

MINUTES

Interim Rules Review Committee



Senator Alan Solano, Chair
Representative Jean Hunhoff, Vice Chair

Three hundred eighty-fourth meeting
Monday
November 4, 2019

Room 414
State Capitol
Pierre, South Dakota

The three hundred eighty-fourth meeting of the Interim Rules Review Committee was called to order by Senator Alan Solano (Chair), at 9:01 a.m. CT, on November 4, 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

Senator Kennedy moved, seconded by Representative Hunhoff, that the September 9, 2019, meeting minutes be approved. Motion prevailed on a unanimous voice vote.

Staff Report

Mr. Wenzel Cummings, Code Counsel, LRC, reported on his complete rewrite of SDCL 1-26, saying many of the statutes are 40 to 50 years old and current law makes the rules process cumbersome and hard to understand for both agencies and LRC staff. The proposed draft is organized in such a way that each step in the rules process gets its own section of the code to provide more clarity. He said due to the meeting's long agenda, members would likely not get the opportunity to review the draft today.

Senator Solano advised members that they would all receive a copy of the draft for review. He commended Mr. Cummings for taking on the challenge of rewriting the entire chapter.

Rules Reviewed

Department of Agriculture: Amend a rule to increase the feed tonnage inspection fee from two cents per ton to 10 cents per ton.

Ms. Taya Runyan, Department of Agriculture, reviewed the proposed rules and said if they were approved today, the agency would file them with the Office of the Secretary of State on such a date as to make the rules effective on January 1, 2020.

Public Testimony

Ms. Brenda Forman, South Dakota Association of Cooperatives, expressed the support of her organization for the fee increase and the feed program.

Representative Hunhoff asked about the substantial revenue changes for the program over the past three years, and what contributed to the changes in fee increases. **Mr. Chris Petersen, Department of Agriculture**, replied that specialty pet food revenues have declined and rebounded. The fee increase changes can be attributed to a higher number of individuals re-upping their licenses in a particular year.

Representative Hunhoff inquired how long the fee increase from two cents per ton to 10 cents per ton would carry the fund. Mr. Petersen responded the fund would still hold a negative balance for Fiscal Years 2019 and 2020 but should have a positive balance with Fiscal Year 2021. The increase would sustain the fund for five to seven years before the fees would need another adjustment.

Senator Solano asked if the reduced numbers of testings and inspections would remain the same if the fee increase were approved. Ms. Runyan said the goal is to increase the number of samples back up to 700 from 350, which is most effective for the program.

Senator Russell thanked the agency for running an efficient program but said he could not vote for a five-fold increase to the fee. Senator Kennedy said statute caps the tonnage fee at not more than 24 cents per ton, and the proposed increase was significantly lower than the cap.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Agriculture 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 Game, Fish and Parks: Amend rules to:

- Insert gender-neutral language and update authorities;
- Create new working definitions;
- Provide for consistent language;
- Differentiate between suspensions and revocations for licensing agents;
- Create a unified time restriction for the state park system as well as public hunting and lake access areas;
- Consolidate similar rules into one rule;
- Prohibit alcohol at Bolton Game Production Area;
- Clarify nomenclature;
- Provide clarity and eliminate unnecessary and redundant language;
- Identify specific authorities as the basis for rule;
- Authorize additional days of free entrance into state parks;
- Extend the time periods that the Mickelson Trail would be accessible;

- Repeal the requirement to tag antlers in the velvet stage; and
- Modify the start date for the prohibition of baiting from August 15 to August 1.

Mr. Jon Kotilnek and **Mr. Tony Leif, Department of Game, Fish and Parks**, reviewed the proposed rules. Mr. Kotilnek said two additional rules ([Document 1](#)) had been inadvertently left out of the proposed packet and he asked that they be added to the packet for the committee's consideration.

Representative Hunhoff asked for a definition of "managed" as it pertains to the department and public lands. Mr. Kotilnek said while a definition does not exist in statute or rule, it is a common term associated with the managerial requirements under Title 6. Mr. Leif said as an example of other properties managed by the state the department works with federal partners to manage property through a Memorandum of Understanding or Memorandum of Agreement.

