

Minutes
State Board of Elections Meeting
State Capitol, Pierre
May 8, 2007

The meeting was called to order by chair Chris Nelson at 12:05 p.m. on May 8, 2007 with the following members responding:

Present

Chris Nelson
Paula Jones
Karen Layher

Gail Brock
Linda Lea Viken

Christopher Madsen joined at 12:07
Richard Casey joined at 12:07

Chad Heinrich, Deputy Secretary of State; Kea Warne, Secretary of State's staff; Daniel Burke, HAVA Coordinator; Robert Kean, SD Advocacy Services; Rich Petersen, Brown and Saenger; Tony Pierce, Brown and Saenger; Karen Doerr, Potter County Auditor; Julie Pearson, Pennington County Auditor; Sherri Sundem Wald, Office of Attorney General; Sue Roust, Minnehaha County Auditor; Dorothy Schuh, Corson County Auditor; Adele Enright, Dewey County Auditor; Connie Atkinson, Lawrence County Auditor; Brenda McGruder, Lawrence County Auditor; Patty McGee, Sully County Auditor; Shellie Baumgart, Hughes County Finance Officer; Bob Mercer; Mike Hoversteen, Election Systems and Software; Matthew Nelson, Election Systems and Software; Eric Erickson, SD Association of County Officials and Steve Willis.

Moved by Layher and seconded to approve the minutes of the October 4, 2006 meeting. Passed.

A rules hearing was declared open.

Moved by Layher and seconded to approve the changes to ARSD 5:02:03:21 to add the words South Dakota to the type of driver license listed on the statement. Passed

Moved by Jones and seconded to approve the changes as amended to ARSD 5:02:05:22 by adding the date of birth, South Dakota driver license number and if the voter does not have a SD driver license number, the last four digits of the voter's Social Security Number to the provisional ballot envelope. Changed the language in the voter's affirmation to read declare or affirm instead of swear or affirm. Passed.

Moved by Viken and seconded to approve the changes to ARSD 5:02:06:01 to remove the general election hand counted paper ballot format and replace that with a general election optical scan ballot layout due to the fact that all general election ballots in South Dakota will always be optical scan ballot. Passed.

Moved by Brock and seconded to approve the changes to ARSD 5:02:06:01.02 to stress the words FILL IN and DO NOT by using all upper case bolded letters in the instructions to voters which are printed on an optical scan ballot. Passed.

Moved by Layher and seconded to approve the changes to ARSD 5:02:06:03 to remove the colon after the "vote for" instructions on the judiciary ballot. Passed.

Moved by Madsen and seconded to approve the repeal of ARSD 5:02:06:03.01 which included the Supreme Court retention ballot layout because the retention ballot language will be printed on the general election optical scan ballot as provided in 5:02:06:01. Passed.

Moved by Casey and seconded to approve changes to ARSD 5:02:06:13 to add the wording regarding adopting an ordinance to the choices the finance officer will use for the wording on a municipal question election ballot. Passed.

Moved by Brock and seconded to approve changes as amended to ARSD 5:02:08:00.01 to specify in more detail the requirements for counting signatures on petitions. Added language to the circulator's verification to require the printed name of circulator, the circulator's residence address and complete date. Added clarification for when the declaration of candidacy can be completed to be on or after the first date to circulate the petition as authorized by statute. If a signer does not have a residence address or post office box, a description of the residence location must be provided. Allow a building name to be used for a signer's residence address if it is a publicly known building. Remove the requirement for the year to be included in the voter's date of signing. Added clarification that the signers name must be printed and legible and the signer's county of voter registration must be provided. Passed.

Moved by Viken and seconded to add ARSD 5:02:08:00.04 to determine the first petition signature submitted to be valid when a signer has signed more petitions than offices to be nominated. Later submitted duplicate signatures are not valid. Passed.

Moved by Madsen and seconded to add ARSD 5:02:08:00.05 to set up the methodology for conducting the random sample for an initiative petition, referred law petition, or initiated constitutional amendment petition that are filed with the secretary of state. Passed.

Moved by Casey and seconded to approve changes as amended to ARSD 5:02:08:01 to require the candidate for partisan election to list his/her principle residence address on the nominating petition. Passed.

Moved by Layher and seconded to approve changes as amended to ARSD 5:02:08:05 to require an independent candidate to list his/her principle residence address on the nomination petition and remove the party affiliation requirement. Passed.

Moved by Brock and seconded to approve changes to ARSD 5:02:08:05.01 to remove the requirement of listing the party of voter registration of the running mate on the independent candidate declaration of candidacy and certification of running mate form. Passed.

Moved by Viken and seconded to approve changes to ARSD 5:02:08:07 to add specific language to the initiative petition for the verification of circulator portion. Passed.

Moved by Brock and seconded to approve changes to ARSD 5:02:08:08 to add specific language to the referendum petition for the verification of circulator portion. Passed.

Moved by Casey and seconded to approve changes to ARSD 5:02:08:09 to add specific language to the initiated constitutional amendment petition or initiated petition for repeal of constitutional provision for the verification of circulator portion. Passed.

Moved by Casey and seconded to approve changes to ARSD 5:02:08:20 to remove the requirement of listing the party affiliation of independent candidates for the office of Presidential Electors. Passed.

Moved by Viken and seconded to approve changes as amended to ARSD 5:02:09:01.02 to create a tally sheet prior to the machine count and specify a minimum of twenty-five test ballots for all test decks. Also specify if more than one tabulating machine is used in the election, each machine shall be fully tested. Passed.

