MINUTES
Rules Review Committee

Senator Alan Solano, Chair
Representative Jean Hunhoff, Vice Chair

Three hundred eighty-first meeting
Monday
July 8, 2019

Room 414
State Capitol
Pierre, South Dakota

The three hundred eighty-first meeting of the Rules Review Committee was called to order by Senator Alan Solano (Chair), at 10:02 a.m. CDT, on July 8, 2019, 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 (Chair), 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 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 Hunhoff moved, seconded by Representative Hansen, that the June 3, 2019 meeting minutes be approved. Motion prevailed on a unanimous voice vote.

Rules Reviewed

Department of Game, Fish and Parks: Amend rules to:

- Add air guns to the types of weapons regulated by 41:03:01:16;
- Impact the use of certain weapons in the Newton Hills State Park, LaFramboise Island Nature Area, and Farm Island Recreation Area;
- Correct nomenclature used for several designated management units;
- Add air guns and crossbows to the list of weapons that cannot be discharged across the George S. Mickelson Trail right-of-way;
- Allow for the use of air guns in the state park system if it meets the muzzle velocity requirements laid out in administrative rules;
- Limit the number of access permits for residents and nonresidents in certain limited access units;
- Establish a start date for nonresident archery deer hunters;
- Create an application deadline for nonresident archery deer hunters; and
- Alter the deadline for an organization to submit an application letter for the opportunity to auction a Bighorn Sheep tag.

Mr. Scott Simpson, Division of Parks and Recreation, and Mr. Tony Leif, Wildlife Division, Department of Game, Fish and Parks, reviewed the proposed rules.

Representative Hunhoff asked if the proposed rules regarding air guns applied to all state parks and recreation areas in South Dakota and what the history was behind the regulations governing them. Mr. Simpson confirmed the rules cover all areas. Air guns were initially prohibited because of the danger pump action pellet guns posed in camping areas. Accommodations were later made for larger caliber air guns that were used for hunting or on designated shooting ranges.

Representative Cwach inquired how regulations apply if an individual brings a concealed weapon into a state park in their vehicle, and simply parks the vehicle with the weapon inside of it. Mr. Simpson replied the Department wants to make sure that if such action is legal outside of a state park, it is also legal inside a state park. Likewise, if it is illegal outside of a state park, it would be inside the park as well.

Senator Kennedy referenced the LRC's Style and Form letter to the agency which raised statutory authority questions over the proposed rules and he wondered why the suggested changes to the rules were not made. **Mr. Jon Kotilnek, Legal Counsel, Department of Game, Fish and Parks,** said when he receives the Style and Form information, he contacts the LRC and walks through each exception for clarification. It was his understanding that the Department was ultimately the decision maker as to whether to accept the suggestions but without knowledge of the formal process for appealing those suggestions, he considered the agency's bringing of the rules as they are before the Rules Review Committee to be their appeal.

Senator Kennedy also questioned the Department's legal authority to change the language concerning "water access". Mr. Kotilnek noted that while statute differentiates between "fishing access" and "lake access" areas, the public does not; users see them all, regardless of their specific purpose, as areas where they can access water. He said changing the term simply to "water access areas" eliminates redundancy. The Game, Fish and Parks Commission was addressing the term change at their scheduled meeting today. Senator Kennedy then asked whether it was the legislature's role to define such terms.

Representative Hunhoff wondered if the proposed rules on nonresident archery deer licenses were the result of petitions that were rejected earlier this year, prompting the issue to be brought before the Commission. Mr. Leif said that was accurate. He further clarified that nonresident archery deer hunters who want to hunt on public land after September 1 will need to apply for licenses by August 1, 2019. After this year, the deadline will be April 1.

Representative Hunhoff asked whether landowners with private land used by hunters were asked for their comments on the rules changes. Mr. Leif said the standard public notice was issued and emails were sent to all residents and nonresidents who purchase licenses. While walk-in area operators were not directly contacted by the Game, Fish and Parks Department, they may have been made further aware of the proposed changes by the hunters who use their land. Representative Hunhoff inquired whether a landowner who may operate a business in cooperation with enrolling their land as a walk-in area would consider withdrawing their land if they believed they would lose revenue from the deadline change. She said more data is needed to determine if there were unintended financial consequences from the proposed changes.

Senator Solano inquired as to what restricts a landowner from withdrawing their lands from the walk-in program. Mr. Leif replied that the contract specifies a 30-day notice for cancellation by either side.