Representative Cwach asked whether generalizing the traffic laws on department lands would create an ambiguity not present in the current rules. Mr. Kotilnek said the rules are necessary to provide park staff with the authority to cite people who violate the traffic laws and the proposed language will simplify the rules and reduce redundancy.

Representative Hunhoff moved, seconded by Representative Hansen, 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 4 ayes and 2 nays. Voting aye: Hansen, Hunhoff, Kennedy, and Solano. Voting nay: Cwach and Russell.

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

- Extend the mountain lion hunting season dates in the Black Hills Fire Protection District from December 26 through March 31 to December 26 through April 30 and increase the number of access permits in Custer State Park;
- Allow the GFP Commission to extend the mountain lion hunting season beyond April 30 if necessary;
- Extend the Custer State Park coyote hunting season from December 26 through March 31 to December 26 through April 30 and remove the requirement to have a free access permit;
- Allow for a single importation permit from an out-of-state source to cover an entire year from their last fish health inspection;
- Specify which species of fish need to be tested for particular pathogens;
- Add spiny water flea, round goby, and specified perch to the aquatic invasive species list;
- Add Lake Sharpe and Francis Case to the list of containment waters to help control the spread of aquatic invasive species;
- Add and update specific authority to the current rules and correct language for style and form;
- Update language for consistency purposes and to reduce redundancy of terms;
- Repeal repetitive references and unnecessary rules;
- Increase the park entrance license fees and increase the fee for having a vehicle in the park without a park entrance license;
- Increase camping fees across the state;
- Create a definition for a "tent only" campsite;
- Increase the cost of firewood from \$5.00 to \$6.00 a cubic foot;

- Identify the state's known chronic wasting disease (CWD) endemic areas at the hunting unit level for deer and elk; and
- Require hunters, wildlife processors, and taxidermists to dispose of out-of-state cervids, regardless of CWD status, and cervids harvested from a known South Dakota CWD endemic area through their waste management provider or a permitted landfill.

Mr. Jon Kotilnek, Department of Game, Fish and Parks, reviewed the proposed rules. It was determined that due to the length of the rules packet, the committee would vote on the proposed rules in sections instead of taking action on the entire packet in a single vote.

Senator Kennedy asked how a member of the general public who does not know that the Game, Fish and Parks Commission is taking action on a petition becomes a party to receive notice. Mr. Kotilnek said the department publishes notices in three newspapers, posts the information to its website, and alerts interested parties by email. Senator Kennedy replied that under 41:04:06:02, publication applies only to rule-making and not to contested cases.

Senator Kennedy moved, seconded by Senator Russell, that 41:04:06:02 as proposed by the Department of Game, Fish and Parks be reverted to a prior step according to SDCL 1-26-4.7. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Cwach, Hunhoff, Kennedy, Russell, and Solano. Voting nay: Hansen.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Game, Fish and Parks up through page 94 of the rules packet 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.

Mr. Scott Simpson, Department of Game, Fish and Parks, and Mr. Gary Jensen, Chair, Game, Fish and Parks Commission, reviewed the proposed rules from page 95 to page 101 of the rules packet. Historical information was provided on fee revenues ([Document 2](#)).

Mr. Jensen said the department and the commission discussed the impact of flooding on the park system, including how much the damages would cost and how it would be paid for. When the department proposal was taken to the public, about 300 comments were received. Many respondents spoke highly of the park system and supported the fee increases as necessary and appropriate.

Representative Hunhoff asked how Fiscal Year 2019 ended in terms of fee revenues. Mr. Simpson said revenues were down close to \$1.9 million from Fiscal Year 2018.

Representative Hunhoff wondered how many residents versus nonresidents use the state park system. Mr. Simpson responded that on the camping side, the split is 70-30 systemwide but that may change depending on the area of the state where the individual is camping. Resident numbers are higher than nonresidents for day use of the parks.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Game, Fish and Parks from page 95 through page 101 of the rules packet 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.

Mr. Tony Leif, Wildlife Division, Department of Game, Fish and Parks, reviewed the remainder of the proposed rules, beginning with page 102.

