



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Two hundred ninety-seventh meeting
Wednesday
June 9, 2009**

**Room 414
State Capitol
Pierre, South Dakota**

The two hundred ninety-seventh meeting of the Rules Review Committee was called to order by Chair Representative Roger Hunt at 9:20 a.m. CDT, June 9, 2009, in Room 414 of the State Capitol, Pierre, South Dakota and via the Dakota Digital Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., Room MJ 140, Aberdeen, South Dakota; Department of Transportation, 901 Dakota St., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 156, Mitchell, South Dakota; SD School of Mines and Technology, 501 E. St. Joseph St., Room CB 108, Rapid City, South Dakota; and University Center, 2205 Career Ave., Room 282 S, Sioux Falls, South Dakota.

A quorum was determined with the following members answering the roll call: Senators James Hundstad, Jean Hunhoff (Vice-chair), and Mike Vehle; and Representatives Peggy Gibson, Roger Hunt (Chair), and David Lust. All members appeared via the DDN.

Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

Approval of Minutes

Representative Gibson moved, seconded by Senator Hundstad that the minutes of the May 20, 2009, meeting be approved. Motion prevailed unanimously on a voice vote.

Rules Reviewed

Department of Labor: Board of Accountancy - Amend rules to update references; correct erroneous references; repeal rules for conditional credit and transitional credits for the paper and pencil exam to the computerized exam; update language in rules to allow online renewals submission as signature and verification of information provided and the submitted time as the received date; eliminate pro-rated fees for firms and renewal of certificates; clarification of credit for CPE for instructors or discussion leaders; change definition of lapsed license to expired license; allow the board to be petitioned by an applicant or licensee to show other good cause to waive certain requirements; repeal and amend rules to reflect

changes required by the passage of House Bill 1058 in the 2009 legislative session to no longer require notification forms to be filed with the Board, out-of-state firms will need permits only to perform audit work, certificates and firm permits will not be required to be displayed, and disciplinary procedures to include those with practice privileges.

Ms. Nicole Kasin, Sioux Falls, Executive Director, reviewed the proposed rules.

Senator Hunhoff moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Labor: Board of Accountancy. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Labor: Electrical Commission - Amend rules to require standards for attaining a 501(d) license and for attaining levels of licensure above 501(d); address fee administration for 501(d) active and inactive licensure; document exceptions to the National Electrical Code as approved by the South Dakota Electrical commission; address fee administration for maintenance inspections; address fee administration for wiring permits; and eliminate the requirement for a wiring permit, inspection fee or inspection for modular homes or modular structures exported out of South Dakota.

Mr. J. J. Linn, Pierre, Executive Director, reviewed the proposed rules.

It was suggested that the Electrical Commission either delete or define "commercial and industrial" as used in ARSD 20:44:16:08 the next time rules are promulgated.

Senator Hundstad moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Labor: Electrical Commission. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Public Safety: Driver Licensing - Amend rules to revise the definitions of terms; clarify documents required for issuance of a first-time driver license or identification card; clarify documents required for issuance to an applicant holding an out-of-state license or identification card; clarify documents required for an applicant holding a South Dakota identification card; clarify a reference to fraudulent documents to reflect changed definition of terms; revise the fee for a prorated driver license for those under twenty-one years of age; revise existing guidelines regarding commercial driver licenses to reflect adoption of current federal regulations; revise certain commercial vehicle criteria to reflect current standards; and revise the seasonal commercial driver license rule to allow for issuance during two ninety day periods within a calendar year.