Moved by Brock and seconded to approve changes to ARSD 5:02:08:20 to delete the mention of the National Association of State Election Directors and system approved date prior to December 15, 1995 from the approval of automatic tabulating systems requirement before distribution because this information is old language which is no longer needed in this rule. Passed.

Moved by Casey and seconded to approve changes to ARSD 5:02:09:04.03 to remove the language in (8) for lock and seal and refer to the seal of the ballot box to be in accordance to 5:02:16:37. Passed.

Moved by Viken and seconded to approve changes to ARSD 5:02:09:04.04 to add language in (2) to specify what the resolution board does with excess ballots. Clarify in (3b) the procedure the resolution board will use to determine the marking of duplicate ballots. Passed.

Moved by Madsen and seconded to approve changes as amended to ARSD 5:02:09:05 to state in (3) what the recount board does with excess drawn ballots. Leave in (5). Add (6) to require the testing of the automatic tabulating equipment and allow for additional tests of the equipment. Passed.

Moved by Layher and seconded to approve changes as amended to ARSD 5:02:09:13 to name this the envelope for unofficial returns and remove the word official from this rule. Add a description for the returns as being printed from the tabulating or accumulation equipment. Passed.

Moved by Madsen and seconded to approve changes as amended to ARSD 5:02:09:22 to clarify what type of marks are counted on optical scan ballots. Passed.

No action taken on 5:02:10.01

Moved by Madsen and seconded to approve changes to ARSD 5:02:10:01.03 to update the penalty statement for impersonating a registered voter on the combined absentee ballot application/return envelope to a \$10,000 fine. Passed.

Moved by Viken and seconded to approve changes as amended to ARSD 5:02:10:05 to insert at the end of the rule title the language 'except as provided in 5:02:10:08'. Remove language regarding a past effective date and update the penalty statement for impersonating a registered voter on the official return envelope to a \$10,000 fine. Passed.

Moved by Layher and seconded to approve changes to ARSD 5:02:10:08 to update the mail code number that is required to be printed on the ballot transmission envelope for overseas ballots and update the penalty statement for impersonating a registered voter on the ballot return envelope to a \$10,000 fine. Passed.

Moved by Brock and seconded to approve changes as amended to ARSD 5:02:16:17.01 to clarify write-in votes may not be counted. Passed.

Moved by Brock and seconded to approve changes as amended to ARSD 5:02:16:17.02 to clarify what type of marks are counted on paper ballots. Passed.

No action taken on ARSD 5:02:16:37.

No action taken on ARSD 5:02:16:38.

No action taken on ARSD 5:02:16:39.

Rules hearing concluded at 3:15.

Mike Hoversten and Matthew Nelson demonstrated Elections Systems and Software's electronic poll book. The electronic book provides immediate access to voter information, polling place locations, ballot styles and other information for poll workers.

Mark Manganaro, State Certification Manager for Election Systems & Software submitted a written request for an administrative certification upgrade for the Model 100 optical scan ballot counter from the current certified version 5.2.0.0 to 5.2.1.0. The 5.2.1.0 version has received the NASED certification number N-2-02-22-22-006. The enhancement eliminates a "halt error" from occurring and requiring a reboot of the system. Moved by Jones and seconded to approve the M100 certification upgrade for version 5.2.1.0. Passed.

Dan Burke discussed an amendment to the State Plan to allow for the use of title II, section 251 funds for new projects that improved the administration of elections for federal office. In keeping with the current plan for the use of Help America Vote Act (HAVA) funds by counties, the State will continue to oversee the use of title II, section 251 funds for appropriate purposes. Moved by Brock and seconded to approve the amendment to the State Plan. Passed. Dan will submit the amendment to the U.S. Election Assistance Commission for listing in the Federal Register.

Nelson discussed the following proposals to look at for the 2008 legislative session.

SDCL 6-8B-4 to change the notice of election publication timeframe to be published the same time as other notices of election. Moved by Viken and seconded to approve this proposal. Passed.

No action taken on SDCL 12-4-10.

No action taken on SDCL 12-16-1.1 except for the Secretary of State to request an Attorney General Opinion regarding State Constitution Article IV, Section 7.

SDCL 12-17B-1 to allow for a county auditor to appoint additional resolution board members if needed. Moved by Madsen and seconded to approve this proposal. Passed.

SDCL 12-21-32 to remove the requirement for recount certifications to be transmitted to the secretary of state by registered or certified mail. Moved by Casey and seconded to approve this proposal. Passed.

Julie Pearson, Pennington County Auditor, discussed the issue regarding the violation of the declaration of candidacy and whose responsibility is it to deal with this issue. Request for Secretary of State to draft legislation for this and use the same type of language as provided in HB 1048 for who's responsible for each jurisdiction.

Julie Pearson discussed allowing permanent mail voting for those voters that vote by absentee. Request for Secretary of State to draft legislation.

Julie Pearson discussed changing the term "absentee voting" to "early voting". Request by Viken to have the Legislative Research Council run a check for the term "absentee voting" in code and administrative rule to determine how much of a change this will take.

Julie Pearson discussed the issue of absentee ballot applications mailed to the county auditor that contain campaign information on the reverse side of the envelope. This violates SDCL 12-18-3 for no campaigning at a polling place. Request to have Secretary of State send letters to the state political parties and ballot question committees regarding this statute.

Chad Heinrich, Deputy Secretary of State, presented an overview of HB 1048 (campaign finance bill).

Nelson presented an overview of federal legislation and how the legislation will affect South Dakota if it passes.

Move by Layher and seconded to adjourn at 5:45. Passed.

Chris Nelson, Secretary of State

Kea Warne, Recorder