Representative Hunhoff asked if permitted landfills are currently meeting the requirements to contain Chronic Wasting Disease (CWD) when accepting carcasses. Mr. Leif said facilities ensure that live animals do not come in contact with the carcasses, and a list of landfills that take the carcasses has been provided to hunters. Separate colored tags are used for any animal with special disposal requirements. He said efforts are also underway to educate the general public about CWD.

Senator Solano asked what the timeframe is for an animal that contracts the disease, from incubation to death. Mr. Leif said there is no cure once the animal has contracted the disease although some deer can test positive for CWD and survive for years before the disease kills them.

Senator Kennedy moved, seconded by Representative Hansen, that the review of the remainder of the rules proposed by the Department of Game, Fish and Parks, beginning with page 102, is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Solano.

Department of Transportation: Amend or establish rules to:

- Expand the 35 mile-per-hour limited speed zone through Bryant;
- Shift the locations of the 45 mile-per-hour limited speed zones on the east and west ends of Bryant;
- Expand the approved routes for longer combination vehicles; and
- Allow the testing and operation of groups of individual motor vehicles traveling in a unified manner at electronically coordinated speeds and distance intervals that are closer than otherwise allowed under SDCL 32-26-40 through 32-26-42.

Ms. Karla Engle, Department of Transportation, reviewed the proposed rules, and provided a map showing the current and proposed longer combination vehicle (LCV) routes in South Dakota ([Document 3](#)). She also explained the concept of "truck platooning" in which autonomous vehicles travel at a coordinated speed and distances that are closer than what is normally allowed.

Mr. Joel Jundt, Department of Transportation, said truck platooning was authorized by the passage of House Bill 1068 by the 2019 Legislature. Federal rules regarding the practice are already in place.

Public Testimony

Captain John Broers, South Dakota Highway Patrol, Department of Public Safety, and **Mr. Myron Rau, South Dakota Trucking Association,** expressed their support for their proposed rules.

In response to a question from Representative Hunhoff, **Mr. Dave Huft, Department of Transportation**, explained how trucks would disengage from platooning in construction zones.

Senator Kennedy asked if rain could be added to the conditions under which platooning would not be permitted. Ms. Engle said she believed that was already contemplated by the rule. As for vehicles that have reduced visibility because they are behind the truck, she noted all drivers are responsible for assessing safe situations and making safe movements.

Representative Cwach asked what value the department will get from the reporting requirements. Mr. Huft said the reports can help verify safety performance.

Responding to Representative Cwach on whether platooning vehicles need to be identifiable in some way to other drivers, Ms. Engle said the concern in marking a truck with signage is that the vehicle may not always be platooning when they are visible to other drivers. Other states do not consistently require marking. Captain Broers said for law enforcement purposes, trucks that are following closely would be readily apparent and the truck could be stopped and asked to show their platooning permit. Under the proposed rules, platooning is limited to interstates.

Representative Hansen moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Transportation 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 allow municipalities to regulate the practice of saline tattoo removal.

Ms. Colleen Winter, Department of Health, reviewed the proposed rules which are needed due to the passage of House Bill 1176 by the 2019 Legislature.

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.

Department of Health: Amend rules to:

- Clean up existing rules; and
- Clarify the methodology for determining testing fees.

Ms. Joan Adam, Department of Health, reviewed the proposed rules which are related to the passage of House Bill 1012 by the 2019 Legislature.

Senator Kennedy, referencing the style and form letter from LRC, asked how the fees will be determined if the strike-thrus in rule eliminate the methodology required by the legislation. Ms. Adam said a formula will still be used to calculate the costs.

Representative Hunhoff asked why the list of lab tests was eliminated. Ms. Adam replied that the testing done in the lab needs to be responsive to emerging pathogens and flexibility is needed to update information quickly when necessary. The list is on printed materials as well as the department website.

Representative Hansen said if the legislature only wanted the requirement to be that the fee cannot exceed the cost for the test, they would not have said the department needed to promulgate rules to explain the fees. He suggested a change in statute, not rule, may be needed.

