

MINUTES **Amended 8-22-2017**

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred sixty-sixth meeting
Monday
July 17, 2017

Room 414
State Capitol
Pierre, South Dakota

The three hundred sixty-sixth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair) at 10:00 a.m., CDT, on July 17, 2017, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following location: University Center, 4801 N. Career Ave., Room FADM 145, Sioux Falls, 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 Julie Bartling, Steven Haugaard, and Jean Hunhoff (Chair). Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary/Business Manager.

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

Representative Bartling moved, seconded by Senator Kennedy, that the minutes of the June 5, 2017, meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Rules Reviewed

Department of Health: Division of Health Systems Development and Regulation – Amend rules to allow for the regulation of the emergency medical responder and revise rules to reflect current standards for emergency medical technicians.

Mr. Tom Martinec reviewed the proposed rules.

Public Testimony

Mr. Maynard Konechne, Kimball, South Dakota EMS Association, spoke in support of the proposed rules.

Ms. Nicole Neugebauer, Armour, Douglas County Armour Ambulance, spoke in support of the proposed rules.

Ms. Shawn Fischer, Sturgis, South Dakota Ambulance Association and Sturgis Ambulance, spoke in support of the proposed rules.

Senator Kennedy noted that the notices for public hearing had not been published as required by the statutes. A discussion was held regarding SDCL §§ 1-26-4 (3) and 1-26-4.1 which require the notice of hearing be published in at least three newspapers at least twenty days before the public hearing. One of the newspapers missed the deadline by one day. The lack of proper notice as required by the statutes was noted for other agencies in addition to the Department of Health. The committee members and Mr. Decker discussed whether the agency had substantially complied with the statute so that a person likely to be affected by the rules had received sufficient notice.

Chair Hunhoff stated that the SD Newspaper Association should be made aware of the issue that some newspapers are not publishing the notices in a timely manner resulting in a procedural defect in the rule adoption process. The problem needs to be addressed.

Senator Solano moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Health: Division of System Development and Regulation is complete. Motion prevailed on a roll call vote with 4 ayes, 2 nays. Members voting aye: Bartling, Hunhoff, Kennedy, and Solano. Members voting nay: Haugaard and Russell.

Department of Game, Fish and Parks – Amend a Camping Permits and Rules (Park facility use fees) rule to establish facility fees for special events held at the Good Earth State Park visitor center and adjacent grounds; amend Application for License rules to allow the department secretary to authorize a terminally ill person to hunt outside established season dates, require a resident or nonresident deer hunter who possesses an archery, muzzleloader, youth or mentor deer license to obtain a free access permit to hunt in the newly created East River deer Limited Access Unit 13L, and allow licenses to be issued to nonresident hunters in Unit WRD-58D for the West River prairie deer season; amend a License Forms and Fees (Custer State Park Trophy and Non-Trophy Bison Licenses) rule to adjust the license fees for a Custer State Park trophy bull bison license from \$5,000 to \$6,500 and for a Custer State Park non-trophy bull bison license from \$2,250 to \$3,250; amend a Waterfowl Hunting Season (Nonresident Waterfowl Licenses) rule to reduce the total number of temporary nonresident waterfowl licenses from 2,000 to 1,750, move Brown County from Unit NRW-00Y (northeast SD) to Unit NRW-00X (central/northcentral SD), reduce the total number of nonresident waterfowl licenses in Unit NRW-00X from 1,500 to 1,000 licenses with 500 having a valid start date of December 1 until the end of the waterfowl season, establish a new unit with 250 nonresident waterfowl licenses that includes all of the state except counties in Units NRW-00A, NRW-11A, NRW-00X, and NRW-00Y, and make all temporary nonresident waterfall licenses valid on private land only except those in Unit NRW-00Y; amend a Black Hills Deer Hunting Season rule to adjust the number of licenses; amend West River Deer Hunting Season rules to adjust the number of licenses, discontinue the split seasons for Gregory and Mellette counties and align with the regular West River deer season, and change the season date for Unit 24B (Little Moreau); amend East River Deer Hunting Season rules to adjust the number of licenses, create a new Limited Access Unit (Unit 13L) that would be restricted to Corps of Engineers property, all Game Production Areas, and the Elm Creek Lakeside Use Area immediately adjacent to the Missouri River, all in Brule County, and the Pease Game Production Area in southwest Buffalo County, modify Unit 13A to include all of Brule County excluding that portion located within Unit 13L, and modify Unit 14A to

