



OFFICE OF THE SECRETARY OF STATE

MONAE L. JOHNSON, SECRETARY OF STATE

THOMAS J. DEADRICK, DEPUTY SECRETARY OF STATE

State Board of Elections

Notice of Public Meeting – DRAFT MINUTES

Tuesday, March 15, 2023
1:30 PM CT

Secretary of State's Business Services Conference Room
215 E Prospect Avenue
Pierre, SD 57501
Call in Information: +1 605.679.7263
Phone Conference ID: 301 267 589#

1. Call to Order

Secretary of State Monae Johnson called the meeting to order at 1:30 p.m. CT

2. Members Present In-Person:

(Chair) Secretary of State Monae Johnson, (BOE) John Lake.

3. Members Present VIA Call:

(BOE) Lindley Howard, (BOE) Scott McGregor, (BOE) Maggie Gillespie, (BOE) Michael Buckingham.

4. Members NOT Present: (BOE) Jackie Sieverding.

5. Others Present (In-Person):

Thomas J Deadrick (Deputy Secretary of State) Rachel Soulek (Director, Division of Elections), Reggie Rhoden (Meeting Secretary/SOS Staff) Adam Miller (HAVA/NVRA Coordinator), Logan Manhart (Federal & State Elections Coordinator), Cliff Katz.

Others Present (VIA Stream): Kayla Dowling (SOS Staff), Rick Weible, Makenzie Huber.

6. Approval of the Draft Minutes from January 23, 2023 Meeting:

Maggie Gillespie requested that her excusal from the 01/23/23 meeting be notated in the last meeting's minutes. Gillespie opted to abstain from a vote to approve the draft minutes for 01/23/23.

Secretary Johnson: "Are there any other corrections or additions?" Seeing none, Secretary Johnson requested a motion to approve.

A motion to approve the January 23, 2023 Board of Elections draft minutes was made by Lake; seconded by Buckingham.

Voice Vote: Buckingham-Aye, Gillespie-ABSTAINED, Howard-Aye, Lake-Aye, McGregor-Aye, Sieverding-NOT PRESENT, Secretary Johnson-Aye. Motion Carried

7. Approve the Agenda

A motion to approve the agenda was made by Lake; seconded by Gillespie.

Voice Vote: Buckingham-Aye, Gillespie-Aye, Howard-Aye, Lake-Aye, McGregor-Aye, Sieverding-NOT PRESENT, Secretary Johnson-Aye. Motion Carries.

8. Rules Hearing to Amend Administrative Rule 5:02:03:01 – Voter Registration Form

Rules Hearing began at 1:34 PM CT.

(Chair) Secretary Johnson: “Now we'll move on to the rulemaking to amend Administrative Rule 5:02:03:01, which is the voter registration form.” Johnson asked for any comments on this rule. Seeing none, she turned attention over to Cliff Katz of the Attorney General’s Office.

Cliff Katz: “Yeah, so Secretary of State's office was involved in a lawsuit. It’s been a couple years since it started over now, but as part of the settlement agreement, the box on Box 4A, the wording had to be revised and that was revised pursuant to that settlement agreement. And so, the language that was included in the settlement agreement is now included in Box 4A of the South Dakota Board of Registration form. And then I believe Secretary of State's office had some other items like the South Dakota non drivers ID number which is now added in Box 7. And they deleted, I believe it's the date of birth, which was in the former box 12... And so now the form does conform to the settlement agreement with the appropriate language in Box 4A.

Tom Deadrick: And I would add, we've gone through this with LRC. Three or four different times I've met with Justin Goetz, Code Council, in order to make sure all the wording was fine with LRC and they finally approved everything. As they are wanting to do, whenever they get anything in front of them, they want to make a few other changes, so the wording at the top where it talks about voter registration form, they wanted to get rid of the numbers where it said 8 inches, it was a numeral 8 and numeral 11 and they wanted to make a few other grammatical changes. So, we've got everything conforming to LRC and everything according to the settlement at this point in time.

Secretary Johnson asks if there are any more comments or questions.

Rick Weible (Public Comment): Uh, yes. I would like to make a couple of recommendations, a couple of comments. My first recommendation is I think you guys might want to wait because there are two bills in queue right now, SB140 and SB139 that could further change this form. And I would hate to have multiple forms within the same year being revised to create confusion with what is the correct form, and both of those passed out of the legislature March 7th and March 8th and are on the governor's desk and both of those could impact the form. The other piece is just kind of when I looked at several states in the western part of the United States that also have border registration forms that are under the jurisdiction of the Bureau of Indian Affairs, we see that North Dakota doesn't have a requirement for voter registration. Idaho and Nevada are terrible forms. Eight other states are so basic kind of where we were at, but there's actually two other forms that I think could have been better models, and I think Arizona has the better form that we could actually use to actually help people with registration. Arizona is the best -- It actually describes it with either mileage, GPS, or even attaching a map as an option. And then Oklahoma is a little bit more unique where they talk about directions to the location where they live, or the 911 address. My recommendation is to please hold off and at least look at the Arizona form and maybe use that as a model before going forward. So that way we are considering the best of class option. Thank you so much.



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Secretary Johnson requested any further questions or comments.

(BOE) Scott McGregor: In relation to Rick's comments, are we under any timeline pursuant to the settlement agreement to adopt?

Cliff Katz: It needs to be adopted prior to the next vote that takes place.

(BOE) Scott McGregor: So that's in June?

Tom Deadrick: Well, but we were getting comments from them that we hadn't had it adopted back in November or December. According to the comments we were getting from the plaintiffs, they were not happy that we don't have it adopted and they wanted it done at the soonest possible time. We told them that we could go ahead and adopt it, but you know the Rules Committee wouldn't be meeting them until sometime in April and that would be the first time we could become official. And they were, I can't say necessarily OK with it, but they were understanding and accepting the fact that we couldn't get it done and they wanted it done at the earliest possible time.

