

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred seventy-first meeting
Monday
April 9, 2018

Room 414
State Capitol
Pierre, South Dakota

The three hundred seventy-first meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair), at 10:00 a.m. CDT, on April 9, 2017, in Room 414 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 Julie Bartling, Steven Haugaard, and Jean Hunhoff (Chair). Staff members present were Doug Decker, Code Counsel, and Paul M. Giovanetti, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file at 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 Haugaard moved, seconded by Senator Solano, that the minutes of the March 26, 2018 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: Board of Medical and Osteopathic Examiners – Amend rules to establish the number of continuing education hours required for physical therapists and physical therapy assistants.

Mr. Tyler Klatt reviewed the proposed rules.

Public Testimony

Mr. Patrick Hauer, Mission Hill, President, South Dakota Physical Therapy Association, voiced support for the rules changes.

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

Department of Agriculture – Amend rules to require all aerial applicators in South Dakota to acquire aerial applicator certification for agricultural plant pest control and right of way; and designate all pesticide products containing only straight Dicamba active ingredient for agricultural use as restricted use pesticides in South Dakota.

Mr. Tom Gere reviewed the proposed rules.

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

Department of Agriculture: South Dakota Veterinary Medical Examining Board – Amend rules to update application and assessment requirements for veterinarians seeking licensure in South Dakota; update current language of reference materials and names of national veterinary assessments and scores; eliminate the option of licensure by endorsement of another state’s veterinary licensing authority; and update application requirements for persons seeking registration as a veterinary technician.

Mr. Drew Duncan reviewed the proposed rules, presenting via telephone.

Representative Haugaard inquired about Canada’s certificate of qualification and whether a governing treaty exists for its authorization. Mr. Duncan stated that while many countries differ in their certification process, the Canadian program is consistent with certification in the United States; he could not definitively confirm the existence of a governing treaty or compact but will research the matter further and provide additional information if requested. Representative Haugaard also expressed interest in whether the board monitors changes in Canadian qualifications.

Senator Kennedy wondered why the rule regarding licenses in good standing was being repealed. Mr. Duncan replied licensing in good standing in another jurisdiction is unnecessary if the applicant meets the qualifications for application and renewal in South Dakota.

In response to Senator Solano’s questions regarding the issuance of temporary licenses, Mr. Duncan reviewed the board’s process for temporary licensure and advised that temporary licenses could be issued in a matter of days.

Senator Russell moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Agriculture: South Dakota Veterinary Medical Examining 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 Game, Fish and Parks – Adopt a rule to require all bait dealers to list employees/agents on their application that will engage in trapping, transporting, delivering, raising, or seining bait; and allow the Department to refuse the issuance of a license to a bait dealer with an employee/agent who has had their bait dealer license suspended, revoked, or been denied a bait dealer license.

Mr. Tony Leif reviewed the proposed rules.

In response to Representative Bartling, Mr. Leif clarified that a license could be suspended, revoked, or denied if a dealer has errors in their records, inappropriately marked traps, and a pattern of violations.

Representative Hunhoff asked if there was a listing of suspended, revoked, or denied dealers; Mr. Leif replied in the negative. Representative Hunhoff stated it would be beneficial for the department to provide such a registry for individuals interested in opening a bait business. Mr. Leif replied the department would be able to provide the information.

Senator Kennedy 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 Game, Fish and Parks - Amend rules to modify the Low Plains South Zone hunting season to begin on the third Saturday instead of the second Saturday; increase the pigtail bag limit from one to two; remove Lawrence and Meade Counties from Unit 1 and place them in Unit 2 for the Canada goose hunting season and allow Canada goose hunting into mid-February; and reduce the daily limit from fifteen to eight birds and change the possession limit from forty-five to three times the daily limit of Canada geese.

Mr. Tony Leif reviewed the proposed rules.

Representative Hunhoff inquired if the state is bound by Nebraska's hunting season to which Mr. Leif replied that for hunting areas near Nebraska, there is a separate boundary and their hunting seasons are taken into consideration. Representative Bartling stressed the importance of tourism and the benefit of knowing how the seasons in the two states align. Mr. Leif said the commission will provide that information to the committee.

