



# OFFICE OF THE SECRETARY OF STATE

STEVEN J. BARNETT, SECRETARY OF STATE

JASON LUTZ, DEPUTY SECRETARY OF STATE

## Public Rules Hearing and State Board of Elections Meeting Minutes

Monday, October 24, 2022  
10:00 a.m. CT

State of South Dakota Capitol  
500 E. Capitol Ave, Rm 413  
Pierre, South Dakota

Conference Call Dial-in Information:  
Dial-in Number is 605.679.7263  
Phone Conference ID is 661 619 103#

### *Call to Order*

Secretary of State Steve Barnett called the meeting to order at 10:08 a.m. CT.

### **Members present via conference call:**

Mike Buckingham (Board of Elections member), Margaret Gillespie (Board of Elections member), Karen Layher (Board of Elections member), Linda Lea Viken (Board of Elections member)

### **Members present in person:**

John Lake (Board of Elections member), Jackie Sieverding (Board of Elections member) Secretary of State Steve Barnett (Chair, Board of Elections)

Absent: None.

Quorum present.

**Others present (In-Person):** Jason Lutz (Deputy Secretary of State), Kea Warne (Director, Division of Elections), Suzanne Wetz (State Election Coordinator/NVRA Coordinator), Sarah Moreno (Federal Programs Coordinator), Adam Miller (Program Assistant), Clifton Katz (Assistant Attorney General), Jim Eschenbaum (Hand County Commissioner), Cole Uecker (Disability Rights of South Dakota Executive Director), CJ Moit (Disability Rights of South Dakota), Sheri Lund (Lincoln County Auditor)

**Others Present (Online):** Kayla Dowling, Kathy Glines, Julie Bartling, Kami Moody, Lisa Perman, Stacy Pinney, Jill Hanson, Tamara Brunken, Shelby Thompson, Patty Hojem, Karen Layher, Doug DeBoer, Christine Tarbox, Lynn Heupel, Megan Biel, and other callers by phone.

### *Approve the Agenda*

A **motion** to approve agenda was made by Sieverding; second by Lake.

Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Layher-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett -Aye. Motion carried.

***Approve of the Draft Minutes from August 23, 2021, meeting***

A **motion** to approve the August 23, 2021, Board of Elections minutes was made by Sieverding; second by Lake.

Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Layher-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett -Aye. Motion carried.

***Rules Hearing began at 10:11 a.m. CT***

Secretary Barnett stated that the proposed rule changes are as follows: §§ 5:02:03:01, 5:02:05:00, 5:02:05:01, 5:02:09:16, and 5:02:16:36. The Secretary provided approval to proceed with the rules package on August 25, 2022. The proposed rules and supporting documents were also submitted to the Legislative Research Council and Bureau of Finance and Management for review on that date. Public notices for today's hearing were published in the Pierre Capital Journal, Aberdeen American News and Sioux Falls Argus Leader. These notices were published on October 1st and 2nd. Notice was also published on rules.sd.gov and the Secretary of State's website on September 28th. Interested parties were also notified. The interested party notification list includes individuals and entities that have requested to be notified of proposed rule changes or entities that may be impacted by proposed rules. This list includes the South Dakota Association of County Officials, Associated School Boards of South Dakota, South Dakota Association of Towns and Townships, School Administrators of South Dakota, South Dakota Municipal League, and the South Dakota Unified Judicial System. Notice was also provided to all County Auditors and 23 additional recipients that have requested notice for Board of Elections rules hearings.

The effect of the rules will be to update recapitulation sheets to provide clarifying language and additional tabulation descriptions, allow for the use of certain abbreviations on official ballot stamps, provide clarity regarding the certificate of transmittal to a counting board, and updating of the voter registration form to provide clarity to the choice of party information section. Each of these rule proposals are the result of input received from County Auditor offices. The most recent rules packet distributed to the Committee incorporated the style and form edits recommended by the Legislative Research Council. Those amendments were also posted on rules.sd.gov.

**ARSD 5:02:03:01**

Secretary Barnett explained in addition to minor style & form edits, this amendment will provide clarity to the choice of party information section on the voter registration form. This is accomplished by specifying that current voters registered "in South Dakota" will remain registered with their current party affiliation if the field is left blank when updating their registration. The current form does not include the phrase "in South Dakota". This raised a concern that a citizen moving to South Dakota from another state in which they were previously registered may think that their previous party affiliation would be used if they left this field blank.

No written comments were received regarding this rule.

No public testimony was given.

A **motion** to approve the proposed rule changes was made by Viken; second by Buckingham.

Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Layher-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett -Aye. Motion carried.

**ARSD 5:02:05:00**

Secretary Barnett explained the proposed amendment to this rule would allow for the use of certain abbreviations on official ballot stamps. We received input from numerous auditors to seek this change which will help fit required ballot stamp information within the spacing constraints of their stamps. The proposed rule would allow for the use of "SD" in place of "South Dakota", as well as "Cty" in place of "County".

No written comments were received regarding this rule.

Public testimony – Hand County Auditor Doug DeBoer stated he was in support of this change. County Auditor Kathy Glines asked for clarification as to why “Cty” is being used for the abbreviation of county instead of “Co”. Deputy Lutz explained this was suggested by LRC as Co can sometimes be correlated with the abbreviation for Company.