(BOE) Scott McGregor: Is Rick correct then, that we're probably going to be looking at this again in a post-session rules making meeting? You know, those two bills are pretty extensive and they both direct the board to make appropriate rules.

Cliff Katz: I don't recall exactly what is in those bills that are before the Governor right now.

Tom Deadrick: And I don't either, but if we have to do it again, we have to do it again. If she signs those, at this point in time, we don't know if she's signing them or not signing them. And we've got to go along with what we have promised we would do as far as the settlement is concerned or else we find ourselves back in court, or probably could find ourselves back in court.

Rick Weible (Public Comment): Question, Madam Chair. Once again, on 139 and 149 right off top of my head I'm not familiar with either one of them, but I mean there's just -- not in depth, but can you just kind of give a quick synopsis of what 139 and 140 do?

Rachel Soulek: One deals with the residency, the 30 days... I think that was 140.

Rick Weible(Public Comment): And 139 really redefines 12-1.4 the residency and the description of residential address as well.

(BOE) Scott McGregor: So that would directly impact this amended rule on the description of address component.

Rick Weible(Public Comment): Yeah, it was brought forward by a Pennington County commissioner regarding mail forwarding addresses was the original intent. And it creates a free residency rule.

Secretary Johnson requested Logan Manhart read the bills from his phone.

Logan Manhart: SB 140 revise certain provisions relating to voter registration, and 139 revised residency requirements for the purpose of voter registration.

Maggie Gillespie requested to make a question & comment.

(BOE) Maggie Gillespie: Thank you, Madam Chair. Well, I recognize that this legislation, as I understand it, and I -- on vacation, so I had to step away from my children for a minute. So, I missed the very end of Mr. Weiland's (Weible's) comments, It seems to me that if that were proceeding based upon the settlement and court order, we don't know what's going to happen with the legislation. So, either way, if the legislation were to pass and there was an issue, we'd have to have another meeting anyway. So, it seems to me that we should proceed with the matter before us. And then, Madam Chair, Madam Secretary, if necessary, we would just have to call another meeting if there was a need to amend the form.

Rick Weible (Public Comment): Madam Chair, we'll know within 10 days whether or not the default is going to happen to where this becomes law in lieu of a veto either way, and then either way, if you want to move forward, I would just recommend looking at the Arizona form and just copying and stealing theirs and it would be in compliance. However, the only piece that would potentially be in question is the 30 day section that would be added to the form.

(Chair) Secretary Johnson: "Thank you, are there any further comments or questions?"

(BOE) John Lake: Yeah, I would follow up on Maggie's comments that, we all know how the 'rules-making thing' happens and it takes a long time. Not only on our board, but in many boards, when you start dealing with rulemaking, it's not like session where you kind of deal with it day by day and you get done with it and you're done with it till the next year. In the rules making process, it starts last year and you finally get to a point where you change a rule and it might overlap so you just deal with that rule change, then you might be dealing with another rule change before that one even gets done because you know it's going to be a year before you get there. We've been dealing with this one, what you say 2 years now? So I think you, I think you do. You just have to deal with what we have in front of us now, and it's the rule change that we're going to do. If we're going to be changing this in six months, so be it. But we have to deal with what we have presented to us right now.

Rick Weible (Public Comment): The effective date would be July 1 under the new laws if 139 and 140. So that would just be the only marker that I want you to be aware of.

Secretary Johnson requests a motion to amend Administrative Rule 05:02:03:01 Exhibit 1 & Exhibit 1A.

Scott McGregor makes the motion to amend; Gillespie seconds.

Roll-Call Vote: Buckingham-Aye, Gillespie-Aye, Howard-Aye, Lake-Aye, McGregor-Aye, Sieverding-NOT PRESENT, Secretary Johnson-Aye. Motion Carries.

YAYS: 6, NAYS: 0, EXCUSED: 1.

9. Public Comments

(Chair) Secretary Johnson: Now I leave it open to public comments. We have about 20 minutes for public comments.

Rick Weible: The only thing that I recommend just to save the state some money is that you would make a motion to reconsider the last motion that you just had and then motion to table it to your next meeting, which you could schedule within 30 days. And then you could save the state money on any type of printing costs and potential confusion, since we know that the law would be in effect no matter what July 1, and you'd have to have a meeting July 1 if these other two legislations passed to correct the form. That's my only recommendation. Thank you so much.

(Chair) Secretary Johnson: Thank you, any other comments?

(BOE) Scott McGregor: If legislation is signed from this session, requiring the board to undertake rulemaking, do you have any idea what the time frame for that would be as far as your office getting drafts prepared and whatnot?

Tom Deadrick: Scott, I really don't have a time frame on that. We would try to get it done so we're in that July 1st range but there's a number of steps you have to go through and one of them is working with LRC and I think on this last one, we spent at least six weeks to two months with LRC getting everything the



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way they wanted it to be, you know, and then you've got the publishing requirements, the public notice requirements that need to be out there, then it has to go to the interim rule... to get a rule done in three to four months is about lightning speed.

Secretary Johnson requested any further comments. No further comments.

10. General remarks

(Chair) Secretary Johnson: I thank everyone for participating and we will be reaching out to you as soon as we can with what we get done here and, I would entertain a motion to adjourn.

11. Adjournment

Gillespie moves to adjourn; seconded by Buckingham.

Roll Call was taken to adjourn the meeting: Buckingham-Aye, Gillespie-Aye, Howard-Aye, Lake-Aye, McGregor-Aye, Sieverding-NOT PRESENT, Secretary Johnson-Aye. Meeting adjourned.

Meeting adjourned @ 1:51 PM CT.