South Dakota Secretary of State
SHANTEL KREBS

State Board of Elections Spring Meeting and Rules Hearing

Minutes

Thursday, June 4, 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 10:06 am (central time).

Present via conference call: Mitch LaFleur (Board of Elections member), Carol Klumper (Union County Auditor), CJ Moit (representing SD Advocacy Services) and Cathy Sauer (Brown County Deputy Auditor).

Present in person: Secretary Shantel Krebs (Chair, Board of Elections), Cindy Brugman (Board of Elections member, Codington County Auditor), Pam Lynde (Board of Elections member, Deuel County Auditor), Kea Warne (Deputy Secretary of State, Election Services), Brandon Johnson (HAVA Coordinator), Kristin Kellar (Election Coordinator), Christine Lehrkamp (State Election Coordinator), Bob Mercer (press), Bob Litz (Minnehaha County Auditor) and Jerry Schwarting (Mellette County Auditor).

Board of Elections Members not able to attend: Drew Duncan, Dick Casey and Linda Lea Viken.

Motion to approve the minutes of January 5, 2015 meeting by Cindy Brugman, second by Pam Lynde. Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

Secretary Krebs noted that action will not be taken on agenda item #4 below but another public meeting will be held prior to July 1 for comments and action on this item. No exact date and time has been set as of this meeting.

4. *Help America Vote Act (HAVA)*
    a. *Review of HAVA fund balances and annual expenses*
    b. *Review a list of possible board members to serve on the HAVA Grant Board and a draft of the parameters for the HAVA Grant*

Secretary Krebs asked anyone present to offer comments for the record. No comments from the public were made.

Election Systems and Software (ES&S) Certification for the following machines: DS200 Precinct Optical Scan Tabulator v. 2.12.0.0, DS850 Central Count Optical Scan Tabulator v. 2.10.0.0, AutoMARK Voter Assist Terminal v. 1.8.6.0 ExpressVote Universal Voting Device v. 1.4.0.0

Brandon Johnson, State HAVA Coordinator, reviewed the ES&S Voting System 5.2.0.0 State Certification report that was sent out and is attached to these minutes. He explained that South Dakota Codified Law (SDCL) and Administrative Rules (ARSD) outline and guide the certification process.

ExpressPass v. 1.1.0.0 was not tested. The DS200 Precinct Optical Scan Tabulator, DS850 Central Count Optical Scan Tabulator and AutoMARK Voter Assist Terminal are already certified in SD so the reason they were being tested was because of a firmware change to allow a different ballot style to be used.

ExpressVote Universal Voting Device is a new device that was tested. Allows voters to vote a ballot by using touch screen technology and is able to serve all voters including those with special needs. This machine also allows many counties to replace the AutoMARK with the ExpressVote.

Discussion:

Mitch LaFleur asked for clarification on the how to use the ExpressVote. Brandon Johnson explained the process.

Pam Lynde asked if a County Auditor would have to upgrade to a DS200 or DS850 in order to use the ExpressVote? Yes they would. She asked if there is a possibility of an ARSD change to allow a resolution board to take the marked ExpressVote card and transcribe that to an optical scan ballot that an M100 or M650 could read. The Secretary of State's office needs to research more as to whether this would be allowed.

Mitch LaFleur shared his concern that transcribing would take more time, slow down the ballot counting process and open the door for more human error.

Mitch LaFleur asked if the county would have the option to use the ExpressVote Universal Voting Device if certified. Yes.

Pam Lynde asked if it would be an option for the smaller counties to use ExpressVote Universal Voting Device and have a resolution board since they only use their machines every two years and it's not feasible financially to upgrade equipment to the DS200 and DS850. She asked how much are the DS200's? The Secretary of State's office does not have that information, but they will ask the Vendor for pricing on these machines.

Summary of testing:

- 250 ballots are required to be tested through the machines;

- All machines were unplugged to test battery life;
- Tabulating was done on both and were successful; DS850, 300-400 can be scanned and tabulated in a minute; DS200 was able to scan and tabulate 13 a minute; there were no jams; DS850 allows for out-stacking and that was done correctly;
- Each machines was successfully tested and met all requirements under ARSD and SDCL;
- Reminder that before the Secretary of State's office can even test equipment it has to be certified by the Elections Assistance Commission (EAC);
- Based upon the successful testing the Secretary of State's office recommends certification.

