

State Board of Elections meeting and Rules Hearing
DRAFT – meeting minutes

Tuesday, August 13, 2019
10:00 am CT

Secretary of State's Office
SD Assoc of County Commissioners Building
211 East Prospect
Pierre, South Dakota

Secretary of State Steve Barnett called the meeting to order at 10:03am CT.

Present via conference call: Margaret Gillespie (Board of Elections member), C.J. Moit (Disability Rights South Dakota), Bruce Danielson (Sioux Falls), Susan Lamb (Sully County Auditor), Kathy Glines (Harding County Auditor), Yvette Isburg (Buffalo County Auditor), Stacy Hegge (Attorney General's Office), Ann Mines-Bailey (Attorney General's Office)

Present in person: Secretary of State Steve Barnett (Chair, Board of Elections), Karen Layher (Board of Elections member), Carri Crum (Board of Elections member), Linda Lea Viken (Board of Elections member), Rick Knobe (Board of Elections member), Mike Buckingham (Board of Elections member), Jason Lutz (Deputy Secretary of State), Kea Warne (Director, Division of Elections), Rory Mennenger (Elections and Federal Programs Coordinator), Christine Lehrkamp (State Elections Coordinator), Rachel Soulek (HAVA Coordinator), Bailey Tibbs (Elections Assistant), Emily Kerr (Director, Business Services Division), Bob Litz (Minnehaha County Auditor) and Bob Mercer (Keloland News reporter)

Quorum present.

Introductions were made by board members; Secretary of State staff and others present in person.

Viken asked for agenda item 10 – public comment, to be allowed as each rule is discussed instead of waiting for public comments after the board has already voted on the proposed rule changes.

A motion to approve amending the agenda to add public comments after each rule in item 4 by Viken; second by Knobe.

Roll call vote: Buckingham-Aye; Crum-Aye; Gillespie-Aye; Knobe-Aye; Layher-Aye; Viken-Aye; Secretary Barnett-Aye. Approved.

A motion to approve agenda as amended by Knobe; second by Viken.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie (excused), Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

A motion to approve the June 18, 2018 Board of Elections minutes by Viken; second by Crum.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie (excused), Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved

Rules hearing opened at 10:18 am.

5:02:03:01. Voter registration form. The voter registration form shall be legibly printed. The voter registration form shall be printed on an 8.5 inch wide by 11 inch tall paper, or a county may create a large print version of this form in the following format and contain the following information:



South Dakota Voter Registration Form

_____ County

Use this form to: Register to vote or report a name, address, or party change.					
Please print. Complete the entire form. Return this form to your county auditor.					
The deadline for voter registration is 15 days before any election. Your form must be received by the county auditor by this deadline if you are to vote in the next election. Within 15 days you will receive a notice of your registration. If you do not, contact your county auditor. Any private person or entity registering voters is required to provide you with their contact information. For more information, visit www.sdsos.gov .					
Are you a citizen of the United States of America?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Will you be 18 years of age on or before the next election?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
If you checked 'No' in response to either of these questions, do not complete this form.					
1	Last Name	First Name	Middle Name(s)/Initial	Suffix	
2	Residence Address	Apt. or Lot #	City	State	Zip Code
3	Mailing Address (if different)		City	State	Zip Code
3a	If Residence Address is a PO Box, rural box, or general delivery, you must give the location of your residence:				
4	Date of Birth (Required): Month / Day / Year Month / Day / Year	5 Telephone Number		6 South Dakota Driver License Number (Required)	
7	Choice of Party – See information in the box below:	8 Email Address		If you do not have a current SD Driver License, provide the last 4 digits of Social Security Number	
Choice of Party Information: If you are currently registered to vote and you leave the choice of party field blank, you will remain registered with your current party affiliation. If you are not currently registered to vote and you leave the choice of party field blank, you will be entered as an independent/no party affiliation voter, which is not a political party in South Dakota.					
Use this section to cancel your previous voter registration. Previous Voter Registration Information Required, if applicable. Use this section to cancel your previous voter registration:					
9	Previous Last Name	First Name	Middle Name(s)	Suffix	
10	Previous Address		City	State	Zip Code
11	Previous Driver License Number and State		Previous County	Date of Birth (Required)	
Would you like to be a precinct election worker on election day?				<input type="checkbox"/> Yes <input type="checkbox"/> No	
12	I declare, under penalty of perjury (2 years imprisonment and \$4,000 fine), that: *I am a citizen of the United States of America; *I actually live at and have no present intention of leaving the above address; *I will be 18 on or before the next election; *I have not been judged mentally incompetent; *I am not currently serving a sentence for a felony conviction; and *I authorize cancellation of my previous registration, if applicable.		<div style="border: 1px solid black; width: 200px; height: 50px; margin: 0 auto;"></div> Signature Required Date: _____ / _____ / _____ Month / Day / Year		

Auditor use only. Agency code:

2019

Source: 2 SDR 5, effective July 30, 1975; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 23 SDR 115, effective January 22, 1997; 25 SDR 167, effective July 6, 1999; 29 SDR 177, effective July 2, 2003; 30 SDR 171, effective May 10, 2004; 31 SDR

214, effective July 4, 2005; 32 SDR 225, effective July 3, 2006; 35 SDR 48, effective September 8, 2008; 39 SDR 123, effective January 16, 2013; 42 SDR 178, effective July 1, 2016.

General Authority: SDCL 12-1-9(1).

Law Implemented: SDCL 12-4-3, 12-4-5.4, 12-4-6, 12-4-8

Director Warne explained in 2018, SB 144 required the Secretary of State to make programming changes to our voter registration file which also included changing language on the Driver License application. We need to make sure the same language is on both our voter registration form and the drivers licensing voter registration form. The explanation of the change in the law is if someone updates information on their voter registration form and leaves the party field blank, the previous party affiliation will be pulled into their current application. If a new voter leaves the party field blank, they will be entered as an independent/no party affiliation (NPA) voter. In box 4 we are moving the month/day/year up to allow for more writing space. Below box 7 is new language explaining what happens if the party field is left blank. That new language should all be underlined, and we will correct that in our final submission to LRC.

Viken questioned if the voter will understand what *previous registration* means. Crum suggested to add the word “below” after the word “required.”

A *motion* to amend the line above box 9 to add the word “below” after the word “required” and delete the words “if applicable” by Viken; second by Knobe.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie (excused), Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

Public comments: Hearing none.

A *motion* to approve the rule as amended by Crum; second by Buckingham.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie (excused), Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

5:02:04:17. Notice of deadline for filing primary nominating petitions. ~~Not less than ten nor more than fifteen days before the deadline for filing primary nominating petitions between the fifteenth and thirtieth day of January in an even-numbered year,~~ the person in charge of the local election shall publish a notice in the following form:

NOTICE OF DEADLINE FOR FILING NOMINATING PETITIONS FOR THE PRIMARY ELECTION AND FOR FILING INDEPENDENT CANDIDATE PETITIONS

The deadline for filing nominating petitions for the primary election is _____, _____, at 5:00 p.m. (mountain or central) time. If a petition is mailed by registered mail by _____, _____, at 5:00 p.m. (mountain or central) time, it shall be considered filed.