Board Member Sieverding also shared with the committee a copy of what her ballot stamp looked like, just as a reference.

A **motion** to approve the proposed rule changes was made by Lake; second by Viken.

Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Layher-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett -Aye. Motion carried.

#### **ARSD 5:02:05:01**

Secretary Barnett also reported that the proposed amendment to this rule would provide clarity regarding the certificate of transmittal to a counting board. The only amendment to the rule is the additional description added to the certificate. The new certificate title will provide a clearer picture of the purpose of the document.

No written comments were received regarding this rule.

No public testimony was given.

A **motion** to approve the proposed rule changes was made by Lake; second by Gillespie.

Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Layher-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett -Aye. Motion carried.

#### **ARSD 5:02:09:16**

The proposed amendments to this rule would add additional descriptions to recapitulation sheets for elections using optical scan ballots. An additional table is now included in the rule to better distinguish any discrepancies that may be encountered by a Resolution Board. This could include any unstamped ballots, which are ballots missing the required official ballot stamp. The new breakdown will also aid tabulation center employees when matching the number of ballots listed on the tabulation tape to the number of ballots listed on the recap sheet.

Board Member Lake asked for clarification about the changing of “must vs shall”. Deputy Lutz stated that all SDCL/ARSD language is updated with the correct language.

No written comments were received regarding this rule.

No public testimony was given.

A **motion** to approve the proposed rule changes was made by Layher; second by Sieverding.

Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Layher-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett -Aye. Motion carried.

### **ARSD 5:02:16:36**

The proposed amendment to this rule would provide clarifying language to specify which elections would use the form provided by the rule. By adding, “In elections using hand-counted paper ballots” to the rule, it will clearly signify which elections the rule pertains to. Again, the goal is to provide a clearer picture of the purpose of the document.

No written comments were received regarding this rule.

No public testimony was given.

A **motion** to approve the proposed rule changes was made by Viken; second by Buckingham.

Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Layher-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett -Aye. Motion carried.

**Secretary Barnett ended the rules hearing at 10:32 a.m. CT.**

### ***Update on County Held HAVA Funds / HAVA Grants / Election Cares Act Funds***

Deputy Lutz stated the county held HAVA balances and the state held HAVA balances were the following:

Title 1 (Section 101 Funds)

Balance - \$1,667,855.69

- Initial award of \$5M in 2003
- No matching requirement

Title II (Section 251 Funds)

Balance - \$5,199,908.57 (State-Held Title II - \$3,489,014.31 / County-Held Title II - \$1,710,894.26)

- Initial award of \$13M in 2004
- Match requirement of \$686K (just over 5%) has been met

Recurring uses for these funds consist of federal election-related costs, including statewide voter file system maintenance and upgrades, grants to counties, equipment purchases and personnel costs.

EAC Election Security Grants (2018/2020)

Balance - \$3,251,556.25 (\$1.5M to be reverted to federal government if matching funds are not secured by end of FFY23)

- \$6M appropriation – state currently has met matching requirement to expend \$4.5M, remaining \$1.5M will be returned to federal government if additional match (\$300,000) is not met. The unmet match funds (\$1.5M) are included in balance above. The State has until the end of Federal Fiscal Year 2023 (September 30, 2023) to secure the remaining match portion of this grant to qualify to spend the remaining amount.
- This grant was used to upgrade voting equipment (tabulators and ballot marking devices) in all 66 counties prior to 2020 election cycle.

Deputy Lutz also discussed the 2022 EAC Security Funding. South Dakota is eligible to seek a \$1 million award but has not to this point as it carries a 20% matching requirement, or \$200,000. The State has until the end of Federal Fiscal Year 2023, or September 30, 2023, to seek the funding, allowing the opportunity for the new administration to determine whether or not to seek the award. Mr. Lake asked if the 2022 grant had been discussed with the Legislature’s Appropriations Committee. Deputy Lutz stated the 2022 award had not, however, the 2020 grant had during multiple years and was still short \$300,000 in match money. As the 2020

grant still had an eligible \$1.5 million that needed a match requirement, or \$300,000, to be met, the office determined not to also seek an additional \$200,000 in matching funds for the 2022 grant.

***Public Comments***

Hand County Commissioner Jim Eschenbaum provided public comments concerning post-election audits and transparency in elections. Mr. Eschenbaum stated he believes trust needs to be brought back to elections by do a post-election audit to make sure the tabulators are working correctly.

Lincoln Auditor Lund did report that auditors across the state are working with legislators to come up with a post-election audit.

Hand County Auditor Doug DeBoer provided public comments concerning CVRs and obtaining these records from tabulating machines and he would like the election vendor to provide to counties at no cost.

Rick Weible provided public comments concerning CVRs and obtaining thee records from tabulating machines and he would like the election vender to provide the reports to the counties.

***Disability Rights of South Dakota - Cole Uecker***

Mr. Uecker spoke to the group about creating a system for online voting for individuals with disabilities. He reported to the group other states have implemented similar programs to assist with voting.

***General remarks***

Board Member Viken extended a thank you to Secretary Barnett on his work during his time as Secretary of State. Board Member Sieverding echoed her sentiments.

Secretary Barnett concluded the meeting by thanking all the members for taking the time to attend the meeting and their service on the Board.

Roll call was taken to adjourn the meeting: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Layher-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett -Aye. Meeting adjourned at 11:27 a.m.