

FORM 10

MINUTES OF PUBLIC HEARING Board of Elections

The Board of Elections (BOE) convened at 1 PM on May 7, 2025, in the LRC Appropriations Room.

The purpose of the meeting was to conduct a public hearing on the proposed rules of Board of Elections numbered §§ 5:02:03:01 Voter registration form; 5:02:03:13 Voter registration instructions; 5:02:03:19 Voter registration address verification notice; 05:02:03:27 Voter registration list maintenance confirmation notice; 5:02:06:10.03 Primary election ballot for ballot marking device; 5:02:09:05 Recount procedure; 5:02:10:01.01 Receipt for absentee ballot returned by authorized messenger; 5:02:10:04 Instructions to absentee voters, adopted under the authority of SDCL 12-1-9.

Hearing Officer: Monae L. Johnson, Secretary of State

A. Call to Order

Members of the Board in Attendance: Secretary of State L. Monae Johnson (Chair), Austin Hoffman (BOE), Lindley Howard (BOE), Michael Buckingham (BOE), Jamalia Franzen (BOE), Scott McGregor (BOE), and Kent Alberty (BOE).

Others Present (In-Person):

Thomas J. Deadrick (Deputy Secretary of State), Rachel Soulek (Director, Division of Elections), Christine Lehrkamp (Deputy Director, Division of Elections), Thomas Oliva (Hughes County Finance Officer), Jill Hansen (Beadle County Auditor), Rick Weible, Penny BayBridge, Leah Anderson (Minnehaha County Auditor), Stacey Pinney (Haakon County Auditor), Cindy Mohler (Pennington County Auditor), Jodi Waltman, Jean Childs, and Tom Pischke (Senator – District 25).

Others in Attendance: Others Present (Remotely):

Fifty-one (51) individuals were present remotely via call-in and Teams.

B. Approve the Draft Minutes from the Board of Elections Meeting on December 4, 2024:

A motion to approve the draft minutes from the Board of Elections meeting on December 4, 2024 was made by Howard and seconded by Franzen.

Roll Call Vote: Alberty – Aye, Buckingham – Abstain, Franzen – Aye, Hoffman – Abstain, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 5 – Nays 0 – Abstain 2. Motion Carries.

C. Approve the Agenda:

A motion to approve the amended agenda was made by McGregor and seconded by Buckingham.

Roll Call Vote: Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

Written Testimony

The Board of Elections (BOE) received written comments from Kayla Delfs, Lincoln County Deputy Auditor, on Tuesday April 15, 2025 via email. The BOE was provided the same along with Secretary of State’s comments in red. The BOE took them under advisement and acted as reported below and took them under advisement.

D. Rules Hearing to Amend or Enact the Following Administrative Rules:

Rules Hearing began at 1:02 PM CDT.

1. ARSD 5:02:03:01. Voter registration form; (effective through December 31, 2025).

Deputy Deadrick provided an explanation of the differences between versions “a” and “b” of the form and clarified why changes are needed through the end of 2025, with a new version planned for use beginning January 1, 2026. McGregor questioned the necessity of including version “a” if the changes don’t become effective until 2026, suggesting it may be more efficient to wait for the updated form. Tom responded that some statutory changes take effect on July 1, 2025, while others become effective January 1, 2026, necessitating the interim version. Lindley asked whether the form will still be available if it is removed from administrative rule, and it was confirmed that the Secretary of State’s Office will continue to provide the form. In response, McGregor proposed adding language to the rule stating that the Secretary of State shall prepare and distribute to county auditors a form containing the required information, with that provision placed at either the beginning or end of the rule.

McGregor moved that the rule be amended to add a new subsection stating that the “Secretary of State’s Office shall create and produce a voter registration form containing the above information and distribute it to the county auditors.” The motion was seconded by Howard.

