



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 **DRAFT** Meeting Minutes

Monday, August 23, 2021
10:00 a.m. CT

SD Association of County Officials
211 East Prospect
Pierre, South Dakota

Conference Call Dial-in Information:
Dial-in Number is 866.410.8397
Conference Code is 2178377981

Call to Order

Secretary of State Steve Barnett called the meeting to order at 10:00 a.m. CT.

Members present via conference call: Mike Buckingham (Board of Elections member), Margaret Gillespie (Board of Elections member)

Members present in person: John Lake (Board of Elections member), Jackie Sieverding (Board of Elections member), Linda Lea Viken (Board of Elections member) Secretary of State Steve Barnett (Chair, Board of Elections)
Absent: Karen Layher (Board of Elections member)

Quorum present.

Others present: Jason Lutz (Deputy Secretary of State), Kea Warne (Director, Division of Elections), Suzanne Wetz (Elections Program Administrator), Cely Johnson (Elections Assistant) C.J. Moit and Tim Neyhart (Disability Rights South Dakota), Bob Mercer (KELOLAND Reporter)

Approve the Agenda

An amendment to the agenda was proposed by Secretary Barnett. Item #6 should read "Voter Registration Update System".

A **motion** to approve the amendment to the agenda was made by Viken; second by Lake.

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

A **motion** to approve agenda with amendments was made by Viken; second by Lake.

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

Approve of the Draft Minutes from August 19, 2020 meeting

Viken stated that on page 8 of the August 19, 2020 minutes that "an" should be changed to "a." in the second paragraph. Also, that "too" should be changed to "to" in the third paragraph.

A **motion** to approve the August 19, 2020 Board of Elections minutes with amendments was made by Viken; second by Sieverding.

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

Rules Hearing began at 10:09 a.m. CT

The proposed rule changes are as follows: §§ 05:02:07:06, 05:02:03:28, 05:02:03:29. The following rules conform to LRC style and formatting rules. The Rules Hearing Notice for this meeting were published in the Aberdeen American News, Rapid City Journal, Argus Leader (Sioux Falls), and the Capitol Journal (Pierre).

ARSD 5:02:07:06 – Clarifies who can sign the certificate of nomination to fill a vacancy by the death or withdrawal of a candidate for a single-county legislative district or a county office and multi-county legislative districts per requirements of SB145. Deputy Secretary of State Lutz explained that multi-county legislative districts have encountered problems tracking down chairpersons in the past to sign the certificate because either the party does not have a chairperson, or the chairperson has passed away. This rule now states the certificate must be signed by the state party central committee chairperson or the person designated to conduct the meeting under SDCL 12-6-57.

Deputy Lutz thanked Senator Wheeler for his work on this bill.

BOE Member Lake asked for clarification as to who would be appointed to sign the form. Deputy Lutz clarified the State Party Chairperson would appoint a signer per SDCL 12-6-57 or the State Party Chairperson would sign.

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 Lake.

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

ARSD 5:02:03:28 – Adding secured active designation application per requirements of SB102.

Deputy Lutz explained this law created a secure active voter registration designation. Sen. Schoenbeck introduced the bill this past session and it received broad legislative support. People who fall within this statute will qualify to have their voter record excluded from public inspection or copying. This includes statewide voter registration lists, absentee voter lists, and the record will not be searchable on the SOS website. This applies to individuals with an active domestic violence protection order or being a resident of an established shelter pursuant to chapter 25-10. Deputy Lutz also stated this program will be run through the SOS office. The SOS office will contact shelters on an annual basis to make sure the office has a list of the most current authorized shelter officials that sign the application forms. Deputy Lutz also pointed out that each applicant has to affirm that they meet the requirements of the law on the bottom of the application.

BOE Member Viken asked if the SOS office verifies the protection orders. Deputy Lutz stated the SOS office will verify with the Unified Judicial System (UJS) if the applicant marks the applicable affirmation on the form.

BOE Member Sieverding clarified that an applicant with this designation would not show up at all in the pollbooks on election day. Deputy Lutz confirmed they will not show up. People with this designation in the system will need to vote absentee.

No written comments were received regarding this rule.

No public testimony was given.

A **motion** to approve the proposed rule changes by Lake; second by Sieverding.

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

ARSD 5:02:03:29 – Adding secured active designation cancellation application per requirements of SB 102.

Deputy Lutz explained that a voter with the secured active designation listed in the registration file needs to apply if they want the designation canceled before the designation expires, which is 5 years.

Deputy Lutz informed the group that this designation will be fully functional mid-fall. The SOS office will reach out to the appropriate service entities to get the word out. The application will also be on the SOS website.

No written comments were received regarding this rule.

Public testimony was given by Tim Neyhart of Disability Rights SD. Mr. Neyhart stated his organization is in full support of these rules and their implementation.

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

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

Motion carried.

The Rules Hearing has ended at 10:27 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 – State-Held Title 1 = \$1,861,826.99, State-Held Title 2 = \$5,119,869.07, County-Held Title 2 = \$1,720,029.98. Recurring uses for those funds include federal election related costs, which includes grants to counties, equipment purchases, statewide voter file system maintenance and upgrades, and staff salary. The state fiscal year 2021 expenses for Title 1 = \$189,749.08 and Title II = \$494,430.16. The majority of the Title II funds were spent on equipment purchased by the counties using County-Held funds.

Deputy Lutz also briefed the committee on the Election Assistance Commission (EAC) Election Security Grant that was given out in 2018 and 2020. The balance of that grant is \$3,189,160.40. The original grant awards totaled \$6M from 2018 and 2020 (\$3M each). The 2018 grant required a 5% match, or \$150,000, which has been met. The 2020 grant required a 20% match, or \$600,000, of which \$300,000 has been met. Due to meeting only half of the 2020 requirement, \$1.5M will be returned to the (EAC) after December 21, 2021. The remaining funds (nearly \$1.7M) no longer contain a sunset timeframe. The focus of these funds will be on development of a post-election audit process and cybersecurity measures at the state and local levels.