Additional questions from the committee:

Mitch LaFleur asked if the Secretary of State's office believes that all machines meet the requirements. Yes. They meet the guidelines set forth by the BOE, ARSD and SDCL.

Secretary Krebs explained that the testing was an all-day process and the Elections team tried hard to make the ballot difficult for the machines to read and the machines were still successful at reading the ballots accurately.

Secretary Krebs opened the hearing for public testimony or comments:

Bob Litz stated that his county has built into their budget to purchase an ExpressVote. He wants to use them for absentee voting as they expect a high number for 2016 and hopes these machines will reduce human error when voting in person absentee. On July 15 ES&S may stop by and give an over-view of the machines and Bob hopes they are approved today by the Board of Elections (BOE).

No further public comments were offered.

Mitch LaFleur then asked Bob Litz if they have a tabulator in Minnehaha county that would be able to count ExpressVote Universal Voting Device ballots. Yes they have two DS850's and are purchasing another one.

No further questions.

Motion for approval and certification of machines DS200 Precinct Optical Scan Tabulator v. 2.12.0.0, DS850 Central Count Optical Scan Tabulator v. 2.10.0.0, AutoMARK Voter Assist Terminal v. 1.8.6.0 ExpressVote Universal Voting Device v. 1.4.0.0, by Pam Lynde, second and Cindy Brugman; no comments on the motion.

Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

Review of the 2015 election legislation by Kea Warne:

There are three attached documents to these minutes outlining 2015 legislation.

Many amendments were put on several of the Secretary of State bills that were not a part of the original package of bills and this especially impacted SB 69.

Pam Lynde asked how many signatures independent candidates would need if the SB 69 goes into effect July 1, 2015. The signature requirement will be based upon the last general election voter registration numbers and independent candidates would only be able to collect signatures from voters registered as Independents, Other or No Party Affiliation.

Mitch LaFleur asked when it refers to the percentage, how is that calculated for a Statewide, county, or legislative race? The calculation is drawn from the jurisdiction they are running in. Ex: if it's a county race, then the percentage is based off of county data. Mitch LaFleur then asked for clarification that the independent language in SB 69 came from the Legislature right? Yes. All amendments came from the Legislature not the BOE or the Secretary of State's office.

There is a referendum petition for SB 69 currently circulating and the sponsors have until 5:00 pm June 29 to submit them to the Secretary of State's office and then the elections team has until midnight June 30 to verify signatures.

There were no other questions or comments.

There is also attached to these minutes a handout listing potential 2016 ballot measures.

Recess for a short break at 11:02am.

Reconvened at 11:15am.

Mitch LaFleur wanted to state for the record, that he is not in favor of the amendments that were placed on the BOE proposed bill SB 69 (especially the independent and withdrawal language) by the Legislature.

Opening of the rules hearing at 11:17am by Secretary Krebs. There are nine different rules to be reviewed, discussed and action taken on and these proposed rules are attached. There will be another Rules Hearing in the fall.

Secretary Krebs noted that the BOE will defer taking action on 05:02:10.01 to allow for additional time to visit with County Auditors regarding the proposed changes.

ARSD 05:02:05:02.01 (added the word "completely" and picture examples to the instructions to the voter)
Motion for approval by Cindy Brugman, second by Pam Lynde. No further discussion or comments on the motion.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

ARSD 05:02:06:01 (adding the ability for the person in charge of the election to place the ballot stamp watermark wherever they choose)
Pam Lynde asked what is actually being removed from this rule. The answer was the requirement that the ballot stamp watermark has to be put in the front, upper right hand corner of the ballot.

Do counties put on the ballots wording that says "ballot stamp…"? Brandon Johnson explained that a couple of years ago, ARSD was changed to allow an alternate ballot style name on the ballot. SDCL 12-18-12 (2) for optical scan states the person in charge can choose where to place the ballot stamp.

Mitch LaFleur asked is there something that says a ballot stamp has to be on the ballot. Yes, Kea Warne stated it is in state law.

Jerry Schwarting stated that they use a precinct ballot stamp. Is that the same thing? Yes that is.

Chair, will entertain a possible amendment to remove the wording "watermark printed" found on page 6 of the proposed rules. Brandon Johnson stated that if those two words were removed from the proposed language then there is no need to have the new language added since the wording is already in SDCL 12-18-12 (2). Mitch LaFleur and others stated it doesn't hurt to leave the language in but the Legislative Research Council (LRC) may come back and say there is no need for this language.

