

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred sixty-fourth meeting
Monday
May 1, 2017

Room 413
State Capitol
Pierre, South Dakota

The three hundred sixty-fourth meeting of the Rules Review Committee was called to order by Senator Alan Solano, (Vice Chair) at 10:00 a.m., CDT, on May 1, 2017, in Room 413 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Craig Kennedy, Lance Russell, and Alan Solano (Vice Chair) and Representatives Steven Haugaard, and Jean Hunhoff (Chair) (appearing telephonically). Representative Julie Bartling was excused. 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 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://sdlegislature.gov> under "Interim."

Approval of Minutes

Senator Kennedy moved, seconded by Representative Haugaard, that the minutes of the March 28, 2017, meeting be approved. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Member excused: Bartling.

Rules Reviewed

Department of Revenue: South Dakota Commission on Gaming – Amend Racing rules to clarify the penalty for use of illegal substances, repeal 20:04:27:13 to allow therapeutic medication to be used, allow the use and administration of furosemide, clarify the use of certain therapeutic medications, allow the Commission and stewards to impose penalties which may be considered by other racing jurisdictions and allow the Commission and stewards to consider a trainer's pattern of drug or medication violations in other jurisdictions when determining a penalty for violations in South Dakota.

Mr. Larry Eliason, Executive Secretary, and **Mr. Mike Shaw**, Pierre, Attorney for the Gaming Commission, reviewed the proposed rules.

Senator Solano moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Revenue: South Dakota Commission on Gaming is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Member excused: Bartling.

Department of Revenue: South Dakota Lottery Commission – Adopt rules to authorize and establish the parameters to offer the Lucky for Life game.

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

Senator Russell moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Revenue: South Dakota Lottery Commission is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Member excused: Bartling.

Department of Game, Fish, and Parks – Amend Public Water Zoning rules to add a "public swimming zone" on Lake Madison in Lake County, modify the size and configuration of the "public swimming zone" on Lake Alvin in Lincoln County, amend and clarify the public water safety zone regulations for Sheridan Lake in Pennington County, and add a "no motors zone" on Lewis and Clark Lake in Yankton County; amend Motorboats and Watercraft rules to clarify the definition of "careless boat operation" and adopt a rule to prohibit a boat operator from eluding law enforcement; amend a Duck Hunting Season rule to decrease the daily bag limit for pintail; amend a Goose Hunting Season rule to increase the number of days for the light goose hunting season from 86 days to 105 days as allowed by the U.S. Fish and Wildlife Service; amend a Tundra Swan Hunting Season rule to set the number of licenses available; amend Aquatic Invasive Species rules to allow businesses approved by the department to transport and possess boats with aquatic invasive species attached for the purpose of decontamination, allow participants in a local boater registry to transport and possess aquatic invasive species in accordance with the provisions of the registry, allow participants in a local boater registry to launch a boat with an aquatic invasive species attached if it is done in accordance with the provisions of the registry, adopt a rule to define and identify specific waters that will be classified as "containment waters," create a local boater registry, require the decontamination of boats with at least one gallon of water from a lake, river or stream remaining in the watercraft, that cannot be drained after all drain plugs, bailers, valves, or other devices used to control the drainage of water have been opened or removed, after use in a "containment water," and require decontamination of boats that have been moored in a "containment water" for three or more continuous days.

Mr. Tony Leif reviewed the proposed rules.

Senator Kenney inquired about the department's plans to publicize the creation of the boater registry.

Senator Russell and Representative Haugaard voiced concerns with the statutory authority regarding the boating rules for careless operation and eluding a law enforcement officer (ARSD 41:04:05:14 and 41:04:05:16.01). They felt SDCL § 32-3A-1 gives too broad of authority to the department.

Chair Hunhoff asked for a division of the question.

Mr. Decker briefly reviewed SDCL § 1-26-4.7 regarding the nine reasons for reversion of rules to a prior step in the adoption process.