Senator Kennedy cited statute that says Code Counsel edits must be followed or appealed and while the Department may have had the best of intentions, their proposed rules exceeded the delegated statutory authority and the Department made no appeal on the suggested edits.

Senator Kennedy moved, seconded by Representative Cwach, that the review of the rules proposed by the Department of Game, Fish and Parks is complete and that 41:03:01:16.02, 41:03:01:16.04, and 41:03:01:16.05 should be reverted to a prior step according to SDCL 1-26-4.7. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Solano.

Representative Hunhoff remarked that while the Rules Review Committee had approved definition changes previously, as there was not currently a definition for "water access" in place, the Department had perhaps "put the cart before the horse" in bringing rules to create the definition.

Senator Solano commented that while he understood the intent of the rules and was personally not opposed to putting them in place as part of the agency's clean-up of regulations, he was not clear on whether a well-defined appeals process for not following Code Counsel edits was laid out in code. He said it was incumbent upon the Rules Review Committee and legislators to put one in place.

Representative Hunhoff moved, seconded by Senator Russell, that 41:06:22:01.02 should be reverted to a prior step according to SDCL 1-26-4.7. Motion failed on a roll call vote with 6 ayes and 4 nays. Voting aye: Hunhoff and Russell. Voting nay: Cwach, Hansen, Kennedy, and Solano.

Representative Hunhoff moved, seconded by Representative Hansen, that the remaining rules proposed by the Department of Game, Fish and Parks be approved. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Voting nay: Russell.

Board of Medical and Osteopathic Examiners (Department of Health): Amend rules to clarify the limitation of attempts of an exam for medical license applicants.

Mr. Tyler Klatt, Board of Medical and Osteopathic Examiners, reviewed the proposed rules.

Representatives Hunhoff and Cwach requested an explanation of the exam process. Mr. Klatt provided details about the written and clinical portions of the exam and said individuals get three opportunities to take it: the initial attempt and two additional attempts if they are unsuccessful the first time.

Senator Solano wondered why the requirement needed to be clarified in rule if it exists in statute. Mr. Klatt said the clarification would help dispel further confusion.

Senator Kennedy cited a change requested in the LRC's Style and Form letter that was not reflected in the proposed rules. Mr. Klatt replied the correction would be made before the rules were filed with the Secretary of State.

Senator Solano moved, seconded by Representative Cwach, that the review of the rules proposed by the Board of Medical and Osteopathic Examiners (Department of Health) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Solano.

Department of Health: Amend rules to minimize and clarify the requirements pertaining to the redistribution of nursing facility beds.

Mr. Tom Martinec, Department of Health, reviewed the proposed rules.

Senator Solano asked if audited financial statements are requested for out-of-state groups requesting to expand the number of beds. Mr. Martinec said the statements could be requested and reviewed as part of the consideration of the group's overall proposal.

Senator Russell inquired how the Department establishes the identified area of need for more beds. Mr. Martinec explained a variety of resources are used including national studies, how beds are currently utilized, census information, and why additional beds may be needed in specific geographic areas. He said the criteria used should be more expansive to make the beds more available to facilities that really need them.

Representative Hunhoff wondered why initially the Department used community support as a determining factor. Mr. Martinec responded that if there were competing proposals in a community, letters of support could help to determine which proposal was better supported. He acknowledged the practice has not added value to the process.

Senator Russell commented that while he would support the proposed rules as a step in the right direction, criteria need to be established in statute to ensure smaller communities are given the same opportunity for additional beds as larger communities.

Senator Kennedy moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Health is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Solano.

South Dakota Board of Education Standards (Department of Education): Amend rules to:

- Update language to reflect industry standards;
- Correct references to national program standards where applicable; and
- Align terminology and requirements with educator certification rules updated.

Ms. Kathy Riedy, Department of Education, reviewed the proposed rules.

Senator Kennedy wondered why specific regulations were listed for birth though 3rd grade and 5th through 12th grade but not for 4th grade. Ms. Riedy said kindergarten through 12th grade special education rules covered all grade levels while the proposed rules being presented at this meeting were for specialized areas.

Representative Hunhoff asked if the rules were introducing a new term: Board of Education Standards. Ms. Riedy explained there was a previous name change from the Board of Education to the Board of Education Standards.

Senator Kennedy noted several errors in the rules regarding citations and numbering that needed to be addressed. Ms. Riedy assured him the corrections would be made prior to filing the rules with the Secretary of State.

Representative Hunhoff inquired how much engagement occurred with the affected groups during the rules process. Ms. Riedy said all pertinent sectors were informed and included in the discussion.