Roll Call Vote (Amendment): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

Public Comment: Leah Anderson, Minnehaha County Auditor, raised concerns about the proposed voter registration form, specifically objecting to the change of wording from “optional” to “voluntary” in items 6 and 9, suggesting it could confuse voters. She also recommended clarifying language related to residency requirements under HB 1066 by explicitly stating on the form that the applicant must have been a South Dakota resident for at least 30 consecutive days, particularly in the sworn statement section. She

suggested holding another meeting to discuss the differences between the two forms being proposed for use in 2025 and 2026.

Rick Weible, a member of the public from Elkton, expressed general support for the direction of the proposed changes but also recommended tabling the item for a future meeting. He emphasized the importance of giving the public and auditors adequate time to review the forms to minimize errors and ensure clarity, suggesting a follow-up meeting later in the summer or fall to finalize the version effective January 1, 2026.

Buckingham moved to approve the rule as amended and was seconded by Alberty.

Roll Call Vote (Pass as amended): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

2. ARSD 5:02:03:01. Voter registration form; (effective January 1, 2026).

McGregor moved to add the same changes from the previous rule to this one as well to ensure that the Secretary of State will provide county auditors with a voter registration form. The motion was seconded by Howard.

Roll Call Vote (Amendment): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

Public Comment: Rick Weible from Elkton reiterated his earlier comments, expressing support in principle but objecting to moving forward without the actual form available for public review. He emphasized that the State Board of Elections is statutorily responsible for reviewing such forms and warned that submitting incomplete rule packages to the Rules Committee is inappropriate. He stated he would raise the issue with the Rules Committee if necessary.

Leah Anderson, Minnehaha County Auditor, spoke in opposition to the rule, stating she should have identified herself as an opponent earlier. She echoed concerns about the form not being ready for review and expressed that the Board is rushing the process without thoroughly reviewing both the law and the form.

Board member McGregor inquired about the timing of the next meeting, noting an understanding that it would be held in June. The Secretary of State clarified that the date has not yet been set, but it will likely occur in July or August. In response to earlier public comments, McGregor moved to delay final passage of ARSD 5:02:03:01; (effective January 1, 2026) until the Board's next meeting and was seconded by Alberty.

McGregor moved to delay final passage of ARSD 5:02:03:01; (effective January 1, 2026) until the Board's next meeting and was seconded by Alberty.

Roll Call Vote (Delay final passage): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

Secretary of State's office clarified they are working on a form.

3. ARSD 5:02:03:13. Voter registration instructions.

The board discussed proposed changes to the voter registration instructions, specifically regarding how residency is defined. The original revision added the phrase "be a resident of South Dakota for 30 consecutive days, as defined by 12-1-4".

McGregor initially moved to rephrase the language so that "*as defined by 12-1-4*" followed "*South Dakota*", to clarify the statutory reference. However, he later withdrew his motion, after Hoffman expressed concern that the wording might unintentionally require 60 days of residency instead of 30 due to how the statute defines when residency begins.

Deputy Deadrick explained that the 30-day residency requirement was added to statute during the legislative session, and the instruction language should reflect that so voters understand they must be in the state for 30 consecutive days to become a resident eligible to vote.

A discussion followed regarding the clarity and accuracy of the wording. Hoffman then offered a revised motion: "Maintain an actual fixed permanent dwelling establishment or any other abode where the individual lives and usually sleeps for at least 30 consecutive days, deeming them a resident of South Dakota as defined by 12-1-4." Board member McGregor expressed concern about duplicating statutory language in administrative rules.

Hoffman moved that ARSD 5:02:03:13 be amended and was seconded by Franzen.

Roll Call Vote (Amendment): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Nay, Secretary Johnson – Aye.

Ayes 6 – Nays 1 – Abstain 0. Motion Carries.

Public Comment: Rick Weible from Elkton urged the board to table the rule and refer it to the Legislative Research Council (LRC) for review, emphasizing that duplicative language should be avoided. He agreed with earlier comments that the rule should be written more clearly to better serve voters and suggested that reviewing language used in other government forms, such as hunting licenses, could be helpful.