The deadline for filing nominating petitions to run as an independent candidate in the general election is _____, _____, at 5:00 p.m. (mountain or central) time. If a petition is mailed by registered mail by _____, _____, at 5:00 p.m. (mountain or central) time, it shall be considered filed. For the offices of (here list county offices) shall be filed in the office of the (insert name of county) county auditor and nominating petitions for the offices of (here list legislative, state, judicial, and federal offices) shall be filed in the Office of the Secretary of State, State Capitol Building, Pierre, SD 57501.

The deadline for filing nominating petitions to run as an independent candidate for president in the general election is _____, _____, at 5:00 p.m. central time. If a petition is mailed by registered mail by _____, _____, at 5:00 p.m. central time, it shall be considered filed. (Only include this deadline in addition to the independent deadline above if it is a presidential election year.)

Nominating petitions for the offices of (here list county offices) shall be filed in the office of the county auditor during regular business hours. Nominating petitions for the offices of (here list legislative, state, judicial, and federal offices) shall be filed in the Office of the Secretary of State, State Capitol Building, Pierre, SD 57501, between the hours of 8:00 a.m. and 5:00 p.m. central time.

(County Auditor or County Finance Officer)

Source: 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 30 SDR 171, effective May 10, 2004; 42 SDR 178, effective July 1, 2016; 44 SDR 94, effective December 4, 2017; 45 SDR 9, effective July 30, 2018.

General Authority: SDCL 12-1-9(3).

Law Implemented: SDCL 12-12-1.

Director Warne explained the current rule requires the county auditors during a primary/general election year, to publish a notice of vacancy which lists the offices to be filled.

This notice has always been published 15 days before the deadline for filing a primary nominating petition. The deadline for filing is a nominating petition in 2020 is March 31st. The current publication date gives a candidate very short notice to take out a petition and collect signatures. Our suggested change is to amend the time frame to publish the notice to between the 15th and 30th days of January in even numbered years. With January 1st as the first day a person may take out a nominating petition, this change would give notice of the offices to be filled much sooner.

Public Comments: Layher and Crum, both county auditors, feel this is a good change. Layher also stated she liked the wording of the 15th through the 30th. Kathy Glines, Harding County Auditor, asked how many times this notice is published. Director Warne explained it is published once but after reviewing the statute stated the notice is published twice.

A ***motion*** to approve the rule as amended by Layher; second by Crum.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

5:02:07:04. Certificate of election returns -- School districts. ~~Upon completion of the canvass by the school board and the issuing of certificates of election, the business manager shall certify the election results to the county auditor of the counties in which the school district is located. The certificate shall be in the following form:~~

CERTIFICATE OF ELECTION RETURNS
===== SCHOOL DISTRICT NO. =====

This is to certify that the results of the School District Election held on the _____ day of _____, 20____, were as follows:

(Here the business manager shall list the votes tallied for each office, candidate and question.)

Business Manager

Repealed.

Source: 4 SDR 26, effective October 27, 1977; 6 SDR 25, effective September 24, 1979.

~~— **General Authority:** SDCL 12-1-9.~~

~~— **Law Implemented:** SDCL 13-7-18.~~

Director Warne explained to the board that school business managers ask why they need to provide this certificate when they could be providing a copy of the canvass sheet, which is a spreadsheet already required in administrative rule that contains all the information required by this rule. As a result, we are asking for a repeal.

Public Comments: Hearing none

A *motion* to approve the repeal change by Knobe; second by Buckingham.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

5:02:08:00. Guidelines for acceptance of petitions. When a petition is presented for filing, the person or governing board authorized to accept the petition for filing shall determine if it meets the following requirements for acceptance:

- (1) The petition is in the form required by this chapter;
- (2) The petition contains the minimum number of valid signatures, counted according to § 5:02:08:00.01. One or more invalid signatures on a petition section do not disallow other valid signatures on the section;
- (3) Each sheet of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration.

Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths;

(4) The declaration of candidacy contains the original signature of the candidate. Additional sheets may have an original or photocopied signature of the candidate;

(5) If a petition is for a ballot question to be voted on statewide, the signatures were obtained after a copy of the text of the petition was filed with the secretary of state;

(5a) If a petition is for a ballot question to be voted on statewide, the sponsor(s) must submit the affidavit of completed petition along with the information required for each petition circulator when the petition sheets are submitted to the secretary of state;

(5b) (Effective July 1, 2020) If a petition is for a ballot question to be voted on statewide, the petition circulator shall write his or her circulator number on each page of the petition;

(6) The governing board or person authorized by statute to accept the petition shall, if requested, allow a petition circulator the opportunity to add missing information on the signature lines or circulator's verification on his or her petition provided the filing deadline has not passed; and

(7) Following the presentation of the petition for filing, names may not be removed from the petition;

~~(8) The declaration of candidacy on a candidate petition cannot include a professional title with the candidate's name.~~

Except for petitions to nominate candidates for school boards and statewide campaigns, the person who is authorized to accept petitions for filing need not check for voter registration of the signers. **Petitions containing signatures in excess of the minimum number may be filed, but the excess signatures will be disregarded**, unless there is a challenge to that petition. But the excess signatures will not be considered by the filing office unless the excess signatures are needed to validate the petition.

Source: 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 28 SDR 99, effective January 17, 2002; 35 SDR 48, effective September 8, 2008; 42 SDR 178, effective July 1, 2016; 45 SDR 9, effective July 30, 2018.

General Authority: SDCL 12-1-9(6).

Law Implemented: SDCL 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-7.1, 12-6-8, 12-7-1, 13-7-6, ~~2-1-4, 12-1-3, 12-6-4, 2-1-1.1, 2-1-1.2, 2-1-3.1.~~

Cross-Reference: Sections of petition, § 5:02:08:00.02.

Director Warne explained that HB 1094 was passed during the 2019 legislative session with a delayed implementation date of July 1, 2020. We would like to add some of these requirements from sections of HB 1094 into rule now.

There are three rules, in the rules hearing, that we missed adding the delayed implementation date of July 1, 2020. We will ask for these rules to be amended to mirror the delayed implementation language we are proposing for this rule.

Director Warne explains that subsection 8 is an issue that the office has dealt with for quite a few years. The petition states write your name exactly how you want printed on the ballot. Recommendation from the Attorney General's office in the past, was that the title is not part of a name, therefore titles are not included on the ballot.

This change only applies to the guidelines on accepting petitions. Example: When the title Dr. is included on the petition, our office does not include the title on the ballot.

Viken asks if the circulator misses numbering one of the pages of the petition if this will invalidate the entire petition? Law states the circulator number needs to appear on the form on each page that includes signatures or the petition sheet will not count.

This wording is being added because of HB 1094. A suggestion was made by Viken to defer this change until the pending litigation regarding HB 1094 is ruled on. Layher asked what our deadline would be to act on this change. Director Warne stated approximately April 2020 to get on the June 2020 legislative rules review hearing agenda.

Public Comments: Hearing none

A *motion* to defer amending (5b) until after the Federal Court rules or the Secretary of State determines the necessity of the rules needing to be changed to comply with HB 1094 by Viken; second by Layher.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

A *motion* to approve the rule as amended by striking (8) by Buckingham; second by Viken.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

Viken requested if any rules are rejected by the rules review committee to please notify the board.

