is in the central time zone.

A *motion* was made to approve rule 5:02:04:17, as amended per Julie Pearson’s first two suggestions above, by Linda Lea Viken, second by Margaret Gillespie. Roll call vote: Carri Crum– Aye; Margaret Gillespie– Excused; Rick Knobe– Aye; Mitch LaFleur– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained that rule 5:02:04:18 and 5:02:04:19 would be taken up together since they both changed the name of a Secondary Election to Runoff Election in the administrative rules due to signed House Bills 1036 and 1037.

A *motion* was made to approve rule 5:02:04:18 and 5:02:04:19 by Pam Lynde, second by Rick Knobe. Roll call vote: Carri Crum– Aye; Margaret Gillespie– Excused; Rick Knobe– Aye; Mitch LaFleur– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained that rule 5:02:06:01 was being changed to address additional clean up language to the primary and general election ballot formats to include notations for front and reverse sides, clarifying ballot printing notes, adding an option for county finance officer, and providing the format for State Representative Districts 26 & 28 A and B. She further clarified that language for the Legislative Research Council’s prison/jail population cost estimate and/or fiscal note was being added to statewide constitutional amendments, initiated measures and referred laws.

Julie Pearson suggested adding the “or (County Finance Officer)” language in the county treasurer space on the ballot. She gave Custer County as an example of a county that might be combining those two offices.

Angela Ehlers recommended changing the conservation district box language to say, “up to three” since there could be that many positions up.

A motion was made to approve rule 5:02:06:01, as amended per suggestions by Julie Pearson and Angela Ehlers, by Carri Crum, second by Linda Lea Viken. Roll call vote: Carri Crum– Aye; Margaret Gillespie– Excused; Rick Knobe– Aye; Mitch LaFleur– Aye; Pam Lynde– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained the *new rule* that would take effect if the ExpressVote gets certified and explained the new general election ballot format being added to allow county auditor’s to purchase new ballot marking devices.

Julie Pearson suggested using the actual terminology instead of saying “does not use optical scan ballots.”

Kristin Gabriel stated that the correct terminology would be an activation card ballot.

Kea Warne suggested also adding in “no selection made” on the last part of the new ballot to be printed if an individual does not make a selection on the ballot.

Julie Pearson questioned the language in the last paragraph of the new rule which stated that “pre-printing requirements above are only waived for a county that used the ExpressVote and the ExpressLink ballot printer for in-person absentee voting in the county auditor’s office.” She stated that she would like to be able to print ballots on Election Day and this language would prohibit her from doing so.

Secretary Krebs stated that for the first use of the ExpressVote and ExpressLink, she only intended on them being used for in-person voting and not on Election Day since it was the first time using them. She also stated that she felt uncomfortable having blank ballots at the polls.

Julie Pearson stated that by having to have ballots printed beforehand, there will be a higher cost to a county. She stated that she could order large amounts of blank ballots, could use the ExpressVote and ExpressLink, print ballots on Election Day and use the blank ballots in future elections instead of having to discard of the printed ballots she didn’t use.

Secretary Krebs stated that for the first election using these new machines, she felt uncomfortable using the blank ballots on Election Day. She stated that from her travels