Representative Cwach asked how the passage of the rules would impact the certification process. Ms. Riedy clarified the proposed changes would bring standards in alignment with the updated certification rules.

Representative Hunhoff and Senator Solano commented that while there was no reason to revert the rules, they considered them to be a work in progress and they were trusting the Department of Education to continue to clean up the regulations to provide more clarity and keep affected groups apprised of the changes.

Senator Russell said schools and government should be more concerned with the primary role of schools in today's society and focus on improving education standards rather than social standards.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Board of Education Standards (Department of Education) is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Voting nay: Russell.

Department of Revenue: Amend rules to:

- Update definitions;
- Update the timeline and processes for alcohol wholesaler price filings;
- Provide enhanced notice to retailers and clarify requirements for wholesalers for reported delinquencies; and
- Allow alcohol retailers to use loyalty and reward programs.

Mr. Jason Evans, Property and Special Taxes Division, Department of Revenue, reviewed the proposed rules, some of which were reverted by the Rules Review Committee last fall. Mr. Evans noted the Department reached out to manufacturers, wholesalers, and industry groups during the interim for feedback prior to bringing the rules back for consideration.

Public Testimony

Ms. Shuree Mortenson, South Dakota Retailers Association, expressed the organization's support for the rules as presented.

Mr. Jeremiah M. Murphy, Republic National Distributing Company, noted that while he appeared as an opponent in November, he had since been included by the Department in the effort to find alternatives that were feasible for the industry and was now in support of the proposed rules.

Mr. Bob Riter, South Dakota Beer Distributors Association, thanked the Department for their transparency and willingness to work with the industry on the proposed rules.

Representative Cwach moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Revenue is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Solano.

Division of Unemployment Insurance (Department of Labor and Regulation): Amend rules to:

- Change the name of the unemployment insurance program to the reemployment assistance program as a result of the passage of House Bill 1035 by the 2019 Legislature;
- Change to reference of benefit check to benefit payment; and
- Update the citation to the Workforce Innovation and Opportunity Act.

Ms. Pauline Heier, Division of Unemployment Insurance, Department of Labor and Regulation, reviewed the proposed rules, many of which are the result of the passage of House Bill 1035 by the 2019 Legislature.

Representative Hunhoff asked why the fiscal impact statement for the rules package did not indicate any associated costs. Ms. Heier replied that any corresponding costs were covered under the bill itself.

Senator Solano moved, seconded by Representative Hansen, that the review of the rules proposed by the Division of Unemployment Insurance (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Solano.

South Dakota Commission on Gaming (Department of Revenue): Amend rules to:

- Allow accommodations for players with documented medical impediments to assist them in participating in games;
- Include poker and house banked poker into existing drop procedures;
- Apply count procedures to house banked poker and poker games;
- Provide for appropriate procedures for accepting cash at house banked poker tables;
- Provide for procedures for appropriate distribution of chips to and removal of chips or coins from house banked poker games;
- Apply appropriate drop box requirements for and provide for statistics procedures in house banked poker games;
- Provide procedures for the dealing of house banked poker games;
- Prohibit poker players or spectators from removing or altering cards;
- Allow for players to wager on more than one box according to specific rules of each game;
- Allow for tip bets in house banked poker games; and
- Require poker players to be responsible for computing the winning combination of their own hand.

Mr. Craig Sparrow, South Dakota Commission on Gaming, Department of Revenue, reviewed the proposed rules.

Regarding those rules pertaining to house banked poker games, Mr. Sparrow explained that such games are currently played in the blackjack area of a casino instead of the traditional poker pit because players are playing against the house (like blackjack) as opposed to other players, as in a traditional poker game. The proposed rules would move the regulations for house banked poker from the blackjack section to the poker section of the Commission's rules.

Representative Cwach inquired why the submitted small business impact statement showed no financial impact on the Deadwood community if the rules were approved. Mr. Sparrow responded that the gaming industry is already following these procedures so there would be no additional expense to them.

Senator Solano asked if a question in the LRC's Style and Form letter to the Commission on Gaming regarding gaming devices had been resolved. Mr. Sparrow said yes.

Representative Cwach moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Division of Gaming (Department of Revenue) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Solano.

Closing Comments

Senator Solano announced the next meeting of the Rules Review Committee is August 12, 2019. Currently nine rules packages are up for consideration.

Adjournment

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

Chair Solano adjourned the meeting at 1:22 p.m.