5:02:08:00.01. Requirements for counting signatures on petitions. Requirements for counting signatures on a petition sheet are as follows:

- (1) No signature on a petition sheet may be counted if one of the following conditions is present:
 - (a) The form of the petition does not meet the requirements of this chapter;
 - (b) The petition sheet is not a self-contained sheet of paper printed front and back;
 - (c) The circulator's verification is not completed or is improperly completed, according to subdivision 5:02:08:00(3) unless the missing information is completed elsewhere on the petition sheet. A completed circulator's verification must include the printed name of the circulator, the circulator's residence address as provided in subdivision 5:02:08:00.01(2)(c), and complete date;
 - (d) The declaration of candidacy has not been completed on or after the first date authorized by statute to circulate the petition, and signed by the candidate and the signature witnessed by an official empowered to administer oaths in South Dakota; or
 - (e) The circulator's verification was signed by more than one circulator;
 - (f) A petition for a legislative candidate shall include the district number and whether the candidate is running for senate or house; and

(2) An individual signature on a petition sheet may not be counted if one of the following conditions is present:

- (a) It was signed prior to the signing of the candidate's declaration of candidacy or, if for a ballot question, it was signed before a copy of the text was filed with the secretary of state;
- (b) It was signed after the circulator completed the verification;
- (c) The residence address does not include a street and house number or a rural route and box number and the town. If the signer is a resident of a second or third class municipality, a post office box number may be used. If the signer does not have a residence address or post office box number, a description of the residence location must be provided. If the signer is a resident of a building with a publicly known name, the building name may be used;
- (d) The date of signing, including month and day, is not indicated;
- (e) The signer's name is not printed and legible; or
- (f) The signer's county of voter registration is not provided.

Source: 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 26 SDR 168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008; 44 SDR 94, effective December 4, 2017.

General Authority: SDCL 12-1-9(6).

Law Implemented: SDCL 2-1-2, 2-1-2.1, 2-1-4, 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-8, 13-7-6, 12-6-7.1.

Director Warne explained that a legislator did not identify if they were running for the Senate or House seat on their petition. The Secretary of State's Office was not able to accept the petition since it was not identified which chamber the candidate was running for. The 2019 Board of Election's HB 1026 clarified that the candidate needs to state if they are running for Senate or House.

Public Comments: Hearing none

A *motion* to approve the rule as amended by Knobe; second by Crum.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

5:02:08:01. Form of nominating petition -- Partisan election. Nominating petitions for a partisan election must be in the following form:

NOMINATING PETITION FOR PARTISAN ELECTION

_____ **Party**

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of _____ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district, or "state") of South Dakota and members of the _____ Party, nominate _____ of

_____ County, South Dakota, whose mailing address is _____,
_____, SD _____, and whose principal residence address is
_____, _____, SD _____, as a candidate for the office of (If a legislative
candidate insert "State House of Representatives" or "State Senate")
_____ at the primary election to be held June _____, 20__.

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot),
under oath, declare that I am eligible to seek the office for which I am a candidate, that I am registered to
vote as a member of the _____ party, and that if I am a legislative or county commission
candidate I reside in the district from which I am a candidate. If nominated and elected, I will qualify and
serve in that office.

(Signed) _____

Sworn to before me this _____ day of _____, 20__.

(Seal)
My commission expires _____.

Signature of Officer Administering Oath

Title of Officer Administering Oath

The balance of this petition form is prescribed in § 5:02:08:00.03.

Source: 2 SDR 5, effective July 30, 1975; 2 SDR 46, effective December 30, 1975; 5 SDR 31,
effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16,
1981; 10 SDR 27, effective September 26, 1983; 16 SDR 20, effective August 10, 1989; 16 SDR 203,
effective May 28, 1990; 25 SDR 8, effective August 3, 1998; 33 SDR 230, effective July 1, 2007; 35 SDR
48, effective September 8, 2008.

General Authority: SDCL 12-1-9(7).

Law Implemented: SDCL 12-6-5, 12-6-8, 12-6-7.1.

Director Warne explained that this partisan nominating petition is for individuals running as a political
party candidate. Adding the information on the petition form (If a legislative candidate insert "State
House of Representatives" or "State Senate").

Knobe asked why only the request for State House or State Senate. Director Kerr explained the statute
was previously updated and the rule needs to match the statute.

Public Comments: Kathy Glines, Harding County Auditor, asked if on the Declaration of
Candidate section does it state that if I am a legislative or county commission candidate, I reside
in the district from which I am a candidate. She states she understands that it only applies to
those to positions.

Director Warne said that is correct and under state law that is only the candidates that this change applies to and that this is at the time they sign the declaration. Other candidates have statutes with other qualifications before they take their oath if they win the election.

A *motion* to approve the rule as amended by Viken; second by Crum.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

5:02:08:05. Certificate of nomination for Independent candidate. The certificate of nomination for an Independent candidate shall be in the following form:

CERTIFICATE OF NOMINATION FOR INDEPENDENT CANDIDATE

INSTRUCTIONS TO CANDIDATE: The heading of this petition and the declaration of candidacy must be fully completed before the petition is circulated for signatures.

WE, THE UNDERSIGNED qualified voters of _____ (here insert the jurisdiction in which the office is sought: name of county, number of legislative district or "state") of South Dakota, nominate _____ of _____ County, whose mailing address is _____, SD _____, and whose principal residence address is _____, _____, SD _____, as an Independent candidate for the office of (If a legislative candidate insert "State House of Representatives" or "State Senate") _____ at the general election to be held November ____, 20____.

DECLARATION OF CANDIDATE

I, _____ (print name here exactly as you want it on the election ballot), under oath, declare that I am eligible to seek the office for which I am a candidate and that if I am a legislative or county commission candidate I reside in the district from which I am a candidate. If elected, I will qualify and serve in that office.

(Signed) _____

Sworn to before me this _____ day of _____, 20____.

(Seal)

Signature of Officer Administering Oath

My commission expires _____.

Title of Officer Administering Oath

The balance of this petition form is prescribed in § 5:02:08:00.03.

Source: 2 SDR 46, effective December 30, 1975; 4 SDR 85, effective June 14, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008.

General Authority: SDCL 12-1-9(7).

Law Implemented: SDCL 12-6-5, 12-6-8, 12-7-1, 12-6-7.1.

Director Warne explained this is the nominating petition independent candidates use and we are asking to list the same language for House and Senate as on the previous partisan nominating petition.

Public Comments: Hearing none.

A *motion* to approve the rule as amended by Buckingham, second by Layher.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

A *motion* to defer amending 05:02:08:07, 05:02:08:08, 05:02:08:09 until after the Federal Court rules or the Secretary of State determines the necessity of the rules needing to be changed to comply with HB 1094 by Viken, second by Knobe.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

Director Kerr clarified that the rules package the board is reviewing was submitted before the law suit was filed for HB 1094.

