

# SECRETARY OF STATE

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**Chris Nelson**

Secretary of State

Teresa J. Bray  
Deputy

## Minutes State Board of Elections Meeting December 9, 2009

9:00 a.m. Central Time at the following DDN locations: State Capitol, 500 East Capitol, Room B12, Pierre, SD 57501; University of South Dakota State University, 2205 Career Place, University Center Building Room 282, Sioux Falls, SD 57107; Grant County Courthouse, 220 E. 5<sup>th</sup> Ave., Milbank, SD 57252; Rapid City Department of Health, 909 E. St. Patricks Street #7 (Midland Shopping Center), Rapid City, Sd 57709; Redfield Department of Human Services, 17267 W. 3<sup>rd</sup>. Street, Redield, SD 57469.

The meeting was called to order by chair Chris Nelson at 9:04 a.m. Central Time on December 9, 2009 with the following members responding:

### Present

Chris Nelson  
Dick Casey  
Karen Layher  
Cindy Schultz  
Linda Lea Viken – joined at 9:55

### Absent

Christopher Madsen  
Matt McCaulley

Kea Warne, Election Supervisor; Teresa Bray, Deputy Secretary of State, Jennifer Headlee, HAVA Coordinator; Sue Roust, Minnehaha County Auditor; Heather Irwin, Minnehaha County Auditor staff; Robert Kean, South Dakota Advocacy Services; Patty McGee, Sully County Auditor and Sherri Wald, Attorney General's Office; Senator Jason Gant; Senator Ben Nesselhuf; Julie Pearson, Pennington County Auditor; Lori Severson, Pennington County Auditor's Office and Eric Erickson, Executive Director SD Association of County Officials.

Moved by Layher and seconded to approve the minutes of the May 7, 2009 meeting. The roll being called:

Yeas 4, Nays 0, Absent 3  
Yeas: Nelson, Casey, Layher, Schultz  
Absent: Madsen, McCaulley, Viken  
Motion Passed.

Teresa Bray, Deputy Secretary of State provided an overview of the Military and Overseas Voter Empowerment Act (MOVE Act) which was passed by Congress with a mandatory implementation date for the November, 2010 General Election. Teresa and Jennifer Headlee, HAVA Coordinator are the co-leaders for this project.

A rules hearing was declared open at 9:15 a.m. Central Time.

Moved by Layher and seconded to approve the changes to both ARSD 5:02:03:16 and 5:02:03:20 to add the Address Service Requested option for the postal endorsements. The roll being called:

Yeas 4, Nays 0, Absent 3  
Yeas: Nelson, Casey, Layher, Schultz  
Absent: Madsen, McCaulley, Viken

Administration  
(605) 773-3537  
Fax (605) 773-6580

Corporations  
(605) 773-4845  
Fax (605) 773-4550

Uniform Commercial Code  
(605) 773-4422  
Fax (605) 773-4550

Motion Passed.

Moved by Schultz and seconded to approve the changes to ARSD 5:02:04:04 by changing food stamps to SNAP and inserting the reference of the Voter Information Portal to this notice. The roll being called:

Yeas 4, Nays 0, Absent 3  
Yeas: Nelson, Casey, Layher, Schultz  
Absent: Madsen, McCaulley, Viken

Moved by Casey and seconded to approve the changes to ARSD 5:02:05:24 by inserting a paper or electronic copy of the notice shall be maintained by the official in charge of the election for the time periods defined in SDCL 12-20-31. The roll being called:

Yeas 4, Nays 0, Absent 3  
Yeas: Nelson, Casey, Layher, Schultz  
Absent: Madsen, McCaulley, Viken

Moved by Layher and seconded to approve the changes ARSD 5:02:06:21 to include the language of sixty percent of votes cast to be consistent with passage requirements for water project district formation. The roll being called:

Yeas 4, Nays 0, Absent 3  
Yeas: Nelson, Casey, Layher, Schultz  
Absent: Madsen, McCaulley, Viken

Moved by Schultz and seconded to approve the changes to ARSD 5:02:08:07, 5:02:08:08 and 5:02:08:09 to add the Title and Attorney General Explanation of the measure to the petition form. These changes have a delayed implementation date of July 1, 2010. The roll being called:

Yeas 4, Nays 0, Absent 3  
Yeas: Nelson, Casey, Layher, Schultz  
Absent: Madsen, McCaulley, Viken

Moved by Casey and seconded to approve the changes to ARSD 5:02:8:11 to add a section for the representation number to be listed if a candidate is running in a school district with representation areas. The roll being called:

Yeas 4, Nays 0, Absent 3  
Yeas: Nelson, Casey, Layher, Schultz  
Absent: Madsen, McCaulley, Viken

Moved by Casey and seconded to approve the changes to ARSD 5:02:09:05 to allow a hand count to be conducted to verify the accuracy of the count by the automatic tabulating equipment during a recount. The roll being called:

Yeas 4, Nays 0, Absent 3  
Yeas: Nelson, Casey, Layher, Schultz  
Absent: Madsen, McCaulley, Viken

