



Legislative Research Council

Rules Review Committee Minutes

**Three hundred fifty-fourth meeting
Monday
December 14, 2015**

**Room 414
State Capitol
Pierre, South Dakota**

The three hundred fifty-fourth meeting of the Rules Review Committee was called to order by Senator Mike Vehle (Chair) at 8:22 a.m., CT, on December 14, 2015, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: Department of Human Services, 2361 Dakota Ave. S., Huron, South Dakota; and South Dakota School of Mines and Technology, 501 E. St. Joseph St., Room CB109, Rapid City, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jim Bradford, Phyllis Heineman (appearing telephonically), and Mike Vehle (Chair) and Representatives Peggy Gibson, Jean Hunhoff, and Timothy Johns (Vice Chair). Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.sd.gov> under "Interim."

Approval of Minutes

Representative Johns moved, seconded by Representative Hunhoff, that the minutes of the November 9, 2015, meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Chair Comments

Senator Mike Vehle, Chair, commented that he would be working with staff to draft legislation to require that the rules be promulgated in a manner that meet time constraints for the committee and staff. He would like to set the Interim Rules Review Committee's first and last meeting dates in statute so agencies know the schedule and can plan accordingly. If any members had suggestions, please contact either Senator Vehle or Mr. Decker.

Rules Reviewed

Department of Game, Fish and Parks – Amend a Park License and Trail Use Pass rule to increase the fee for a 7-day Custer State Park entrance license from \$15 to \$20, and increase the one-day fee for a motor vehicle in Custer State Park that does not have a park entrance license from \$15 to \$20; amend a Camping Permits and Rules rule to provide for an additional \$2 reservation fee for a reservation made through the telephone call center applicable to both South Dakota residents and non-residents; amend a George S. Mickelson Trail Use Service Fees rule to increase the daily trail user pass fee from \$3 to \$4; amend a Motorboats and Watercraft rule to increase the annual fees for licensing motorboats and watercraft as follows: non-motorized boats over 12 ft. and boats propelled solely by electric trolling motors from \$12.50 to \$15, motorboats under 19 ft. from \$20 to \$25, and motorboats 19 ft. and over from \$40 to \$45; amend a Spring Wild Turkey Hunting Season rule to amend the resident and nonresident "male turkey" license numbers for the Prairie Units, establish a new unit (Unit 16A) for Campbell and Walworth counties, and change the county designation of Unit PST-65A from Shannon County to Oglala Lakota County; amend a Custer State Park Spring Wild Turkey Hunting Season rule to set the "male turkey" licenses numbers; and amend a Waterfowl Hunting Seasons (Spring Light Goose Conservation Order) rule to adjust the start date of the Conservation Order from opening statewide for 79 consecutive days beginning on the 106th day from the Saturday closest to November 1 to being open statewide for 79 consecutive days beginning the day following closure of Unit 2 of the goose hunting season.

Mr. Bob Schneider and **Mr. Tony Leif** reviewed the proposed rules.

Representative Hunhoff moved, seconded by Senator Heineman, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Game, Fish and Parks – Amend a License Forms and Fees rule to authorize the department to sell license lists to repeat applicants under certain circumstances without the necessity of seeking prior approval of the GFP Commission.

Mr. Chris Petersen reviewed the proposed rule.

Representative Johns moved, seconded by Senator Heineman, that the review of the rule proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Transportation – Amend Speed Limits rules on State Highway 253 through the town of Hosmer in Edmunds County beginning 9 miles North of the junction with U.S. Highway 12, the limit is 45 mph west for 0.24 mile, then 25 mph for 0.68 mile through the town of Hosmer, then 45 mph for an additional 0.2 mile west; amend a rule in Lake County on State Trunk Highway 34 in the city of Madison by reducing the maximum speed

from 50 mph to 30 mph from its intersection with Washington Avenue then East for 0.17 mile, and then from 65 mph to 55 mph an additional 1.05 miles west; and a rule in Moody County on State Trunk Highway 32 (Pipestone Avenue) in the city of Flandreau, to increase from 35 mph to 45 mph step down speed zones entering and exiting Flandreau in order to provide consistent 20 mph increments on State Trunk Highway 32 through Flandreau.

Mr. Bill Nevin reviewed the proposed rules. This was an informational only presentation as the public hearing will be held on December 18th. No committee action was taken.

Bureau of Human Resources – Amend State Employee Benefits rules to change the appeal process for an adverse determination or claims denial; eliminate preexisting conditions from eligibility in the state employee health benefit plan; and provide an application deadline for employees who were not previously eligible to apply for state employee health benefits and life benefit without showing proof of insurability.

Ms. Jill Kruger reviewed the proposed rules.