5:02:09:02.02. Criteria for approving direct recording electronic voting machines. ~~Before the State Board of Elections grants a certificate of approval, the following capabilities of the direct recording electronic voting machine must be demonstrated to the board or its designee. As used in this section the term, system, means direct recording electronic voting machine. The board may grant a certificate of approval for a system, if the system fulfills the following requirements:~~

~~—— (1) Enables the voter to vote in absolute secrecy;~~

~~—— (2) Presents the entire ballot to the voter in a series of sequential screens that include methods to ensure the voter sees all ballot options on all screens before completing the vote and allows the voter to review all ballot choices before casting a ballot;~~

~~—— (3) Prevents any voter from selecting more than the allowable number of candidates for any office to prevent overvoting, alerts the voter on the screen if the voter attempts to overvote, and provides information on how to correct the overvote;~~

~~—— (4) Accurately counts each vote for each position voted;~~

~~—— (5) Is an electronic computer controlled voting system that provides for direct recording and tabulating of votes cast;~~

- ~~—— (6) Has a battery back up system that, at a minimum, allows voting to continue uninterrupted for two hours without external power;~~
- ~~—— (7) Along with any activating and vote recording devices and components, has a unique embedded internal serial number for audit purposes;~~
- ~~—— (8) Is designed to accommodate multiple ballot styles in each election precinct and have an option to handle multiple precincts;~~
- ~~—— (9) Has a real time clock capable of recording and documenting the total time polls are open in a precinct and capable of documenting the opening and closing of polls;~~
- ~~—— (10) Complies with the disability voting requirements of the Help America Vote Act;~~
- ~~—— (11) For security purposes, along with each associated activating and recording device and component, employs a unique, electronically implanted election specific internal security code such that the absence of the security code prevents substitution of any unauthorized system or related component;~~
- ~~—— (12) Has a color touch screen that is at least fifteen inches in diagonal measure;~~
- ~~—— (13) Has an option to accommodate a wheelchair voter without intervention of the poll worker other than a minor adjustment such as the angle of the display, and the voter must be able to vote in a face first position so that privacy is maintained with the ballot surface adjusted to a vertical position;~~
- ~~—— (14) Has wheels so that the system may be easily rolled by one person on rough pavement and rolled through a standard thirty inch door frame if the net weight of the system, or aggregate of voting device parts, is over twenty pounds;~~
- ~~—— (15) Has a smart card type device to activate the system for each individual voter. The poll worker shall be able to activate the card at the poll table with an activation device and hand the card to the voter to use on any open voting system. The card shall be rendered unusable by the voting system after the voter has cast a ballot and after a period of time has expired. There shall be a manual solution available in the event the smart card activation device, or the smart card reading unit on the machine, fails;~~
- ~~—— (16) Prints an alphanumeric printout of the contest, candidates, position numbers, and vote totals when the polls are open so that the poll workers may verify that the counters for each candidate are on zero. These printouts shall contain the system serial number and the counter total. The poll worker must be able to request as many copies as needed. The system shall include a feature to allow reports to be sent to a printer or to an Excel compatible file;~~
- ~~—— (17) The system central processing unit is designed so that no executable code may be launched from random access memory. If the operating system is open or widely used, it must be an embedded system;~~
- ~~—— (18) Provides an electronic, redundant storage of both the vote totals and randomized individual ballot images. These randomized images must be able to be printed after the polls close;~~
- ~~—— (19) Allows a comparison of the multiple locations of totals and ballot images to detect any errors or discrepancies. In the event of a data discrepancy, an appropriate error message shall be displayed in a text format, in order to either correct the data error or prohibit voting from continuing;~~

~~—— (20) Has a programmable memory device that plugs into the system. This programmable memory device shall contain the ballot control information, the summary vote totals, maintenance log, operator log, and the randomized ballot images;~~

~~—— (21) Maintains all vote totals, counter totals, audit trail ballot images, and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery back-up power fail;~~

~~—— (22) Has a self-contained, internal back-up battery that powers all components of the system that are powered by alternating current power. In the event of a power outage in the precinct the self-contained, internal back-up battery power shall engage with no disruption of operation or loss of data. The system shall maintain all vote totals, counter totals, and audit trail ballot images, and the internal clock time in both the main memory and the removable programmable memory devices in the event the main power and battery back-up fail;~~

~~—— (23) Has software that is able to run in a networked or stand-alone environment and support absentee in-person voting;~~

~~—— (24) Has as a standard or as an option, software and hardware provisions for remote transmission of election results to a central location;~~

~~—— (25) Has internal operating system software or firmware, that:~~

~~—— (a) Is specifically designed and engineered for the election application;~~

~~—— (b) Is contained within each touch-screen voting device;~~

~~—— (c) Is stored in a nonvolatile memory within each terminal;~~

~~—— (d) Includes internal quality checks such as parity or error detection and correction codes; and~~

~~—— (e) Include comprehensive diagnostics to ensure that failures do not go undetected;~~

~~—— (26) Has a mandatory pre-election testing of the ballot control logic and accuracy. The logic and accuracy test results must be stored into the memory of the main processor (central processing unit) and into the same programmable memory device that is used on election day for future reference. The test results must be stored by vote total summaries and by each individual ballot image randomly. The system must be capable of printing a zero results printout prior to these tests and results printout after the test; and~~

~~—— (27) Stores tabulation of votes, ballot by ballot, in two or more memory locations on separate integrated circuit chips and shall be electronically compared throughout the election. Any differences between votes tabulated and votes stored in multiple storage locations shall be detected immediately and generate an error message defining required maintenance on the electronic voting system before the system continues to be used in the election. Repealed.~~

Source: 29 SDR 113, effective January 30, 2003; 29 SDR 177, effective July 2, 2003.

~~—— General Authority: SDCL 12-17B-17.~~

~~—— Law Implemented: SDCL 12-17B-2, 12-17B-1 (4), 12-17B-4, 12-17B-2.1.~~

Director Warne explained back in 2002 when the Help America Vote Act was passed there were many vendors trying to get states to buy their systems. The Secretary of State's Office had a few vendors ask to go through the certification process to get certified. Our office did not certify a direct recording electronic device (DRE). DRE's are all electronic with no paper trail. Legislation was passed in 2018 to prohibit DRE's to be used or sold in our state. Draft legislation being proposed over the last couple of years in

Congress is to require a paper trail, which means paper ballots. Our office missed repealing this rule in the 2018 rules hearing. Asking to repeal now.

Public Comments: C.J Moit with Disability Rights South Dakota, asked what is going to be put in place for people with disabilities? Director Warne stated that previously counties were using the Automark instead of the direct recording electronic voting machines (DRE's) and that the ExpressVote (EV) machine will now take the place of the Automark and the EV has the same type of functions as the Automark and all counties will have the EV's in place for the 2020 elections.

A *motion* to repeal the rule by Layher; second by Crum.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

5:02:10:02. Envelope for transmitting ballot application to superintendent of elections. ~~The signed application for official ballots may be sent in an envelope which conforms to the following specifications:~~

- ~~—— (1) The envelope is the minimum practicable size and weight;~~
- ~~—— (2) The words, "This Envelope must be sent by Registered Mail, Certified Mail or Personal Delivery," are printed in the upper right corner of the face of the envelope;~~
- ~~—— (3) The return address of the person in charge of the election is printed in the upper left corner of the face of the envelope;~~
- ~~—— (4) The words, "This envelope contains the application for the Official Ballot of _____ and the signature on the voter's application should be compared with the signature on the voter's statement which appears on the back of the return envelope," are printed in the lower left corner of the face of the envelope; and~~
- ~~—— (5) The words, "To _____, Superintendent of the Election Board of _____ Precinct, _____, South Dakota," are printed in the center of the face of the envelope. Repealed.~~

Source: 2 SDR 46, effective December 30, 1975; 19 SDR 12, effective August 5, 1992.