Representative Bartling moved, seconded by Representative Haugaard, 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 Game, Fish and Parks - Amend rules to create a 400 yard area as a no wake zone in front of campsites in Hughes County public water safety zones; create a no wake zone in the west boat ramp bay on Shadehill Reservoir; limit hunting in Oakwood Lakes State Park to shotguns using shells, crossbows, and bows; rename the administrative chapter from Black Hills Bighorn Sheep Hunting Season to Bighorn Sheep Hunting Season and make appropriate name changes to applicable rules; and eliminate the ability to harvest one muskellunge or northern-muskellunge, turning the species into a catch and release fish.

Ms. Katie Cerroll and **Mr. Tony Leif** reviewed the proposed rules.

Representative Haugaard moved, seconded by Senator Kennedy, 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 Education: South Dakota Board of Technical Education – Transfer existing rules from Article 24:10 under the Board of Education Standards to Article 24:59 under the Board of Technical Education; and amend relevant references from the director of Career and Technical Education to the Executive Director of the Board of Technical Education, from the Board of Education Standards to the Board of Technical Education, and from the Department of Education to the Board of Technical Education.

Mr. Nick Wendell reviewed the proposed rules.

Senator Kennedy asked if the Board of Technical Education is independent from the Department of Education and whether the rules packet was acted on only by the board and not the department; Mr. Wendell replied in the affirmative. He also confirmed that the repeal of rules included the Department of Education, Department of the Military, and the Department of Human Services.

Representative Haugaard wondered if the Department of Education had representation at the December hearing. Mr. Wendell stated there were representatives of the department present and the decision was made that the authority and transfer of the rules would be with the Board of Technical Education.

Senators Kennedy and Solano expressed concern over whether the Board of Technical Education could act on the rules of the affected agencies without action by the agencies themselves. Mr. Wendell said the board interpreted Senate Bill 65, passed by the 2017 Legislature, as giving the board the authority to transfer rules. Representative Hunhoff requested advice from the Code Counsel.

Mr. Doug Decker, Code Counsel, agreed with comments from Senator Kennedy that one board cannot amend the rules under the authority of another board or department and for there to be no conflict between the rules, they would need to be repealed by the Board of Education. He agreed that it would be appropriate for the Rules Review Committee to revert the repeal of the rules to the appropriate agencies.

Senator Kennedy moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Education: South Dakota Board of Technical Education is complete and the rules be approved with the exception of ARSD 46:30:06:09 which should be reverted to the Department of Human Services, ARSD 50:06:01:01 which should be reverted to the Department of the Military, and the repeal of ARSD 24:10 which should be reverted to the Department of Education. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Education: State Library Board - Amend rules to clarify language; make consistent with statutory amendments; and remove outdated language from the rules concerning access to public libraries and how certain funding is distributed to public libraries.

Ms. Holly Farris reviewed the proposed rules.

In response to Senator Russell regarding grant funding, **Mr. Paul Turman**, Board of Regents, confirmed that the pool of money that was distributed for SDLN no longer exists and is being replaced with other funds. Representative Hunhoff asked if the State Library utilizes fees; Mr. Turman clarified the cost is split between the regental system, technical institutes, and the State Library.

Representative Bartling moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Education: State Library Board 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 Attorney General - Amend rules to increase the fee that a participant shall pay for each drug patch while participating in the 24/7 Sobriety Program.

Ms. Kelly Marnette reviewed the proposed rules.

Senator Kennedy inquired how frequently testing will occur for individuals using the drug patch through the program. Ms. Marnette replied that a patch can be worn from 7 to 10 days and the length of time a person is required to use them through the 24/7 Sobriety Program is determined by the court. He also questioned what the cost of the program is for the defendant and whether provisions exist for indigent defendants. Ms. Marnette stated the cost is case dependent and based on the decision of the courts; there are no provisions for those who cannot afford the cost.