Senator Solano said the desire to remove the list seems to be in line but it may be necessary for the department to modify how it describes method in rule.

Senator Kennedy moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Health is complete and that they be reverted to a prior step according to SDCL 1-26-4.7(4). No action was taken as a substitute motion was made.

Representative Hansen moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Health is complete and that 44:59:01:04, 44:59:01:05, 44:59:01:06, 44:59:01:07, and 44:59:01:08 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.

Senator Solano moved, seconded by Senator Russell, that the review of 44:59:01:01 as 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.

Department of Health: Amend rules to prescribe a form to be used by a physician to comply with the requirement of SDCL 34-23A-10.1(1).

Ms. Lynne Valenti, Department of Health, reviewed the proposed rules which are needed due to the passage of Senate Bill 72 by the 2019 Legislature.

Public Testimony

Mr. Mitch Richter, Planned Parenthood, expressed the organization's opposition to the proposed rules. He told committee members the group had provided a dozen recommendations for the form but only a few were addressed and that Planned Parenthood would be willing to work with the department to update medically pertinent language.

Senator Solano asked for an overview of the additional section added to the form and whether using two forms instead of one would be an option. Ms. Valenti said the form complies with statute regarding medical terminology and risks and that the additional section better spells out that information for women contemplating abortion. She said it is important to have only one form that physicians can use with certain sections that can be completed specific to each patient's situation.

Senator Kennedy wondered why a woman is required to sign each separate page of the form even though some pages may not apply to her specific situation. Ms. Valenti said it is important for women to

understand the entire process from start to finish. The form is intended to be a guideline the provider can review with the patient before the procedure. Representative Hansen said there are often situations in which information can be difficult for a client to understand; in this situation, it is the doctor's job to break that down so the woman can understand it.

Representative Cwach said according to statute, the purpose of the form is to provide information about the specific procedure that will be performed. His concern is that the committee would be approving a form that does not comply with the statute. Senator Solano responded that use of the form takes place prior to the woman consenting to the procedure and that contents of the form are laid out in statute.

Senator Solano moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Health is completed. Motion prevailed on a roll call vote with 4 ayes and 2 nays. Voting aye: Hansen, Hunhoff, Russell, and Solano. Voting nay: Cwach and Kennedy.

Department of Health: Amend rules to:

- Reflect current practices;
- Delete unnecessary rules; and
- Increase flexibility in providing Assisted Living services.

Ms. Debra Carlson, Department of Health, reviewed the proposed rules.

Senator Solano 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.

Division of Developmental Disabilities (Department of Human Services): Amend rules to:

- Limit participants in shared living to individuals with IDD/DD age 22 and older;
- Require training for disability awareness, the participant's Individual Service Plan, and abuse, neglect, and exploitation for respite care providers and anyone over 18 years of age living in the home;
- Allow a cell phone to be used instead of requiring a landline;
- Prohibit a shared living provider from being a representative payee over a participant's money;
- Specify the staff orientation requirements of providers of case management;
- Clarify what Individual Service Plan expectations are for a participant's goals;
- Eliminate a rule concerning alternative day services;
- Add new training requirements to include focusing on the participant's needs to achieve their good life;
- Add new requirements to ISP development to include Charting the LifeCourse principles;
- Modify coordination of required actions and timeframes;
- Repeal a rule which is repetitive with DSS Medicaid rules;
- Eliminate a rule stating that no services are provided if state funds are not available;
- Change the name of Statewide Family Support to Strengthening Families Program; and
- Update the age requirement from 2-1/2 to 3 years of age for incontinence supplies.

Ms. Beverly Katz and Mr. Darryl Millner, Department of Human Services, reviewed the proposed rules.

Senator Solano and Representative Hunhoff asked about training for respite care providers and case managers. Mr. Millner explained that community support providers conduct the training for the respite care providers and that because case managers do not interact with patients as much as community support providers, safety training requirements are in place for community support providers.

Senator Solano moved, seconded by Senator Kennedy, that the review of the rules proposed by the Division of Developmental Disabilities (Department of Human Services) 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 Nursing Facility Administrators (Department of Health): Amend rules to:

- Update the reference to the national examination; and
- Clarify continuing education requirements.