Bob Litz commented that he is looking for a place to put the watermark at on the ballot. The watermark is needed so the election precinct workers that didn't understand where to place the ballot stamp would know where to put it. Example: the ballot stamp should not be placed over the tabulating marks but election workers may not realize how important that is.

Pam Lynde asked for clarification on what the proposed language "watermark printed" means. This is the section that is chosen to be the instruction area for stamping here.

Mitch LaFleur asked what the difference is between the ballot stamp and ballot stamp watermark. Bob Litz explained that the ballot stamp watermark is a grayed out area that is an indicator for where to place the ballot stamp. Brandon Johnson further commented

that if a ballot stamp is placed in the wrong spot that could cause a ballot to be kicked out of a tabulator.

Cindy Brugman asked if there is currently a requirement for a watermark to be placed on a ballot. No, there is nothing in SDCL.

Motion by Pam Lynde to amend proposed new language from "must" to "may", second by Cindy Brugman. Any further comments? Mitch LaFleur is wondering what the need is for this change? Some counties haven't used a watermark in the past so we don't want to require this. Mitch LaFleur just wanted to clarify that we weren't giving them the option to put on the ballot stamp but giving them the option for the watermark. All agreed that is what the motion is stating.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

The Chair asked for further comments on the proposed rule removing the ballot stamp watermark and amended new language on the printing note. No further comments or discussion.

Motion to approve proposed changes as amended by Cindy Brugman, second by Pam Lynde; no comments on motion to approve as amended.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

ARSD 05:02:08:11- (this further clarifies what a candidate needs to include on the Declaration of Candidacy for a school board candidate nominating petition).
No comments on this proposed change.
Motion to approve proposed changes by Cindy Brugman, second by Pam Lynde.
There was no further discussion on the motion.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

ARSD 05:02:08:13 (this further clarifies what a candidate needs to include on the Declaration of Candidacy for a municipal candidate nominating petition).
No comments on this proposed change.
Motion to approve proposed changes by Cindy Brugman, second by Mitch LaFleur.
There was no further discussion on the motion.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

ARSD 05:02:08:23 *(*adding language to the municipal change of government petition form including the word "wards" to coincide with SDCL 9-11-5).
No comments on this proposed change.

Motion to approve proposed changes by Pam Lynde, second by Cindy Brugman.
A question was asked if the word "commissioner" is used in SDCL 9-11-5. Yes but the word "wards" wasn't ever included on this petition form. A reminder that this form applies to municipal government so it is not referring to County Commissioners.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

ARSD 05:02:09:02.03 *(*adding a subsection to the "general authority" SDCL 12-17B-17)
No comments on this proposed change.
Motion to approve proposed changes by Cindy Brugman, second by Pam Lynde.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

ARSD 05:02:10:01 absentee ballot application proposed changes. The BOE will defer action at this time until the fall meeting in order to gather additional feedback from county auditors.

ARSD 05:02:19:05 (clarify who uses this petition form to request a recount).
The Secretary of State's office had multiple city finance officer's asking about the proper form for a recount request. There is no form required for municipalities to use so we are clarifying who is to use this specific form.
Cindy Brugman asked if we need to add "secondary" election to this. Secondary election is still part of the primary and/or general so current language is fine.
Motion to approve changes by Cindy Brugman, second by Mitch LaFleur.
There was no further discussion on this proposed change.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

ARSD 05:02:04 (FORMS OF NOTICES - repealing 05:02:04:21)
Repealing the actual ARSD regarding the notice of cancellation for municipal election. There is nothing in SDCL that requires publication of this notice.
A question was asked if schools are required to publish a similar notice. No.
No further discussion or comments.
Motion to approve repealing ARSD 05:02:04:21 by Cindy Brugman, second Pam Lynde.
There was no further discussion on this proposed change.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye. Approved.

Secretary Krebs opened for any public comments. Again reminding everyone that agenda item *#4 Help America Vote Act (HAVA)* is being deferred until later in June but she will take public comments and will add them to the record for the next meeting. No additional comments from the public.

The next BOE meeting will be planned for some time later in June and again in September.

Motion to adjourn at 12:19 by Cindy Brugman, second by Mitch LaFleur.
There was no further discussion on this motion.
Roll call vote: Mitch LaFleur- aye; Cindy Brugman- aye; Pam Lynde- aye; Secretary Krebs- aye.
Approved.