Deputy Lutz also briefed the committee on CARES Act funding. All of the grant expenses for these funds were reimbursed directly to the counties for expenses incurred during the 2020 elections. It also had a 20% match, which the counties met. Total grant expenses came to \$350,024.09. The remaining funds of the grant are \$2,660,964.77. The remaining grant balance will be reverted to the federal government by September 30th, which marks the end of the federal fiscal year. In addition to this funding, the state also had a Coronavirus Relief Fund (CRF) administered by BFM. The fund provided precinct protection kits, which provided PPE for each polling location throughout the state. Also reimbursed through the CRF fund was the absentee ballot application mailing and public outreach costs.

Election Related Legislation – Voter registration update system

Secretary Barnett stated that this piece of legislation passed through the Senate last year during the 2021 session but failed in the House. He informed the group that 45 states have the ability to register to vote online or update their information.

BOE member Viken suggested that on page 2 of the 2022 Bill Draft, last paragraph, third sentence from the bottom, after 12-4-9, the word “to” should be added after “consents”. It would then read, “and that the applicant consents to providing the requested information...”

A **motion** to approve the correction in the 2022 Bill Draft was made by Viken; second by Lake.
Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett-Aye.
Motion carried.

BOE member Lake followed with a question asking if this is the identical language that was proposed last year? If not, what were the changes?

Deputy Lutz responded that the security processes listed in 1,2, and 3 are very similar. These are the processes that will validate a person attempting to access their individual registration record. In the Senate committee last year, an amendment struck all of the bill's language and inserted a new paragraph saying that voter registration information can be updated through a system provided by the Secretary of State. This legislation will merge the language together so the statute can reflect the security protocols that this system has to include. This legislation will essentially merge portions of the 2021 legislation with the amendment. It also lays out exactly what changes may be made online through this electronic system.

A **motion** to approve the proposed rule changes by Viken; second by Lake.
Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett-Aye.
Motion carried.

Report on Election Equipment testing

Director Warne gave the report on the Election Equipment testing. She stated that the extensive testing process usually takes about 3 days to get through. During the test, 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 that contained 10 choices and contained choices on both the front and back, except for the ExpressVote ballots which prints all selections on one side. The ballots for testing were at least 90% fully voted with the remainder containing overvoted and under voted ballots. Additional ballots were also processed as absentee ballots in which each ballot was folded in the same manner as absentee ballots. Optical scan ballots were hand marked by staff which were then tabulated on DS200, DS450, and DS850 tabulation machines. Director Warne also reported to the group that ballots were fed into all three tabulators in various ways to test the accuracy. All tabulators performed correctly. Director Warne stated that ExpressVote ballot cards were marked using four ExpressVote machines. Each card was accurately marked and displayed each race that was marked. Each card was then accurately tabulated 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. ES&S, our vendor, was also asked to provide a signature box where a poll worker could place the official ballot stamp. The tabulator can read that there is a ballot stamp in that box. If a stamp is present, the ballot would be counted, but if there wasn't, the tabulator would kick it out. During an election, if the stamp was not in the correct spot but was still on the ballot, the resolution board would still be able to count it. Director Warne stated that this change will aid auditors as the tabulators will now verify a ballot stamp is present when tabulating results on election night. ExpressVote ballots do not have the capability to contain a ballot stamp box, so they will need to be hand verified prior to tabulation.

BOE member Lake asked if all counties use an ExpressVote?

Deputy Lutz informed the group that we have that list and will get it sent out to everyone.

A **motion** to approve the proposed rule changes by Sieverding; second by Lake.
Roll call vote: Buckingham-Aye, Gillespie-Aye, Lake-Aye, Sieverding-Aye, Viken- Aye, Secretary Barnett-Aye.
Motion carried.

Tim Neyhart & C.J Moit – Disability Rights SD

Tim Neyhart informed the group that Disability Rights SD has been actively engaged the last several years regarding election legislation and have supported electronic registration because it works so much better for individuals their organization represents. Mr. Neyhart stated a priority for the upcoming session will be lobbying for legislation to allow individuals with disabilities to receive and mark a ballot electronically and being able to vote in private. This legislation would target individuals who are blind or visually impaired. There are a number of states around the country that give this option.

BOE member Viken asked how the process would work.

Mr. Neyhart mentioned that many states have this option as an extension of their UOCAVA systems. Director Warne explained that using the Uniformed and Overseas Citizens Absentee Voting (UOCAVA) system, military members and overseas citizens can request to receive their ballot electronically. The system sends that voter an email with a username and password and the link to get to the system. They must print their ballot, mark their ballot, then mail it to the county auditor's office. They cannot return it electronically.

CJ Moit stated that the ballots could be received the same way they are for the military, but the form that the ballot comes on would be compatible with screen readers. There would be the option to mark the ballot electronically, print, and mail it back. This way they could vote privately and independently because that is a right we all have and some aren't able to do that currently with the absentee voting.

BOE member Viken asked how an individual would know when this is sent to them.

CJ Moit stated if the link is being sent via email, they would get that notification verbally and they would then utilize their screen readers.

Deputy Lutz stated that, in that type of scenario, the voter would want to know verbally what selection they just made prior to hitting print.

Tim Neyhart explained that the screen reader technology will tell you that. For those individuals who utilize this technology, it will read it to you and tell you what you selected.

No actions were taken.

Public Comments

No comments were made.

General remarks

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, Sieverding-Aye, Viken-Aye, Secretary Barnett-Aye. Meeting adjourned at 11:20 a.m.