Representative Johns moved, seconded by Senator Vehle, that the review of the rules proposed by the Bureau of Human Resources is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Labor and Regulation: Division of Unemployment Insurance – Amend rules to allow domestic employers the option of paying state unemployment contributions (UC) annually instead of paying quarterly.

Ms. Pauline Heier reviewed the proposed rules.

Senator Vehle moved, seconded by Senator Bradford, that the review of the rules proposed by the Department of Labor and Regulation: Division of Unemployment Insurance is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Labor and Regulation: South Dakota Athletic Commission – Amend rules to increase the number of days required between approval of an event and the date of the event, clarify existing rules regarding the requirements of promoters to provide certain equipment at an event, increase the minimum fee for an approved event, clarify existing rules regarding accepted medical documentation for contestants, clarify the requirements for meeting certain promoter requirements in advance of an event, increase the number of days allowed for final reports and fees to be submitted by the promoter, require a security plan to be provided by a promoter prior to an event, increase the number of rounds a referee may officiate in one contest, increase the time period allowed for weigh-ins prior to an event, and clarify responsibilities of the Commission's designee.

Mr. Tom Hart reviewed the proposed rules. It was noted that the proposed fee increase for an approved event had been removed from the set of rules because the proposed increased exceeded their statutory authority.

Representative Hunhoff moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Labor and Regulation: South Dakota Athletic Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department Health: Division of Health Systems Development and Regulation – Amend rules to allow additional participants in the Rural Healthcare Facility Recruitment Assistance Program, update references regarding treatment protocols for the State Trauma Care System, and streamline the trauma transport plan process.

Mr. Tom Martinec reviewed the proposed rules.

Senator Bradford moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Health: Division of Health Systems Development and Regulation is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Health: Board of Medical and Osteopathic Examiners – Amend rules to provide criteria for training a first responder in the use of opioid antagonists, provide the requirements for physicians who issue standing orders authorizing first responders to possess opioid antagonists, and provide the requirements for protocols and procedures related to opioid antagonists.

Mr. Tyler Klatt reviewed the proposed rules. These are the result of SB 14 from the 2015 Legislative Session.

Representative Gibson moved, seconded by Senator Bradford, that the review of the rules proposed by the Department of Health: Board of Medical and Osteopathic Examiners is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Social Services: Board of Examiners for Counselors and Marriage and Family Therapists – Amend rules to repeal unnecessary rules, implement a fee to process license verifications and duplicate renewal cards, increase license and renewal license fees for marriage and family therapists, align language to be consistent with statutory language, clarify supervisor and exam requirements, and update the Code of Ethics to the most recent version.

Ms. Joyce Vos, Executive Secretary, and **Ms. Mary Guth**, President, Board of Examiners for Counselors and Marriage and Family Therapists, reviewed the proposed rules.

Senator Vehle moved, seconded by Senator Heineman, that the review of the rules proposed by the Department of Social Services: Board of Examiners for Counselors and Marriage and Family Therapists is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Education: Board of Education – Amend Certification rules to provide additional and consistent options for secondary career and technical education (CTE) teachers to become certified to teach CTE courses; amend Accreditation and School Improvement rules to clean up language and eliminate the requirement that a student taking a high school course from a qualified teacher before grade nine pass a state-approved assessment before credit can be awarded, which will allow a school district to determine if the student has met the same criteria required for credit to be awarded to high school students in the district and require the acceptance of credit for summer courses taken from an accredited school system documentation and notice of any decision that the credits do not meet graduation requirements; and amend Public School Accountability System rules to update certain components of the accountability system to provide a more in-depth measure of public school performance.

Ms. Bobbi Rank and **Ms. Laura Scheibe** reviewed the proposed rules. It was noted that the proposed rule regarding the acceptance of credit for summer courses taken from an accredited school system documentation had been removed from the final rules package.

Senator Vehle moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Education: Board of Education is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Office of the Attorney General – Amend a rule to provide a juvenile cited violation ticket for use by law enforcement pursuant to SDCL § 26-7A-126.

Ms. Kelly Marnette reviewed the proposed rule. No action was taken by the committee as the hearing was held on December 11th and the comment period is open until December 21st.

Office of Attorney General: SD Law Enforcement Officers Standards and Training Commission – Amend rules to prohibit temporary or probationary non-certified law enforcement officers from working in any enforcement capacities until they successfully complete the state firearms course and receive instruction from their agency on their agency's use of force or response to resistance policy; add an additional specific area of training that law enforcement officers must complete as part of their continuing education requirements; and allow physician's assistants and nurse practitioners to conduct examinations of 911 Telecommunicator applicants.

Mr. Paul Bachand, Attorney, representing the SD Law Enforcement Officers Standards and Training Commission, and **Mr. Scott Rechtenbaugh** reviewed the proposed rules.