Ms. Brittany Novotny, South Dakota Board of Nursing Facility Administrators, reviewed the proposed rules.

Senator Solano moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Board of Nursing Facility Administrators (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 Electrical Commission (Department of Labor and Regulation): Amend rules to:

- Increase the fees for certain inspections; and
- Establish an allotted amount of inspections per permit type.

Mr. JJ Linn, South Dakota Electrical Commission, reviewed the proposed rules.

Representative Hunhoff asked if services from the Bureau of Information and Telecommunications (BIT) was a regular expense for the commission. Mr. Linn said BIT is often used for computer services including database building.

Senator Solano inquired when the fees in the proposed rules were last increased. Mr. Linn responded in 2011.

Senator Kennedy noted that according to Form 15 as submitted by the commission, the required rules notice was successfully published twice but publication was unsuccessful the third time. Mr. Linn confirmed that was the case.

Senator Kennedy moved, seconded by Senator Russell, that the review of the rules proposed by the South Dakota Electrical Commission (Department of Labor and Regulation) is complete and the rules be reverted to a prior step according to SDCL 1-26-4.7(6). Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Solano.

Department of Environment and Natural Resources: Amend rules to:

- Modify the requirements to take an Operator Certification exam; and
- Clarify the requirements to renew a certificate.

Mr. Mark Mayer and Mr. Rob Kittay, Department of Environment and Natural Resources, reviewed the proposed rules.

Representative Hunhoff asked how the changes will impact the quality of South Dakota's water. Mr. Mayer said they will ensure operators are certified and improve the potential for better water.

Senator Solano moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Environment and Natural Resources is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

Department of Social Services: Amend rules to:

- Remove duplicative language and cite federal authority; and
- Clarify process for a client to change their primary care provider.

Ms. Brenda Tidball-Zeltinger and Mr. William Snyder, Department of Social Services, reviewed the proposed rules which had been reverted by the Rules Review Committee at its September 9, 2019, meeting.

Senator Solano moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

South Dakota Board of Minerals and Environment (Department of Environment and Natural Resources): Amend rules to:

- Update South Dakota's existing air quality rules by incorporating updated, codified federal regulations;
- Incorporate by reference the revised federal National Ambient Air Quality Standards; and
- Incorporate federal requirements for municipal solid waste landfills.

Mr. Kyrik Rombough, Department of Environment and Natural Resources, reviewed the proposed rules.

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

South Dakota State Board of Dentistry (Department of Health): Amend rules to:

- Incorporate the Integrated National Board Dental Examination;
- Streamline and update requirements regarding clinical competency examinations;
- Update supervision levels;
- Update the duties and procedures performed by dental assistants and registered dental assistants;

- Update registered dental assistant registration requirements and training program criteria;
- Remove redundant regulations and obsolete provisions and update references;
- Update student exemption to registration; and
- Update continuing education requirements applicable to registered dental assistants.

Ms. Brittany Novotny and **Ms. Shelly Munson, South Dakota State Board of Dentistry**, reviewed the proposed rules which are part of an ongoing regulatory update. Ms. Munson participated in the discussion by phone. Information was provided regarding requirements for dental assistants and registered dental assistants ([Document 4](#)).

Ms. Munson provided committee members with written testimony from Woods, Fuller, Schultz and Smith ([Document 5](#)).

Public Testimony

Mr. Paul Knecht, South Dakota Dental Association, expressed his organization's support for the proposed rules.

Mr. Bob Riter, American Association of Orthodontists, said his organization is opposed to the proposed rules due to their concern over whether the board could promulgate rules regarding what tasks dental assistants could perform in the absence of a dentist or dental hygienist ([Document 6](#)). Mr. Riter asked that the committee revert the rules as presented.

Rebuttal

Senator Solano allowed rebuttal testimony from Ms. Novotny. She said she believed the board has the appropriate authority to promulgate the rules and that they are caught in the middle of a fight that is bigger than the board.