~~—— **General Authority:** SDCL 12-1-9.~~

~~—— **Law Implemented:** SDCL 12-19-2.~~

Director Warne stated that most of the jurisdictions are not using this envelope. Jurisdictions must keep the sealed voted absentee ballot envelopes secure as they come in during the absentee voting timeframe. For their filing system when an absentee ballot comes back voted by a voter, the auditor is paper clipping or taping the application to the envelope and sending them to the polling places on election day. Requiring the person in charge of the election to use this extra envelope takes more time for the precinct election workers to process absentee ballots throughout the election day. Viken stated the statute says "may" so it isn't required anyway.

Public Comments: Hearing none.

A *motion* to repeal the rule by Crum; second by Layher.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

Secretary Barnett adjourned the rules hearing at 11:21 am and requested to continue to item 5 on the agenda.

Update on Election Systems and Software Election Equipment Testing (July 22-24) for Certification

Director Warne explained there are certain statutes and administrative rules our office must go through to certify ballot marking devices and tabulating machines.

The Election staff completed this testing July 22-24, 2019. It required us to test 3,000 ballots to make sure the tabulators run at least a minimum of 15 per minute for a DS850 and a DS450, which both exceeded the requirement. The DS850 ran 300 per minute and the DS450 ran 60 per minute. The DS 200 is a manual tabulator and must meet a requirement of 10 ballots per minute, The DS200 met that requirement. All three were tested and passed. The Secretary of State staff and several county auditors marked over 3,000 ballots for the testing and went through different tests including, a fold test, marking ballots with different pens, pencils and markers. There was one jam where multiple ballots were folded together and ran through the tabulator. The Secretary of State staff created spreadsheets with different positions on the ballots to be voted. All ballots were tabulated correctly.

Director Warne passed out ExpressVote ballots to view. She explained how the ExpressVote machines work, how overvotes and undervotes were detected and how the ballot is printed when a voter is done voting. She also clarified that every voter still has the option to vote a paper ballot with a pen if they choose.

The battery power of the ExpressVote was also tested and passed the two-hour back up battery requirement.

Thirty counties used ExpressVotes in the 2018 election cycle. All 66 counties will be using ExpressVotes in the 2020 election cycle. ExpressVotes will replace the Automarks (which were purchased in 2003).

Bob Litz, Minnehaha County Auditor, expressed how much nicer and easier the ExpressVote machines are compared to the Automarks previously used. The Automarks are heavy and hard for the election workers to move around.

Director Warne explained that our laws require companies selling election tabulators and ballot marking devices to go through federal testing through the Federal Election Assistance Commission (EAC) and they must receive certification from the EAC before they may request certification in South Dakota. Election Systems and Software (ES&S) had a hardware change and went through EAC certification before they could conduct testing of this new hardware in SD.

The Secretary of State is asking for approval of the certification for ES&S. ES&S will be coming back in September or October after they receive EAC certification for a new version of software that upgrades from Windows 7 to Windows 10. Current machines are on Windows 7. We will conduct our testing again at that time. See certification report below.

South Dakota State Board of Elections

ES&S Voting System (EVS) 6.0.4.0 State Certification

Pursuant to South Dakota Codified Law (SDCL) § 12-17B-2, please accept this report as official application for certification of Election Systems and Software (&) EVS 6.0.4.0. The testing of all equipment was conducted on July 22-24, 2019 in Pierre, SD.

The following individuals were present:

ES&S

State Certification Manager: Mark Manganaro

South Dakota Secretary of State's office

Secretary of State: Steve Barnett

Deputy Secretary of State: Jason Lutz

Director, Division of Elections: Kea Warne

State Election Coordinator: Christine Lehrkamp

HAVA Coordinator: Rachel Soulek

Elections and Federal Project Coordinator: Rory Mennenger

Election Assistant: Bailey Tibbs

Other Participants

Jackie Sieverding, Union County Auditor

Jane Naylor, Aurora County Auditor

Jennifer Deyo, Hughes County Auditor Staff

Kylie Stoddard, Hughes County Auditor Staff

Philena (Phil) Burtch, Stanley County Auditor

Susan Lamb, Sully County Auditor

Shawna Shaw, Potter County Auditor

Stefen Pluta, SD Department of Homeland Security

Jim Edman, SD Bureau of Information and Telecommunications

System Testing Overview

The components and versions of EVS 6.0.4.0 are as follows:

Software

ElectionWare, v. 5.0.4.0

- ElectionWare integrates the election administration functionality into a unified application. Its intended use is to define an election and create the resultant media files used by the ExpressVote, DS200 tabulator, DS450 tabulator, the DS850 Central Ballot Scanner, and Election Reporting Manager (ERM).

Event Log Service, v. 1.6.0.0

- ES&S Event Log Service is a Windows Service that runs in the background of any active ES&S Election Management software application to monitor the proper functioning of the Windows Event Viewer. The ES&S Event Log Service closes any active & software application if the system detects the improper deactivation of the Windows Event Viewer.

Removable Media Service, v. 1.5.1.0

- Removable Media Service (RMS) is an application that runs in the background of the EMS client workstation and supports the installation and removal of election and results media.

Hardware

DS200 Central Digital Tabulator, v. 2.17.4.0

- Used in Aurora, Bon Homme, Haakon, Harding, Jerauld, Kingsbury, Sanborn, Perkins, Mellette, Corson, Campbell, Walworth and Ziebach counties
- DS200 digital tabulator is a paper ballot tabulator that is designed for use as a polling place tabulator or a central count tabulator, South Dakota counties will use as a central count tabulator. Both sides of the ballot are scanned at the same time using a high-resolution image-scanning device.

DS450 Central Count Tabulator, v. 3.1.1.0

- Used in Clay, Lyman, Turner and Tripp counties
- The DS450 is a mid-range tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card. TruGrip™ technology insures that multiple sets of rollers are controlling the ballot in the transport at all times. This provides for reliable handling of ballots; even folded ballots. It can also read ballots in any of four orientations. It sorts tabulated ballots into discrete output bins without interrupting scanning.

DS850 Central Count Tabulator, v. 3.1.1.0

- Used in Beadle, Brookings, Brown, Codington, Davison, Lincoln, Meade, Minnehaha and Pennington counties.
- The DS850 is a high-speed, digital scan central ballot tabulator that uses cameras and imaging algorithms to capture voter selections on the front and back of a ballot, evaluate results and then sort ballots into discrete bins without interrupting scanning. A dedicated audit printer generates a continuous event log. Machine level reports are produced from a second, laser printer. The scanner saves voter selections to an internal hard disk and exports results to a USB Memory stick for processing with ElectionWare Reporting Software.

