

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Lance Russell, Vice Chair

Three hundred eighty-fifth meeting
Monday
January 13, 2020

Room 363
State Capitol
Pierre, South Dakota

The three hundred eighty-fifth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, Vice Chair, at 4:02 p.m. (CT) on January 13, 2020, in Room 363 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Senators Craig Kennedy, Lance Russell, and Margaret Sutton; and Representatives Ryan Cwach, Jon Hansen, and Jean Hunhoff, Vice Chair. Staff members present were Wenzel Cummings, Code Counsel, and Kelly Thompson, 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.

Approval of Minutes from the November 4, 2019 Meeting

Pending review of the minutes by committee members, action was deferred until the next meeting.

Election of Chair and Vice Chair

Senator Russell moved, seconded by Representative Hansen, to nominate Representative Hunhoff as chair. Motion prevailed on a unanimous voice vote.

Representative Hansen moved, seconded by Senator Kennedy, to nominate Senator Russell as vice chair. Motion prevailed on a unanimous voice vote.

Discussion on Proposed Rewrite of SDCL 1-26

Mr. Wenzel Cummings, Code Counsel, LRC, presented House Bill Draft 50 ([Document 1](#)), a proposed rewrite of the South Dakota Administrative Procedures Act. Last revised in 1968, SDCL 1-26 in its current form contains outdated language and procedures. The rewrite was undertaken to make it easier for agencies, boards, and commissions to promulgate rules and to reduce the number of questions and hardships for those entities in regard to the rules process.

Senator Kennedy asked if House Bill Draft 50 contained any new language or simply reorganized the language that currently existed. Mr. Cummings responded that the goal was not to change the law but to make it clearer; language was refreshed in areas where it was necessary to make sentences read correctly.

Representative Hunhoff commented on the number of public members in attendance at today's meeting, saying it was an indication of the interest of state agencies in the proposed changes. She suggested that a subcommittee could be formed to review the legislation during the interim, with the group reporting back to the Interim Rules Review Committee in November. Any legislation resulting from the subcommittee could be presented to the Executive Board for introduction in 2021.

Senator Russell said he appreciated the time and effort Mr. Cummings devoted to the rewrite but was interested in hearing the concerns of those agencies in attendance.

Public Testimony

Mr. David Wiest, Department of Revenue, told committee members that House Bill Draft 50 lacked consistency with the rest of South Dakota Codified Law and compared it to the complexity of federal law. He noted it was difficult to follow what had been changed from the current statute and said input should have been requested from interested parties during the drafting process.

Mr. Andy Fergel, State Bar of South Dakota, reported that he had been contacted by numerous members of his organization with concerns relating to style and form for the proposed bill. While the group had not been asked for their input, they would welcome the opportunity to offer comment.

Ms. Julie Johnson, attorney, self, said despite her experience as a former administrative law judge and state agency official, the draft was difficult to follow. She suggested the State Bar's administrative law committee could be consulted to offer advice and edits to the document.

Others agreeing that the legislation as proposed needed further discussion and revision were **Mr. Doug Abraham, lobbyist, South Dakota Retailers Association; Ms. Jessica Filler, South Dakota Bureau of Administration; and Mr. Curt Everson, South Dakota Bankers Association.**

Staff Direction

Representative Hunhoff acknowledged that House Bill Draft 50, while a good first try, deserved more discussion and review, based on the concerns expressed by the state agencies and organizations. She reiterated the need for a subcommittee to review the issue, with Senator Kennedy and Representative Hansen as co-chairs. They would be charged with recommending who should serve on the group, which should include state agency and organization representatives.

Representative Hansen said he was grateful to Mr. Cummings for his work on the bill and if a subcommittee were formed, having some of the people suggested at today's meeting as members could result in a better product.

Senator Kennedy expressed his support for the formation of a subcommittee, saying the bill was not ready for action today.

Senator Russell noted that with a change in Code Counsel for the first time in 20 years, it should be expected that people would have concerns over proposed changes in the rules process. He supported

including the State Bar's administrative law committee in a further review of SDCL 1-26 and the bill draft as written.

Mr. Fergel advised the Interim Rules Review Committee that the administrative law committee is comprised primarily of agency attorneys and attorneys who work for other governmental entities like cities.

Representative Hunhoff requested that Senator Kennedy and Representative Hansen meet to develop recommendations on who should serve on the proposed subcommittee and present those recommendations to the Interim Rules Review Committee at the group's next scheduled meeting.

Adjournment

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

Chair Hunhoff adjourned the meeting at 5:00 p.m.