Senator Solano said while statute appears to give the board the necessary authority, the levels of supervision are not specified. Ms. Novotny responded that prescribed supervision levels exist that specify when a dentist needs to be onsite and that as treatment moves into the teledentistry realm, rules and statute changes will be required.

Senator Solano advised the board to be careful not to protect any particular sector and said the concerns of the dental groups should be brought forward. Ms. Novotny referenced an email from **Mr. Kevin Horner, South Dakota Association of Orthodontists**, saying his organization supports the rules as written. She noted the state association and the national association were not in agreement.

Representative Hansen asked who would perform the necessary scans if Smile Direct Club moved into South Dakota. Ms. Novotny replied that a registered or non-registered dental assistant would be onsite to perform those services and could do so in the absence of an onsite dentist.

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

Appraiser Certification Program (Department of Labor and Regulation): Amend rules to:

- Define appraisal in rule the same as in statute;
- Require state-registered appraisers and supervisors to jointly maintain the required experience log for accuracy;
- Remove language regarding when supervision may begin;
- Reduce the number of joint inspections required;
- Correct a cited rule;
- Establish the length of time the appraiser examination is valid;
- Adopt the new edition of the uniform standards;
- Correct the timeframe for completion of the uniform standards update course; and
- Establish criteria for instructors of the department's training course.

Ms. Sherry Bren, Appraiser Certification Program, before reviewing the proposed rules, advised the committee that although her program had engaged the required three newspapers for notice publication on or before September 27, one of the newspapers did not publish the notice until September 28. She believed the one-day delay meant they did not meet the requirement to publish 20 days before the scheduled hearing.

Senator Solano thanked Ms. Bren for the information.

Senator Solano moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Appraiser Certification Program (Department of Labor and Regulation) is complete and the rules be reverted to a prior step according to SDCL 1-26-4.7(6). Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

Point of Order

Later in the meeting, Representative Hansen raised a point of order concerning the publication dates for the Appraiser Certification Program's notice. He said the requirement of publishing notice 20 days prior to the hearing was met if September 28 is counted as the first day.

Senator Kennedy said historically, the committee has used the same method of counting days as that used under rules of civil procedure in court where the first day of publication is not counted. Senator Solano commented that the day of the hearing itself cannot be counted as one of the notice days.

Mr. Cummings said in looking at the language of the statute, it reads only as at least 20 days. He said he recognized that the committee's practice may be different but he could not judge on their practice, only on the statute.

Senator Solano noted that the issue of newspapers not publishing the notices as directed had been a problem in the past and their action has had a significant impact on boards and agencies. He said if Ms. Bren could return to the Rules Review Committee meeting prior to adjournment, members would reopen the proceedings and hear the proposed rules.

Ms. Bren was located and returned to the meeting.

Representative Hansen explained the issue of how the 20 days was computed and said he believed that she met the 20-day posting requirement.

Representative Hansen moved, seconded by Senator Solano, that the proceedings regarding the rules proposed by the Appraiser Certification Program (Department of Labor and Regulation) be reopened. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

Ms. Bren reviewed the proposed rules.

Senator Solano asked if the reduction in the number of appraisals with the state appraiser was an indication of a shortage of appraisers in the state. Ms. Bren said that played a small role in the change. While there have been changes in federal criteria to address appraiser shortages, the number proposed in rule is more applicable to the situation in South Dakota. She said supervisors are supportive of the rules change.

Senator Solano moved, seconded by Representative Hansen, that the review of the rules proposed by the Appraiser Certification Program (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

Department of Revenue: Repeal rules with no legislative authority and no implementation purpose in the codified laws relating to the inheritance tax.

Mr. Jason Evans, Department of Revenue, reviewed the proposed rules, which repeal all rules related to the inheritance tax. House Bill 1057, passed by the 2014 Legislature, repealed all inheritance tax laws.

Representative Hunhoff moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Revenue is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

Department of Revenue: Amend rules to:

- Establish procedures and requirements for taxpayers required by the Secretary to file a consolidated report; and
- Provide a more efficient procedure for apportionment of bank franchise tax revenue to county governments.