ExpressVote Universal Voting System, v. 2.4.5.0

- The ExpressVote is a universal voting device designed for all voters, with a printed voter-verifiable paper record. This system combines paper-based voting with touch screen technology. The ExpressVote includes a mandatory vote summary screen that requires voters to confirm or revise selections prior to printing the summary of ballot selections using the internal thermal printer.
- The ExpressVote enables voters who are visually or physically impaired and voters more comfortable reading or hearing instructions to privately make their selections. The ExpressVote supports navigation through touchscreen, physical keypad or ADA support peripheral such as a sip and puff device.

Testing Overview

During the test, the 500 ballots were split between five precincts including a split precinct in Precinct One. The SOS staff tested primary election and general election ballots. Tabulated ballots contained 10 choices and contained choices on both the front and back, except for the ExpressVote which prints all selections on one side. The ballots for testing were at least 90% fully voted with the remainder containing overvoted and undervoted ballots. An additional 15 ballots were also processed as absentee ballots in which each ballot was folded in the same manner as absentee ballots.

250 optical scan ballots were hand marked by staff which were then tabulated on a DS200, DS450 and DS850.

Description of ExpressVote Universal Voting Device Testing

Pursuant to ARSD § 5:02:09:02.03, 250 ExpressVote pre-printed ballot cards were marked using three ExpressVote machines. Each card was accurately marked and displayed each race that was marked.

Each card was then accurately tabulated pursuant to ARSD § 5:02:09:02.01 on a DS200, DS450 and DS850. The ExpressVote machine was unplugged and the battery back-up system was successfully tested to allow voting to continue uninterrupted for two hours without external power. One error message was displayed when a staff person tried to insert a primary election ballot, which the error message indicated that the machine was not programmed for that election. The ballot was ejected without opening the machine.

Description of Automatic Tabulating System Testing

Pursuant to ARSD § 5:02:09:02.01, the 250 ExpressVote cards that were marked using the ExpressVote were then tabulated by a DS200, DS450 and a DS850. 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.

Conclusion

All testing of the equipment was successful and met all requirements pursuant to codified law and administrative rule and EVS 6.0.4.0 is recommended for distribution in South Dakota with the ExpressPass exception. Attached is the Secretary of State's certification report and the Election Assistance Commission Grant of Certification and Certificate of Conformance.

Public Comments: Hearing none.

A *motion* to approve the new election certification by Crum; second by Buckingham.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

Update on County Held HAVA Funds

Rory Mennenger, Elections and Federal Projects Coordinator gave an update on County held HAVA Funds. Twenty-six counties are currently at a zero balance in their HAVA accounts. Sixteen of which applied for the \$9,000 HAVA grant for the 2020 election cycle and all were approved by the HAVA Grant board and Secretary Barnett. Five counties applied for the 2020 in-person satellite voting center grant and were approved. Total grant dollars awarded were \$140,450.00 for the HAVA grant and \$62,698.36 for the in-person satellite grant.

Update on the Statewide Voter Equipment Purchase

Director Warne gave an update on the 30 counties that purchased election equipment for the 2018 elections. There are 36 counties left to upgrade their election equipment before the 2020 elections.

The new equipment purchased in 2017 totaled \$1.577 million which came out of county general funds and county held HAVA funds.

Late 2017, all states were eligible to apply for an election security grant from the Federal Government. The Secretary of State's office applied, and we were approved for a \$3M Election Security Grant. Match money was required to receive the grant and during the 2019 legislative session our office was appropriated the match money of \$150,000 and we have received that funding.

We submitted, to the EAC for approval, a plan to purchase new equipment for the 36 counties left to upgrade and the remainder of the grant funds will be used to reimburse the other counties that previously purchased new equipment before the grant was available.

Each county will receive one ExpressVote per polling place. We have also determined we will purchase a tabulator that is equivalent to what the county already has. Example: if the county had a M100 we will purchase a DS250 with the grant funds. If a county decides to upgrade to a different tabulator, the cost difference will be made up by the county.

If leftover security money is available, it will be used for security upgrades to the Secretary of State website and the TotalVote system. The purchase contract will be submitted to ES&S in September and at that time we will start reimbursing counties for the election equipment purchased in 2018 with HAVA and county general funds.

Viken asked about the counties with a zero balance, if they all applied for the two grants and if they didn't why. Director Warne stated several emails were sent in reference to the grants and the deadline of July 1st, 2019, and the grants were discussed at several workshops. She does not know why a county wouldn't apply.

Knobe expressed security concerns. He wanted to be sure we were still taking precaution for hacking. Director Warne clarified that by using paper ballots and having voting and tabulation machines not connected to the internet, hacking is almost impossible.

Bob Litz, Minnehaha County Auditor, explained that he and his IT staffer attended DEFCON in Vegas in 2018. Hackers come from all over the world and try to hack into election machines. He shared information on how the hackers tried to get into the machines and explained that SD excels in paper ballots and no internet connections.

Director Warne shared that members of the Secretary of State's office were involved in a table top security exercise with other Secretary of State offices, federal and state partners and county auditors. The exercise went well, and good information was shared. Knobe expressed to Secretary Barnett that it is important to share and boast about how we are working with all the different entities on the security of our elections.

Secretary Barnett requested to recess until 12:20 pm.

Secretary Barnett called the Board of Elections Meeting back to order at 12:24 pm.

The Board of Elections began their review of the proposed legislation.

#1 Amend: 12-4-2. County auditor in charge of voter registration records. The county auditor has complete charge of maintaining and safeguarding the voter registration records in the county. The county auditor shall retain all voter registration records in the auditor's office in paper or electronic form. All such records shall be open to public inspection at all times during office hours, except pursuant to §12-4-9.

Voter registration shall be conducted by each county auditor and municipal finance officer. Voter registration shall be available at the secretary of state's office and at those locations which provide driver licenses; food stamps; temporary assistance for needy families; women, infants, and children nutrition program; medicaid; military recruitment; and assistance to the disabled as provided by the Department of Human Services. Eligible persons pursuant to § 12-4-1 with a valid driver license or non-driver identification card issued by the State of South Dakota may register to vote through the system provided by the Office of the Secretary of State.

Director Warne explained that the language will allow the Secretary of State's Office to create an online voter registration system where individuals will be able to go online and register to vote through that system. She stated that we already have a similar system with the driver's licensing program where individuals may register to vote or update their registration via the driver's license application. An individual may do this in-person or through DPS's online system. The data provided by the individual goes through a number of verification processes and then the voter registration application is transmitted electronically to the appropriate county's voter registration system (TotalVote).

Also, available is the Uniform Overseas Citizens Absentee Voting Act System (UOCAVA). This system allows members of the Uniformed Services or Merchant Marines on active duty and their spouse or dependent(s), along with US Citizens living outside of the US to register to vote, update their voter registration and/or request an application for absentee ballot. This system went live for the 2018 election cycle.

Director Warne explained that if this statute change is passed, we would use the base of the UOCAVA system minus the option to request an absentee ballot. Requirements to use the system would be a South Dakota valid driver's license or non-driver ID that was issued through SD Department of Public Safety (DPS) as this information is needed for the system to verify the person's first and last name, date of birth, driver license/or nondriver ID number/or SSN number. The information is also verified against the other state databases to make sure the information does not match a deceased person, or a person serving a current felony conviction.

A rough estimate to build the system is \$25,000. Director Warne let the board know that we were updating TotalVote to make it GIS capable which could result in additional costs for the online registration system.