Leah Anderson, the Minnehaha County Auditor, also opposed the rule, citing both procedural and content-related concerns. She pointed out that the board amended the rule and proceeded to vote without allowing for public comment on the amendment, which she said violated proper meeting procedure. Additionally, she objected to inserting codified law directly into the rule text, arguing that doing so would require similar changes throughout the form, such as for citizenship requirements. While she was initially in favor of the rule, she opposed it following the changes and the way the meeting was conducted.

Lastly, Penny Baybridge from Minnehaha County expressed opposition as a private citizen, stating that referencing codified law would confuse voters. She advocated instead for clear, plain language—like "30 consecutive days"—that people can easily understand without needing to look up legal references.

In response to public comments suggesting that the amended language be reviewed by the Legislative Research Council (LRC), it was clarified that the LRC had already reviewed all rules presented, including this one, and had made various changes for

clarity. However, it was noted that the board still had the authority to make further amendments.

Hoffman moved that the proposed rule, as amended, be sent back to the LRC for further review and was seconded by Franzen.

Roll Call Vote (Referral to LRC): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

4. ARSD 5:02:03:19. Voter registration address verification notice.

Discussion focused on formatting and language used on address verification notices sent to voters. The USPS does not reliably review the front of the cards, so the checkbox was recommended to be moved to the back per USPS guidance. Clarification was provided that “person described below” refers to voter information printed on the card, not to language in the administrative rule.

McGregor moved that subsection (2) of the rule be amended by deleting the word “below” and replacing it with “on the verification notice,” so the sentence reads: “If this person described on the verification notice no longer lives at this address.” McGregor’s motion failed for lack of a second.

Public Comment: Rick Weible offered public comment in support of the proposed rule. He suggested replacing the word “described” with “listed” for clarity, noting that having the actual card available during discussion would have been helpful. He acknowledged and appreciated Director Soulek’s earlier comments about challenges with the United States Postal Service (USPS), calling them instructive. Weible recommended that instead of sending a return postcard on its own, the state should consider investing in a real envelope mailed to the resident’s address with the return card enclosed. This approach would allow voters to review the card properly and ensure the return postage directs the card back to the county, rather than relying on inconsistent USPS processes that can result in confusion or lost mail.

Buckingham moved that the rule be approved without amendment and was seconded by Hoffman.

Roll Call Vote (Pass as introduced): Alberty-Aye, Buckingham-Aye, Franzen – Aye, Hoffman – Aye, Howard-Aye, McGregor-Aye, Secretary Johnson-Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

5. ARSD 5:02:03:27. Voter registration list maintenance confirmation notice.

Board members reviewed how the rule outlines the use of a double postcard, as required by statute. The initial pages described in the rule packet describes the process involving the postcard. However, the proposed rule also references an alternative option—sending a letter instead of a postcard—which some county auditors prefer due to ease and potential cost-effectiveness. Despite this preference, it was noted that there is no statutory authority to use letters in place of postcards. Furthermore, while some auditors have already been sending letters, they often reuse the postcard language, which leads to confusing wording in a letter format. Given that statute 12-4-19.7 explicitly requires a double postcard, board members discussed the possibility of not passing this rule as written and instead pursuing legislation in 2026 to authorize the use of letters.

Public Comment: Rick Weible from Elkton spoke as a proponent. He acknowledged that while the rule lacks clear statutory authority and isn't enforceable or tied to any fines, he encouraged the board to adopt it anyway as a step toward improving customer service. He suggested that implementing the rule now would allow the state to gain practical experience with the approach, which could then support a future legislative change based on demonstrated success.

Board members discussed the downside of approving the rule. It was mentioned that a lawyer cannot ethically support a rule that lacks statutory backing. A lawyer member confirmed agreement, noting that although the rule might be practical, it doesn't align with current statutory language. It was clarified that the idea stemmed from prior list maintenance discussions, not the original auditor rule packet. Several board members expressed support for the concept but agreed that a statutory change is necessary before approving it.