Representative Haugaard moved, seconded by Senator Russell, that the proposed rules by the Department of Game, Fish and Parks regarding careless operation and eluding a law enforcement officer (ARSD 41:04:04:14 and 41:04:05:16.01) be reverted to a prior step for review and changes regarding the imposition of a Class II misdemeanor. Motion failed on a roll call vote with 2 ayes, 3 nays, 1 excused. Members voting aye: Haugaard, Russell. Members voting nay: Hunhoff, Kennedy, and Solano. Member excused: Bartling.

Senator Kennedy moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Game, Fish and Parks regarding the water safety zones (pages 1 – 8) is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Member excused: Bartling.

Senator Kennedy moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Game, Fish and Parks regarding the hunting rules (pages 10 – 17) is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Member excused: Bartling.

Senator Kennedy moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Game, Fish and Parks regarding aquatic invasive species (pages 17 – 21) is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Member excused: Bartling.

Senator Kennedy moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Game, Fish and Parks regarding careless boating operation and eluding law enforcement (pages 9 and 10) is complete. Motion prevailed on a roll call vote with 3 ayes, 2 nays, 1 excused. Members voting aye: Hunhoff, Kennedy, and Solano. Members voting nay: Haugaard and Russell. Member excused: Bartling.

Department of Education: Board of Education – Amend rules to update the state certification process for educators to: streamline the certification process; eliminate unnecessary barriers to the certification process; and ensure educators meet the minimum content and pedagogical knowledge requirements expected of them prior to being certified.

Ms. Holly Farris and Ms. Abby Javurek-Humig reviewed the proposed rules.

Senator Solano moved, seconded by Senator Kennedy, 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 4 ayes, 1 nay, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, and Solano. Member voting nay: Russell. Member excused: Bartling.

Department of Education: Board of Education – Amend Special Education and Career and Technical Education rules to replace obsolete citations to Article 24:15 with citations to the updated certification requirements in Article 24:28; repeal Certification rules in Article 24:15 that were made obsolete by the updated certification rules in Article 24:28; amend a Certificate Denial and Discipline Procedures rule to replace obsolete citations to Article 24:15 with citations to the updated certification requirements in

Article 24:28; amend Accreditation and School Improvement rules to update references with the rule to the applicable preparation and certification requirements and remove language which limits certificate holders based on school structure and repeal the waiver route for noncertified administrators; and amend a Teacher Preparation Program Approval rule to replace obsolete citations to Article 24:15 with citations to the updated certification requirements in Article 24:28.

Ms. Farris reviewed the proposed rules.

A typo was noted on page 102 under ARSD 24:18:01:01(2). The reference to article 42:28 should be article 24:28. The department will make the correction prior to filing the rules with the Secretary of State's office.

Senator Solano moved, seconded by Senator Kennedy, 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 5 ayes, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Member excused: Bartling.

Department of Education: South Dakota School Finance and Accountability Board – Adopt rules to establish an appeals process and a set of factors that will be used to determine if a school district be recommended for a waiver from their accountabilities in regards to teacher compensation as outlined in SDCL § 13-13-73.6.

Ms. Farris and **Ms. Tami Darnall** reviewed the proposed rules.

Following a brief discussion regarding the appeals process for schools if their waiver is denied by the board and not presented to the Joint Committee on Appropriations, *Senator Kennedy moved, seconded by Senator Russell, that the rules proposed by the Department of Education: South Dakota School Finance and Accountability Board be reverted to a prior step for further clarification of the appeals process. Motion prevailed on a roll call vote with 3 ayes, 2 nays, 1 excused. Members voting aye: Haugaard, Kennedy, and Russell. Members voting nay: Hunhoff and Solano. Member excused: Bartling.*

Staff Report

Mr. Decker explained the emergency rules process. The Law Enforcement Officers Standards and Training Commission had filed emergency rules last week.

Next Meeting Date

The next meeting of the Interim Rules Review Committee will be held in Pierre on Monday, June 5, 2017.

Adjournment

Representative Haugaard moved, seconded by Senator Russell, that the meeting be adjourned. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Member excused: Bartling.

Vice Chair Solano adjourned the meeting at 12:28 p.m.