include all of Buffalo County excluding the Pease Game Production Area located within Unit 13L; amend Archery Deer Hunting Season rules to close units 17A, 25A, 41A, 50A, and 58A and open units 44A and 62A, all in Unit ARD-LM1, and extend the season closing date for archery deer hunting in Sand Lake National Wildlife Refuge from December 31 to January 15; amend a National Wildlife Refuge Deer Hunting Season rule to adjust the number of licenses for LaCreek National Wildlife Refuge and Waubay National Wildlife Refuge and restrict all licenses within Waubay National Wildlife Refuge to muzzleloading rifles; amend a Custer State Park Deer Hunting Season rule to adjust the number of one-tag licenses, modify the season dates from 14 consecutive days beginning on the first Saturday of November to November 1-December 15 with hunting only by bow and arrow allowed from November 1-15 and hunting only by muzzleloader from December 1-15; amend a General Muzzleloading Deer Hunting Season rule to close units 17A, 25A, 41A, 50A, and 58A, and open units 44A and 62A, all in Unit MZD-LM1; and amend Custer State Park Non-Trophy Bison Harvest rules to change the season dates from 47 days beginning the second Monday in January to 47 days beginning the last Monday in October and reduce the number of cow licenses from five to zero; and amend a Trapping Prohibitions rule to clarify that both traps and snares are prohibited within 30 feet of exposed bait.

Mr. Tony Leif and Ms. Katie Ceroll reviewed the proposed rules.

Representative Hunhoff moved, seconded by Representative Bartling, 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: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Transportation – Amend Speed Limit rules in Pennington County to replace the reference to State Trunk Highway 79 with State Highway Maintenance Route 231, the Interstate Highway 90 crossover road at milepost 78.39 is being changed to Exit 78 (New Underwood Road) beginning 0.07 mile south of the centerline of Interstate Highway 90, then north 0.16 mile, and repealing two speed limits in Box Elder due to the county taking jurisdiction; amend a Custer County speed zone rule on U.S. Highway 385, within the boundaries of Wind Cave National Park, to 45 miles per hour, and State Trunk Highway 87, within the boundaries of Wind Cave National Park, to 35 miles per hour; and amend a Meade County speed on State Highway Maintenance Route 231, beginning at the north Pennington County line and proceeding north 1.05 mile to Peaceful Pines Road, would remain 55 miles per hour and then decrease to 45 miles per hour a distance of 0.6 mile east to Norman Avenue, and the Interstate Highway 90 Service Road on the west side of Interstate Highway 90 beginning at Exit 40, then southeasterly to Exit 44 will be decreased from 55 miles per hour to 45 miles per hour.

Ms. Karla Engle reviewed the proposed rules.

Senator Kennedy moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Office of Attorney General: Law Enforcement Officers Standards and Training Commission – Adopt a rule to permit the temporary appointment of certified law enforcement officers in South Dakota in order to provide assistance under an Emergency Management Assistance Compact.

Mr. Paul Bachand, Pierre, Attorney representing the commission, and **Mr. Scott Rechtenbaugh** reviewed the proposed rules.

Representative Bartling moved, seconded by Senator Solano, that the review of the rules proposed by the Office of Attorney General: Law Enforcement Officers Standards and Training Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Education: School Finance 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. Tami Darnall reviewed the proposed rules. These rules had been reverted to a prior step at the May 1st Interim Rules Review Committee meeting. Two handouts entitled "Comparison of March Adopted Rules to June Revised Rules" (**Document 1**) and "Teacher Compensation Accountability Flow Chart" (**Document 2**) were distributed and reviewed.

Senator Solano moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Education: School Finance Accountability Board is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Labor and Regulation: Appraiser Certification Program – Amend rules to define each appraiser classification; define a certificate, license and registration as a credential; modify certain language, re-structure sentences, and correct errors; allow reciprocal appraisers to be eligible to become supervisory appraisers without having to be certified in South Dakota for three years; and clarify that a state-registered appraiser is required to complete an examination prescribed by the secretary.