Buckingham made a motion to approve the rule as introduced and was seconded by Howard.

McGregor made a substitute motion to remove all red language at the bottom of pages 14 and 15 that provide for a letter version of the voter registration list maintenance confirmation notice and was seconded by Hoffman.

Roll Call Vote (Amendment): Alberty – Aye, Buckingham – Nay, Franzen – Nay, Hoffman – Aye, Howard – Nay, McGregor – Aye, Secretary Johnson – Aye.
Ayes 4 – Nays 3; Motion Carries.

Roll Call Vote (Pass as amended): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.
Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

6. ARSD 5:02:06:10.03. Primary election ballot for ballot marking device.

Board member Howard discussed a change to ARSD 5:02:06:10.03 regarding the primary election ballot for ballot marking devices. The proposed change, originally included in the auditors' rule packet, would allow counties to print the ballot style name—such as a party affiliation or a specific combination like Republican with a particular school district—on the ExpressVote card, similar to how it appears on optical scan ballots. This gives counties flexibility whether they print ballots by precinct or by style. Deputy Auditor Kayla Delfs from Lincoln County submitted a written comment suggesting the ballot style name be explicitly listed alongside the precinct name at the top of the rule.

Howard moved to add “or ballot style” at the top of the header of the rule and was seconded by Franzen.

Public Comment: Rick Weible supported the rule change, noting that primary elections create multiple ballot styles due to party preferences, and labeling these helps both voters and election workers. He raised concerns about a recent presidential executive order banning barcode-reading tabulators, which could impact South Dakota's current voting system. While he supports the changes, he warned the state may need to revisit the rule as federal requirements evolve.

Howard asked that her original motion also include “or ballot style” lower down in the rule as well and was seconded by Franzen.

Roll Call Vote (Amendment): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

Franzen moved that the proposed rule, as amended, be passed and was seconded by McGregor.

Roll Call Vote (Pass as amended): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

7. ARSD 5:02:09:05. Recount procedure.

The board next discussed changes to ARSD 5:02:09:05 regarding recount procedures. This rule change was suggested by county auditors, with the primary concern being subsection (7), which originally implied that a recount board would conduct the test of the automatic tabulating equipment. The proposed update clarifies that a recount board shall supervise the test instead.

Public Comment: Minnehaha County Auditor Leah Anderson expressed support but raised a question about whether the revised language—stating that a recount board “shall supervise” the testing—would also allow them to supervise manual ballot counts conducted by others, particularly in large counties like hers where additional help might be needed to meet timelines. She suggested clarifying whether this is consistent with codified law.

Rick Weible from Elkton also supported the rule, emphasizing the importance of maintaining flexibility for auditors, especially in disaster recovery situations or unexpected recount scenarios. He echoed Anderson’s comments, stressing the need for clear authority and supervisory roles to ensure secure and efficient election processes.

Franzen moved to approve the rule as introduced and was seconded by Hoffman.

Roll Call Vote (Pass as introduced): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

8. ARSD 5:02:10:01.01. Receipt for absentee ballot returned by authorized messenger.

Howard explained that adding the phrase “*by authorized messenger*” clarifies that the receipt is only provided to an authorized messenger who requests it, aligning the rule more clearly with the law.

Public comment: None.

Howard moved to approve the rule as introduced and was seconded by Franzen.

Roll Call Vote (Pass as introduced): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

9. ARSD 5:02:10.04. Instructions to absentee voters.

Howard explained that the primary purpose of the amendment to ARSD 5:02:10.04, regarding instructions to absentee voters, was to align the rule with a 2023 statutory change to SDCL 12-19-7. Specifically, the word "someone" in the original rule was replaced with "absentee ballot messenger" to reflect the legal requirement that only a designated absentee ballot messenger may return a voter's absentee ballot. Additional revisions were made for style and form by LRC.

McGregor moved to change back to "Complete and (bold) SIGN (bold) the statement on the back of the return envelope and (bold) SIGN IT (unbold)." Died for lack of a second.