Senator Vehle moved, seconded by Senator Heineman, that the review of the rules proposed by the Office of Attorney General: SD Law Enforcement Officers Standards and Training Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Labor and Regulation: Appraiser Certification Program – Amend rules to add requirement for email address, if available, to the application for supervisory appraisers; change "state of domicile" to "home state" ("or any other jurisdiction"), where applicable, on the applications for certified or licensed appraisers that move to the state and temporary practice; remove the term "summary or self-contained" from experience requirements for state-certified residential and state-certified general appraisers; add a required comma to educational requirements for state-licensed appraisers; adopt the 2016-2017 Edition of the Uniform Standards of Professional Appraisal Practice; require appraisers to retain "all" not just "any" written reports; and include grounds for disciplinary action against those not certified, licensed or registered who perform an appraisal review requiring the services of an accredited appraiser.

Ms. Sherry Bren reviewed the proposed rules.

Senator Heineman moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Labor and Regulation: Appraiser Certification Program is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Revenue: Commission on Gaming – Amend rules to authorize a variation of Mississippi Stud poker and create a new variation of poker known as Flushes Gone Wild.

Mr. Larry Eliason, Executive Secretary, and **Mr. Mike Shaw**, Attorney representing the Commission on Gaming, reviewed the proposed rules and the procedural issues regarding the two rules.

Representative Gibson moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Revenue: Commission on Gaming is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Revenue: Division of Property and Special Taxes – Amend rules to update manuals and price of manuals to the current version that must be used by assessors in calculating the value of non-residential and residential property.

Mr. Michael Houdyshell reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Revenue: Division of Property and Special Taxes is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Revenue: South Dakota Lottery Commission – Amend a rule to allow the Powerball game to institute a jackpot management plan.

Mr. Norm Lingle, Executive Director, reviewed the proposed rule.

Representative Hunhoff moved, seconded by Senator Heineman, that the review of the rule proposed by the Department of Revenue: South Dakota Lottery Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Environment and Natural Resources: Drinking Water Program – Amend Fluoridation of Water Supplies rules to reduce the required fluoride level and cleanup outdated language; and amend Bottled Water Quality rules to adopt pertinent US FDA rules for bottled water quality.

Mr. Mark Mayer reviewed the proposed rules.

Senator Heineman moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Environment and Natural Resources: Drinking Water Program is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Environment and Natural Resources: Water Management Board – Amend Surface Water Quality rules by deleting the fecal coliform criteria from immersion recreation and limited contact recreation waters (this change will leave intact the United States Environmental Protection Agency's (USEPA) recommended Escherichia coli criteria) and add the USEPA's nonylphenol aquatic life criteria.

Mr. Patrick Snyder reviewed the proposed rules.

Representative Hunhoff moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Environment and Natural Resources: Water Management Board is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Department of Environment and Natural Resources: Water Management Board – Amend a Fences Crossing Navigable Streams rule to allow fences to be constructed without a gate across Firesteel Creek in Davison County.

Mr. Ron Duvall reviewed the proposed rule. It was noted the rule was brought to the Water Management Board by a petition filed pursuant to SDCL § 43-17-39 by Mr. Gary Bussmus, Mitchell.

A brief discussion was held regarding SDCL § 43-17-39 (2) (a) and (b) if the "public's use of the stream is not significant or if the rights of the public to the use of the stream would not be adversely impaired" and concerns on how much the adverse comments were considered by the board, specifically Mr. Leslie Murphy with the Department of Game, Fish and Parks.

Representative Johns moved, seconded by Senator Bradford, that pursuant to SDCL §1-26-4.7 (3) (4) and (8) that ARSD 74:02:10:07 as proposed by the Department of Environment and Natural Resources: Water Management Board be reverted to a prior step

for additional hearing. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Chair Vehle requested the new hearing be held so that the Interim Rules Review committee will be able to meet again on the matter.

Department of Social Services: Division of Child Protection Services – Amend Regulatory Administration rules to implement the reasonable and prudent parent standard to support normalcy for children in alternative care.

Ms. Teresa Schulte and **Ms. Virgena Wiesler** reviewed the proposed rules.

Public Testimony

It was noted that **Ms. Sheila Weber**, Sioux Falls, Lutheran Social Services, wished to speak in support of the proposed rules. Due to technical difficulties, she was unable to join the meeting telephonically.

Senator Vehle moved, seconded by Senator Heineman, that the review of the rules proposed by the Department of Social Services: Division of Child Protection Services is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bradford, Gibson, Heineman, Hunhoff, Johns, and Vehle.

Next Meeting Date

The next meeting of the Interim Rules Review Committee will be held in March to set the tentative schedule for the 2016 interim.

Adjournment

Representative Hunhoff moved, seconded by Representative Gibson, that the meeting be adjourned. Motion prevailed on a voice vote.

Chair Vehle adjourned the meeting at 1:45 p.m.