Mr. Jason Evans, Department of Revenue, reviewed the proposed rules. He advised committee members that those rules in the packet regarding the filing of consolidated returns were being pulled from consideration. As the industry was opposed to the changes, the department will continue to work on the issue with industry representatives with the intention of bringing the rules back for consideration next spring. This left only 64:26:02:12 for discussion and approval by the committee.

Senator Solano thanked the department for delaying the other proposed rules while they continue to work with the industry.

Senator Solano moved, seconded by Representative Hansen, that the review of 64:26:02:12 as proposed by the Department of Revenue is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

Division of Insurance (Department of Labor and Regulation): Amend rules to update continuing education course requirements for insurance producers.

Mr. Frank Marnell, Department of Labor and Regulation, reviewed the proposed rules.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Division of Insurance (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

South Dakota Lottery (Department of Revenue): Amend rules to permit an additional method of a video lottery machine determining video lottery game winners.

Mr. Norm Lingle, South Dakota Lottery, reviewed the proposed rule.

Representative Hunhoff asked if the new method was being utilized by other jurisdictions and what the payback percentage is for video lottery games. Mr. Lingle confirmed its use by other jurisdictions and said administrative rule requires video lottery games to pay back from 80 to 95 percent. He explained that if the rule is approved, the manufacturer will submit its software to South Dakota through Gaming Labs International.

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

South Dakota Real Estate Commission (Department of Labor and Regulation): Amend rules to:

- Require team leaders to keep a current list of their team members;
- Require the responsible broker to maintain the list; and
- Make the list available upon request from the commission.

Ms. Melissa Miller, South Dakota Real Estate Commission, reviewed the proposed rules, which were prompted by the passage of House Bill 1076 by the 2019 Legislature.

Senator Solano moved, seconded by Representative Hunhoff, that the review of the rules proposed by the South Dakota Real Estate Commission (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

Civil Service Commission (Bureau of Human Resources): Amend a rule to change a written examination from a mandatory requirement to an optional criterion during the law enforcement employment selection process.

Ms. Mallori Barnett, Bureau of Human Resources, reviewed the proposed rules.

Representative Hunhoff asked why the change is relevant if the requirement will be optional. Ms. Barnett said the South Dakota Highway Patrol requested the change from mandatory to optional because there are a lot of steps in the examination process and the written exam is not always the best indicator of a good candidate. The agency wanted the latitude to decide whether to administer the written exam based on the candidates themselves. **Ms. Ellen Zeller, Bureau of Human Resources,** explained that the employer could choose to have the written exam administered later on in the process and if they made that choice, it would not be optional for the applicant as to whether to take it.

Senator Kennedy moved, seconded by Representative Hansen, that the review of the rules proposed by the Civil Service Commission (Bureau of Human Resources) is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Solano. Excused: Russell.

South Dakota Board of Barber Examiners (Department of Labor and Regulation): Amend rules to:

- Update language to current nationally recognized terminology;
- Update safety and infection control requirements;
- Add blood exposure procedures; and
- Update rules that affect barber schools including instructor-to-student ratio, allow for substitute instructors, establish equipment requirements, change board approval of a school from accreditation to school license, and establish the number of hours barber students must spend in classrooms, demonstrations, and practice before performing service on a client.

Ms. Kate Boyd, South Dakota Board of Barber Examiners, reviewed the proposed rules.

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

Closing Comments

Senator Solano instructed Mr. Cummings to provide the members with copies of the proposed revisions to SDCL 1-26 and said a conference call could possibly be held at a later date regarding whether to submit the draft bill to the legislature. He thanked the committee, LRC staff, and agency representatives for their

diligence in getting through the day's long agenda. As this was Senator Solano's last meeting with the Rules Review Committee due to his resignation from the South Dakota Senate, he told members he had enjoyed serving with them and doing this important work for the state.

Representative Hunhoff commented that Senator Solano's insight, questions, and desire to do the right thing will be sorely missed by the committee and the legislature. Representative Hansen offered his thanks as well, saying the world needs more gentlemen and statesmen like Senator Solano.

Adjournment

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

Chair Solano adjourned the meeting at 5:12 p.m.