Public Comment: Rick Weible expressed support for the proposed changes but recommended removing the word "blue" from the instruction that voters should fill in the oval using a blue or black ink pen. He explained that based on repeated testing with DS200 tabulators, blue ink has a significantly higher failure rate in being read accurately compared to black ink, due to the tabulators' limited contrast detection. He emphasized that using only black ink would ensure greater ballot readability and vote accuracy.

Leah Anderson, Minnehaha County Auditor, also supported the rule changes and echoed concerns about blue ink. She noted that during both testing and the actual election, ballots marked with blue ink often appeared as blank or had unclear marks, which slowed down the resolution process. Anderson also suggested that instead of listing the dollar amount for return postage on absentee ballot instructions, it would be clearer to list the number of forever stamps needed.

Board members reflected on the earlier legislative debate about whether to require black ink only for marking ballots. Despite concerns about blue ink failing to be read by tabulators, the legislature chose not to mandate black ink exclusively, opting instead to keep the language allowing both blue and black. The legislature had considered a change in Senate Bill 20 to require black ballpoint pens but ultimately rejected it, deciding that marks would still count as long as they could be read.

Howard moved an amendment to clarify that only a black ink pen should be used and was seconded by Franzen.

Roll Call Vote (Amendment): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Nay, Secretary Johnson – Aye.

Ayes 6 – Nays 1 – Abstain 0. Motion Carries.

McGregor noted on there was a word missing or some confusion on one of the instructions to voters and moved an amendment for the instructions to read as: "deliver the ballot in person, or have an absentee ballot messenger deliver it for you to the person in charge of the election." The motion was seconded by Howard.

Roll Call Vote (Amendment): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

Howard suggested simplifying the instructions by removing the word "only" and changing the sentence to read: "Fill in the oval next to the name or ballot question using a black ink pen."

Hoffman moved that the word "only" be removed and was seconded by Howard.

Public Comment: None.

Roll Call Vote (Amendment): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Nay, Secretary Johnson – Aye.

Ayes 6 – Nays 1 – Abstain 0. Motion Carries.

Hoffman moved to approve the proposed rule, as amended, and was seconded by Buckingham.

Roll Call Vote (Pass as amended): Alberty – Aye, Buckingham – Aye, Franzen – Aye, Hoffman – Aye, Howard – Aye, McGregor – Aye, Secretary Johnson – Aye.

Ayes 7 – Nays 0 – Abstain 0. Motion Carries.

Secretary Johnson concluded the rule-making portion of the meeting.

E. Discussion of Further Rule Making:

Deputy Deadrick explained to the Board that there will be more rules drafted and presented to them for their consideration. He further explained that the Secretary of State's Office would like recommendations and suggestions on what rules should be like for challenges and corrections to the voter rolls.

F. Public Comments:

During public testimony, Rick Weible from Elkton expressed support for allowing residents to submit affidavits if someone no longer lives at a given address, suggesting this could trigger a voter's status to be marked inactive—not removed—pending auditor review. He shared concerns about outdated voter rolls and cross-state voting issues, citing personal experiences and national data concerns.

Minnehaha County Auditor Leah Anderson supported having a formal process for flagging such voters as inactive, noting current limitations in her authority.

Penny Baybridge added concerns about voting in nursing homes, recalling instances where residents appeared confused or unable to understand the voting process, raising questions about voter competence and how to appropriately handle such situations.

G. Board Member Comments:

Buckingham asked to consider dates for the next meeting, and the Board chose August 14, 2025 as the date for its next meeting.

H. Secretary Comments:

Secretary Johnson thanked everyone for their time and for reviewing the rules. She also announced a new hire starting in the office.

I. Adjournment:

Franzen moved that the Board of Elections adjourn and was seconded by Alberty.
Voice Vote (Adjournment): Motion Carries.
The meeting adjourned at 3:22 P.M. CDT.

Respectfully submitted,

Thomas J. Deadrick
Deputy Secretary of State