There won't be much change for the auditors as these registrations would just come through as a different home queue item like a DLVR and UOCAVA and they would process them the same way they do all other registrations.

A question was asked if the driver's license had to be scanned in. The individual has to manually enter their driver's license number into the system.

We hope to add an extra layer of security by requiring an individual to put the last five digits of their social security number instead of four. Some states have started requiring the last five already for added security.

DPS has been made aware of our plan and there will be some fees on their side in order to implement this online system but a lot of it will tie into what we are already doing.

Deputy Lutz looked into what other states were doing and there are currently 38 states that are using some form of online registration.

Knobe asked if it would still be available if someone wanted to go down to the auditor's office and fill out the paper form face to face.

Director Warne stated that yes, that option would still be available and that a paper form would need to be filled out if they did not have a SD driver's license or non-driver ID to enter into the online system.

Viken commented that she liked the idea but had some concerns. When you register in person, the Auditor has the driver's license in front of them and can look at the individual and "say okay this matches, and this is the correct individual." Director Warne explained that DPS allows you to update or renew your driver's license and register to vote or update your voter registration online using their system.

Viken was concerned about the initial registration more so than the renewal because anyone could have your DL number. However, she believed that there would be a fair amount of people that will be able to utilize the online system to register and/or update their voter registration.

Director Warne stated that the auditor would still have to verify all the information and in smaller counties auditors might know most of their residents.

This system would only be to register to vote - not vote online.

Secretary Barnett thought the younger people would be more inclined to take advantage of this feature.

Crum's initial thought was renewals may be okay. But she likes seeing the person when they register to vote in the county auditor's office but currently there is no law that makes an individual show their driver's license when they register to vote. There is also still the option to print off the voter registration form, fill it out and mail it to the county auditor.

Crum asked if there would be built-in features that would make sure they would have all the required information filled in before being able to move on. Deputy Lutz answered with yes, they would have to fill everything in, and they would not be able to leave choice of party blank.

Buckingham made the comment that if there was a way to register fraudulently it was already out there. He doesn't think that an online registration system would open the door to make it any easier.

Layher said that an acknowledgement notice is sent out after someone registers to vote and that if a voter didn't register, they could call and ask why they received the notice.

Crum commented that those in the military that are registered, when notice gets sent out to the address listed, auditors get calls saying, "this person doesn't live at my house." She believes auditors would still get that when sending out the acknowledgement notice.

Public Comments: Hearing none.

A *motion* to approve Proposal #1 as amended by Knobe; second by Buckingham.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

#2 Amend: 12-4-9. Master registration file--Contents--Open to public inspection--Access to certain information restricted. The county auditor shall maintain and safeguard a file of voters in computer format that contains the information of each person registered in each voting precinct within the county. This file shall be known as the master registration file and shall be, at all times during office hours, open to public inspection. However, public access to social security numbers, ~~and driver license numbers and dates of birth~~ contained in the master registration file shall be prohibited. ~~Public access to each voter's day and month of birth shall be restricted. Public access to the voter's year of birth is not restricted.~~ The master registration file shall contain all information from each voter's registration card. The master registration file shall also include the date of the last election the voter has voted in and when the voter's information was last updated. The master registration file may also contain additional voter history information. Any voter registration form for a purged or unregistered voter shall be kept for twenty-two months. No purged or unregistered voter may be included in the master registration file.

Director Warne informed the board that the office has met with the Department of Homeland Security a couple of times since Secretary Barnett and Deputy Lutz have taken office. The office has participated in Election Security exercises and conferences. Staff from the Department of Homeland Security asked what type of information we include in a voter registration file that is purchased. The Secretary of State's Office includes the year of birth and they asked why that was included. The Department of Homeland

Security officials stated that the year of birth could be the missing link needed to steal someone's identity and suggested that we remove any reference to the date of birth from the voter files that are purchased.

Litz stated that when we have voters come in to vote and there is Jr. and Sr. living in the same household, the year does help to differentiate who is who. Director Warne clarified the full dates of birth would still be available to the auditor but not to the public when someone is looking to purchase a voter registration file.

Bruce Danielson submitted public comments of his concerns with pulling the year of birth from the files that are available to purchase.

Knobe didn't have a strong feeling either way. He felt that if the homeland security officials are suggesting we remove it, then we should go ahead and remove it; but he also is aware this could be a limiting factor to the people that purchase those files to conduct research.

Viken clarified that the auditor would still have access to verify a voter but someone like herself wouldn't have the access to the date of birth which in her mind made sense.

Public Comments: Bruce Danielson had a concern with the types of data security, voter security and data entry he does, with not having the birth year. He had an issue when trying to identify who the voter is because year of birth is prime information.

Viken asked Danielson who his audience was? Being told that we are giving out information that helps people know how old I am and could steal my identity isn't good. Auditors have complete access to the information – so if you want to know if it is John Jones the 1st, 2nd, or 3rd who is there to vote the election worker can call the Auditor. Viken didn't understand why Danielson needed this information- what does it give you she asked him.

Danielson explained it helps with voter demographics by knowing what year they are born. Example: peak year for voters is someone who is born in 1952. It is one thing to help understand voting in South Dakota and who voters are. Danielson said he works hard to keep that information available. He doesn't understand why there is a problem now when information like this has been available.

Viken asked if he was selling his lists.

Danielson stated he has been doing this for 35 years – why is it an issue? He stated, “he doesn't sell anything out of the database all I'm doing is using it for political purposes that I'm allowed to use it for.”

Viken asked if it was for use by candidates and political parties. Danielson replied yes that is the prime use and stated he didn't want to have buy the data of birth from another data source.

Knobe wanted to know if we had statistics on what other states were doing; we did not have it, but it could easily be obtained.

Crum and Layher both agreed that we are doing everything as a state to secure elections and voter registrations, so why wouldn't we take Homeland Security's recommendation on continuing to ensure this information is kept secure.

Danielson would like to see this be held off and he didn't feel like there was enough information out there regarding the Board of Elections discussing this matter. It needed more research and detail and he would like to be in on the discussion.

Director Kerr clarified that this was proposed legislation and if the Board of Elections passed it, then it would be introduced for the 2020 legislative session. It would then have public hearing(s). Secretary

Barnett informed the group the legislation would go through two committees and both floors of the legislature.

Layher was curious if a business could go about purchasing the year of birth. This was not an option.

With no further discussion or comments from the public.

A *motion* to approve Proposal #2 by Buckingham; second by Layher.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

#3 Amend: 12-12-1. Notice of offices to be filled--Publication. The county auditor charged with the conduct of a primary election shall give notice of any office to be filled by nomination or by declaration and the deadline for filing in all official newspapers in the appropriate district, at least once each week for two consecutive weeks, between the fifteenth and thirtieth day of January in an even-numbered year. A local election official charged with the conduct of a local election shall give notice of any office to be filled by nomination or by declaration and the deadline for filing a nominating petition, in all official newspapers in the locality, at least once each week for two consecutive weeks. The last publication in the notice may not be less than ten nor more than fifteen days before the deadline for filing. The provisions of this section apply unless otherwise provided by law specifically governing the election. The person in charge of the election shall give further notice of each election stating the date and time of the election, and designating each polling place for the election, in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten days before the election.