Senator Solano asked if the counties cover the cost of the patches if the defendant is indigent; Ms. Marnette said if the individual cannot afford the cost of the patches, the court could decide the defendant would not participate in the program and another monitoring method would be used. She further advised that this will be the first fee increase for the patches (which have always been \$40) and the company currently providing the patches is the most economical for the state in both the number of patches being used and the cost.

Representative Hunhoff wondered about the charge of 30 minutes calculated into the overall cost. Thirty minutes is the amount of time required for a staff member to remove the old patch, package it to be tested, and apply the new patch.

Senator Russell moved, seconded by Senator Solano, that the review of the rules proposed by the Office of the Attorney General 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 Attorney General: Law Enforcement Officers Standards and Training Commission - Amend rules to establish a training program for drug detection, explosives detection, and patrol canine teams; establish a curriculum including minimum hours of training and specific subject areas for training; and allow for reciprocity and waivers by the commission for canine teams certified in other jurisdictions or teams with members previously separately certified.

Mr. Paul Bachand reviewed the proposed rules.

Representative Hunhoff asked about reciprocity with the two repealed national standards and if the state has individuals certified to conduct the training. Mr. Bachand responded that the known standards have been reviewed and accepted; South Dakota also has certified trainers and every canine team is certified. When questioned about the benefit of changing the process, Mr. Bachand said the International Congress no longer exists and the changes will keep training within the state.

Senator Kennedy wondered about legal challenges to drug detection canines and if moving to the state having its own standard would open it up to more legal challenges. Mr. Bachand replied the court always looks at the canine team and its reliability in the field, and noted both Nebraska and Utah are utilizing their own standards. He confirmed for the committee that records are kept on each canine, their logs are presented in court, and canines are trained to detect a variety of different substances.

Representative Bartling moved, seconded by Senator Solano, that the review of the rules proposed by the Office of the 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 Revenue: South Dakota Commission on Gaming - Amend rules to add a fee of \$500 for associated equipment manufacturer or distributor license applications; provide for clarification on procedures for found credits, tickets, chips, tokens or cash; clarify that the dealer is responsible to enforce bet limits; clarify types of games where a pit boss is required and the functions of the pit boss; require signage regarding the minimum age to gamble; clarify policies involving persons under the age of 21 in a casino; update the variations of blackjack that have been authorized by the Commission for play in Deadwood; clarify procedures on setting bet limits; set forth a new variation of the game of blackjack known as Triple Win 20; update the variations of poker that have been authorized by the Commission for play in Deadwood; adopt a new payable for the game of Three-card Poker; clarify where cards should be placed on the layout of the game of Ultimate Texas Hold'em; comply with current law which only requires surveillance of slot machines that have an award of \$12,000 or greater; and correct typographical errors.

Mr. Craig Sparrow reviewed the proposed rules.

Representative Hunhoff questioned the fiscal impact statement, saying a fee increase would be expected to result in a gain for the department. **Mr. Mike Shaw**, attorney for the Gaming Commission, said discussions with the Bureau of Finance and Management determined there would be no gain for the State of South Dakota and the city of Deadwood does not qualify as a "small business" for the Small Business Impact Statement.

In regard to age restrictions in Deadwood, Representative Hunhoff asked about the change in signage for Deadwood establishments and how minors who are in the company of adults will be treated. Mr. Sparrow said the door signage rules will address current inconsistencies and that children under the physical control of an adult are defined differently than those who may be viewed as loitering.

Representative Bartling moved, seconded by Senator Russell, 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 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Committee Discussion and Closing Comments

Representative Hunhoff thanked the presenters, staff, and committee members for their efforts in getting through the long agenda.

Mr. Decker informed the committee that there are already five rules packets for the June 4, 2018 meeting and more are expected.

Adjournment

Senator Solano moved, seconded by Representative Haugaard, that the meeting be adjourned. Motion prevailed on a voice vote.

Chair Hunhoff adjourned the meeting at 12:30 p.m.