Moved by Viken and seconded to approve the changes to both ARSD 5:02:10:01 and 5:02:10:01.03 to give more instruction to the voter applying for an absentee ballot by moving the 3:00 application deadline, informing the voter the application is good for elections in that calendar year and provide the Secretary of State's website for additional absentee voting information to the top paragraph on the form. Additional instructions were added next to the Primary election box informing an independent registered voter that he or she may have a choice of voting a non-political or a Democratic Party ballot. The mailing address section was moved up above the voter signature section. The 3:00 pm deadline information was removed from the authorized messenger section since it was added in the first paragraph of the form. A new section with a delayed implementation date of July 1, 2010 titled Military or Overseas Voters Only was added to instruct those voters they can have their ballot sent electronically and if the voter selects that option, he/she must provide his/her email address. The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Viken and seconded to approve the changes to ARSD 5:02:10:04 to include additional instruction to the voter to not return the absentee ballot to the polling place and include the Secretary of State's website for additional information on absentee voting. The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Layher and seconded to approve the changes to ARSD 5:02:16:00 to add a definition for over vote. The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Rules hearing concluded 10:28 a.m. Central Time.

Discussion and action was taken on recommendations to the Secretary of State on several legislative proposals as follows:

Moved by Viken and seconded to include the language "sixty percent for water project district formation" to be included as an option for the passage requirement on formation of special districts (SDCL 6-16-5 & 6-16-5.2). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Casey and seconded to change the date of signing requirement to be consistent with all other petitions (SDCL 7-18A-11). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Viken and seconded as amended to provide the process for a secondary municipal election (SDCL 9-13-25 & 9-13). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Schultz and seconded to add the option to use hand-counted paper ballots for a statewide secondary election if that election does not contain a federal race (SDCL 12-19-2). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Schultz and seconded to change the date for ballots to be in possession of the county auditor from six weeks to forty-five days (SDCL 12-16-1). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Casey and seconded as amended to remove the requirement of sending out an absentee through the next two general elections for UOCAVA voters and add the federal requirement to allow UOCAVA voters to receive their absentee ballot electronically (SDCL 12-19-2). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Schultz and seconded to add a new section to direct what ballot an Independent voter will be provided with if no preference is designated on the application for absentee ballot (SDCL 12-19). The roll being called:

Yeas 4, Nays 1, Absent 2  
Yeas: Nelson, Casey, Schultz, Viken  
Nays: Layher  
Absent: Madsen, McCaulley

Moved by Viken and seconded to require a reason to be listed on uncounted absentee ballot envelopes and require a signature of one of the election board members. (SDCL 12-19-10). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Viken and seconded to rescind previous motion. The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Viken and seconded to amend the proposed language in SDCL 12-19-10 to require a reason to be listed on uncounted absentee ballot envelopes and require a signature of one of the election board members and amend language in 12-19-12 and 12-19-48 regarding the notation on the absentee ballot envelope. The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Viken and seconded to use standards defined by the State Board of Elections to determine voter's intent (SDCL 12-20-7). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Viken and seconded to list out the materials to be provided to the recount board and also to allow a recount board to examine provisional ballot envelopes and absentee ballot envelopes which were determined to be not countable (SDCL 12-21-24). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Casey and seconded to add in the language "if not otherwise specified" for how a road district election is conducted (SDCL 31-12A-15 & 34-47-2). The roll being called:

Yeas 5, Nays 0, Absent 2  
Yeas: Nelson, Casey, Layher, Schultz, Viken  
Absent: Madsen, McCaulley

Moved by Casey and seconded to clarify what is needed for a complete notarization; define qualified voter and include a voter to be on the active voter registration list of the county stated on the petition on the date the petition was signed (SDCL 2-1-10, 12-1-3 and 12-4-36). The roll being called:

Yeas 5, Nays 0, Absent 2

Yeas: Nelson, Casey, Layher, Schultz, Viken

Absent: Madsen, McCaulley

Moved by Layher and seconded to include the transmittal of the absentee voter log and remove the requirement of transmittal of current master registration file of voters by January 1, 2002 language. The deadline for notifying the county auditor of any local changes in their boundaries changed from thirty to forty-five days (SDCL 12-4-37 and 12-14-1.1). The roll being called:

Yeas 5, Nays 0, Absent 2

Yeas: Nelson, Casey, Layher, Schultz, Viken

Absent: Madsen, McCaulley

Discussion on changes to SDCL 18-1-3.1 but no action taken.

Moved by Casey and seconded to include the reference of UOCAVA ballot link. Secretary Nelson will include the definition of ballot link in another statute. The roll being called:

Yeas 5, Nays 0, Absent 2

Yeas: Nelson, Casey, Layher, Schultz, Viken

Absent: Madsen, McCaulley

The Dakota Digital Network site reservation times ended at 12:00 p.m. Central Time before Nelson was able to obtain a motion to adjourn:



Chris Nelson, Secretary of State



Kea Warne, Recorder