For any ~~runoff secondary~~ election under § 12-6-51.1, one notice shall be published along with a copy of the ballot in each newspaper in the state that publishes on Saturday and Sunday. The secretary of state shall direct the newspapers to publish the ballot and notice on the eleventh or twelfth day after the primary election. The secretary of state shall pay all costs of publication.

Director Warne stated this statute change of “secondary” to “runoff” is just for cleanup. Auditors had asked in 2017 that we change that wording in statute because that is what you hear in the media. We missed one reference.

The board was not understanding the first paragraph as it is worded. Director Warne explained that the top half of the first paragraph in the statute, is a publication for a primary election and the bottom half references a city and school publication. Viken felt it seemed inconsistent and wanted to see it cleaned up a bit or some separation added. Discussion was had by the board and it was felt by all that it needed to read as follows:

12-12-1 Notice of offices to be filled--Publication.

The county auditor charged with the conduct of a primary election shall give notice of any office to be filled by nomination or by declaration and the deadline for filing in all official newspapers in the appropriate district, at least once each week for two consecutive weeks, between the fifteenth and thirtieth day of January in an even-numbered year.

(new paragraph) A local election official charged with the conduct of a local election shall give notice of any office to be filled by nomination or by declaration and the deadline for filing a nominating petition, in all official newspapers in the locality, at least once each week for two consecutive weeks. The last publication in the notice may not be less than ten nor more than fifteen days before the deadline for filing.

The provisions of this section apply unless otherwise provided by law specifically governing the election. (adding a return so there is space between paragraphs)

The person in charge of the election shall give further notice of each election stating the date and time of the election, and designating each polling place for the election, in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten days before the election.

(new paragraph) For any runoff secondary election under § 12-6-51.1, one notice shall be published along with a copy of the ballot in each newspaper in the state that publishes on Saturday and Sunday. The secretary of state shall direct the newspapers to publish the ballot and notice on the eleventh or twelfth day after the primary election. The secretary of state shall pay all costs of publication.

Public Comments: Hearing none.

A *motion* to approve Proposal #3 as amended by Knobe; second by Viken.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

#4 Amend 12-13-23. Distribution of public information. The secretary of state shall distribute public information on any amendment to the Constitution, initiated measure, or referred law submitted to the electors for approval. The secretary of state shall compile the public information by printing a statement in support of the amendment to the Constitution, initiated measure, or referred law written by its proponents, if any can be identified, and a statement against the amendment to the Constitution, initiated measure, or referred law written by its opponents, if any can be identified. The statements may not exceed 300 words. The secretary of state is not responsible for the contents, objectivity, or accuracy of the statements written by the proponents and opponents. The pamphlet shall also include the attorney general's title, explanation, and a recitation of the effect of a "Yes" or "No" vote as written pursuant to § 12-13-9 or 12-13-25.1; number of pages and sections in the proposed or referred language; and, if applicable, a fiscal note.

Director Warne stated that this statute requires the Secretary of State to prepare the ballot question information pamphlet. She explained that the office has always set in policy that the pro/con statements cannot be more than 300 words. Our office was not questioned on that until the 2018 election cycle. The new administration decided we should have this requirement set in statute to refer the pro/con writers to.

Knobe clarified that we would be putting in statute what has been internal policy for years.

Public Comments: Hearing none.

A *motion* to approve Proposal #4 by Crum; second by Layher.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

Post-Election Audits, Bob Litz, Minnehaha County Auditor.

Bob Litz would like to conduct a post-election audit of the ballots, this would determine if the machine is functioning properly. He would like to do a pilot program in Minnehaha County and would like it to be after the canvass for a primary and general election are completed so that the pilot program does not

interfere with the canvass results. He is viewing this as a learning type experience. If allowed to do this, Litz would like to assemble a board of people to help with this idea. Suggestions for this board are:

- Statistical Advisor: Cedrick Newman PHD in Math and Stats (SDSU)
- Cybersecurity persons (would like two): Jason Touring, Minnehaha County
- ES&S
- Steph Stinger former elected official who has a PHD in math and statistics
- Software engineer for coding and programing
- Legal counsel to advise on the legislative process
- Secretary of State office personnel
- Board of Elections representative

Litz explained the Department of Homeland Security does have grant funds for this and he would look into writing a grant before the state or individual county, roughly \$19,000 for two years – have it for four elections.

Knobe asked Litz why you would want to take this on.

Litz explained he was willing to do this because he believes in the process. The integrity of elections is attacked, and people attack the integrity of the machines.

Litz believes that by “conducting this risk limiting audit it will go a long way in the statistics of what these machines are putting out.” Viken expressed concern with it being a sample. “You just take this theoretical number and that allegedly means that it represents the whole and is correct. Your taking some of the ballots and says X and the whole is Y. I hate those sample things because then I want to go back and test everything. Within the packet that was handed out might show that there is a need for a full recount on the other hand then there are times there is no need for a full recount – just my personal concern.”

Litz stated Newman has looked over the math and equations that go into it. Stark out of the University of Berkeley started this years ago and feels this is a good idea.

Litz believes there are people that think the machines are stealing elections. He doesn't believe it and feels that machines are more accurate than a hand count. Legislation that Litz would propose is a pilot to figure out the process for a risk limiting audit. Thirty-six states have some source of risk limiting audit in place; 12 more are implementing some sort of audit. South Dakota would be number 13. The pilot would not get in the way of the official canvass.

Litz believes that a precinct audit could be done instead of the whole county. During a recount, one of the recount board members did a random sample of the ballots and then ran them back through the tabulator. He basically conducted a risk limiting audit without knowing what a risk limiting audit was. Litz explained that the board member did that to check the machines.

Crum stated that us, as auditors, are confident that the machines are tabulating correctly. But she read a study that roughly 34% of voters are not convinced that their vote is going to count or count properly. If we could do something to boost voter confidence this may be a good idea. She then asks what is the time line and how much staff would this take?

Knobe asked for the states that have done this, is there a time when the machines were wrong, significantly enough to where there was concern on whether someone won or lost.

Viken asked if HAVA money could be used for this. Director Kerr stated that on the HAVA website, HAVA funds could be used for post-election audits.

There was concern voiced on whether smaller counties would have the funds to do this. Litz said that the audit process could be written in anyway we would like where smaller counties with a certain number of voters wouldn't have to perform the audit or it was an option etc.

Director Warne explained that if the Board passes this and proposed legislation is necessary, we would run it back by the board once something is drafted.

Buckingham stated, we have no evidence to indicate that our machines are not delivering accurate results.

Litz ended with his main goal for this program is to ensure public confidence in our system.

Public Comments: Hearing none.

A *motion* to draft legislation for the 2020 legislative session to authorize a risk limiting audit pilot program for Minnehaha County Auditor and to present that draft legislation before the board at the next meeting by Layher; second by Crum.

Roll call vote: Buckingham-No, Crum-Aye, Gillespie-abstain, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.

Secretary Barnett entertained a motion to adjourn the meeting.

A *motion* to adjourn by Buckingham; second by Viken.

Roll call vote: Buckingham-Aye, Crum-Aye, Gillespie-Aye, Knobe-Aye, Layher-Aye, Viken-Aye, Secretary Barnett-Aye. Approved.