Ms. Sherry Bren reviewed the proposed rules.

Representative Hunhoff moved, seconded by Representative Bartling, 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: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Office of the Secretary of State: Board of Elections – Amend rules to specify a 30 day deadline date for a voter to return the invalid/incomplete voter registration acknowledgment notice; change the name of a "Secondary Election" to "Runoff Election;" add judicial office to be listed in the notice of deadline for filing nominating petitions for the primary election; add to the general election ballot "Legislative Research Council's Prison/Jail Population Cost Estimate and/or Fiscal Note;" add to the primary and general election ballot formats to include notations for front and reverse sides, clarifying ballot printing notes, adding an option for county finance officer, and providing the format for State Representative Districts 26 & 28 A and B and new primary and general election ballot formats; amend the tax levy opt-out ballot format to be used by county, municipality or school to provide clarification on the formats; create a new ballot format for capital outlay elections for school districts; create a new ballot format for school sentinel program elections; create a new ballot format to assist county auditors with ballot for tax

levy ballots for maintaining repairing, constructing or reconstructing roads and bridges; clarify that a petition sheet must be printed on a self-contained sheet of paper printed front and reverse side; amend the rule for the random sample on statewide candidates and statewide ballot measures by replacing the 5% random sample requirement to a sample that is statistically correlative to not less than a 95% level of confidence with a margin of error equal to not more than 3.62%; repeal two petitions for conservation district candidates and amend the third petition to change the candidates for district supervisors to run at large instead of by areas; amend the application for absentee voting to clarify what category of Uniformed Overseas Citizens Absentee Voter the applicant falls under and to simplify the application instructions; and remove language requiring an Uniformed Overseas Citizens Absentee Voter to provide their voting residence on the ballot return envelope.

Ms. Shantel Krebs, Secretary of State, and **Ms. Kea Warne** reviewed the proposed rules. Secretary Krebs noted that one of the newspapers had failed to publish the notice of hearing twenty days prior to the day of the hearing.

Senator Kennedy noted the "Law Implemented" did not reference the various House and Senate bills from the 2017 legislative session as codified that many of the rules were implementing.

Senator Kennedy moved, seconded by Senator Russell, that the rules proposed by the Office of the Secretary of State: Board of Elections be reverted to a prior step per SDCL § 1-26-4.7 (5) – the rules are not in proper form and SDCL § 1-26-4.7 (6) – the public notice was not sufficient.

A substitute motion was made by Senator Kennedy, seconded by Representative Bartling, that the review of the rules proposed by the Office of the Secretary of State: Board of Elections is complete with the recommendation the Board of Elections make the corrections to the law implemented the next time they promulgate rules. Substitute motion failed on a roll call vote with 3 ayes and 3 nays. Members voting aye: Bartling, Hunhoff, and Kennedy. Members voting nay: Haugaard, Russell, and Solano.

Another substitute motion was made by Representative Bartling, seconded by Senator Kennedy, that the rules proposed by the Office of the Secretary of State: Board of Elections be reverted to a prior step per SDCL § 1-26-4.7 (5) and (6) except for the three rules relating to the express voting machines and the random sampling (ARSD 05:02:06:01.04, 05:02:06:10.03, and 05:02:08:00.05). Substitute motion prevailed on a roll call vote with 4 ayes, 2 nays. Members voting aye: Bartling, Hunhoff, Kennedy, and Solano. Members voting nay: Haugaard and Russell.

Committee Discussion

A discussion of substantial compliance continued regarding the three agencies that had issues with newspapers not publishing their notice of hearing in a timely manner. Chair Hunhoff stated that in the future, if the statutory deadlines are not met, the agency must pull their rules package and ensure notices are published as required by statute. A letter will be sent to the South Dakota Newspaper Association regarding the importance of the timely publications to the State and the citizens of South Dakota.

Next Meeting Date

The next meeting of the Interim Rules Review Committee will be held on Tuesday, August 22, 2017.

Adjournment

Representative Bartling moved, seconded by Senator Solano, that the meeting be adjourned. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Chair Hunhoff adjourned the meeting at 2:07 p.m.