Ms. Cindy Gerber reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Public Safety: Driver Licensing. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Secretary of State: Board of Elections - Amend rules to clarify the address which the voter registration address verification notice is mailed to and include information on how to handle the notice if that person is no longer residing at that address; amend language in the notice of election for special district formation to clarify when the trustee election will be held; amend the municipal election ballot to include a list of the types of municipal governing boards; amend the certificate of nomination to fill vacancy form to include the principal residence address of the candidate; amend the approval of automatic tabulating system requirements for certification; amend the instructions to absentee voters to include instructions to not return the absentee ballot to the polling place; amend the type of seal used for sealing a ballot box; require the use of paper seals on the ballot box; amend the certification by precinct election board to include certification language for election boards which use electronic pollbooks; remove the date of the election from the official stamp for ballots; modify absentee ballot envelopes; repeal color requirement for special district ballots; add ballot format for special district formation elections; add ballot for school district reorganization elections; add ballot format for sanitary district elections; add petition form for establishing or eliminating school board representation areas; add petition form for referring the discontinuance of an attendance center; and put security measures in place for the use of electronic poll book.

Ms. Teresa Bray and **Ms. Kea Warne** reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Hunhoff, to approve the rules proposed by the Secretary of State: Board of Elections. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Health: Health Systems Development and Regulation - Adopt rules to establish guidelines of the statewide trauma system.

Mr. Tom Martinec and **Ms. Sandra Durick**, representing the department, and **Ms. Clara Johnson**, Sioux Falls, representing Avera Health, reviewed the proposed rules.

Representative Lust moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Health: Health Systems Development and Regulation. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Health: Health Systems Development and Regulation - Amend rules to assure the public health and safety requirements are met in the licensed lodging and campground facilities regulated by the department.

Mr. Martinec and **Mr. Clark Hepper** reviewed the proposed rules. Mr. Hepper noted that the department was given a copy of the Model RV Code at the public hearing. Prior to that time, the department was unaware of such model. Only two states have adopted the model code in its entirety.

Public Testimony

Mr. Max Hammer, Custer, representing the Beaver Lake Campground and also as President of the South Dakota Campground Owners' Association, spoke in opposition to the proposed rules. He voiced concerns with washroom facilities, size and number of rooms in cabins, and square footage requirements.

Mr. Al Johnson, Hill City, representing Recreational Adventures Co., spoke in opposition to the proposed rules. He asked for a "grandfathered" clause provision. He voiced concerns with regulations for primitive campgrounds; square footage issues; definitions for full service campgrounds, camping units, and camping cabins; issues regarding size, plumbing, windows, screens and linens for camping cabins; and dump station requirements. He asked the committee to send the rules back for further hearing so these issues could be resolved.

Mr. Ray Zobel, Custer, representing Custer's Gulch RV Park and Campground, asked for a clarification – kitchenettes in camping cabins were acceptable but bathrooms were not. Mr. Hepper stated that was correct.

Mr. Ray Aljets, Brandon, representing Yogi Bear's Jellystone Park – Camp Resort, spoke in opposition to the proposed rules. He stated they should have been consulted earlier in the process when the proposed rules were being drafted. He sees the industry going to the higher end amenities. Camping cabins are a large growth factor in their industry and should not be included under the lodging establishment procedures.

Mr. Duane Spader, Sioux Falls, representing Spader KOA, spoke in opposition to the proposed rules. He stated that if they are not grandfathered in, he could be put out of business.

Representative Lust noted ARSD 44:02:10:31 (6) states "No bathroom or kitchen facility may be provided in a camping cabin." Mr. Martinec stated that it was in error and should have been omitted as it is possible to have a kitchen in a camping cabin.

In response to a question regarding the number of rooms in a camping cabin, Mr. Martinec stated that it is a legal issue with regards to lodging establishments. Camping cabins are an industry trend and nothing prevents a campground from having them; however the campground needs to be licensed as a lodging establishment. The more rooms and amenities camping cabins have crosses the line into a true cabin – vacation home versus a camping cabin and the number of regulations attached. Mr. Martinec stated it needs to be a legislative change.

In response to a question that some of the campgrounds do not meet the square footage requirement, Mr. Martinec stated that the department is under the assumption that they are licensed and meet the current requirements.

Based on the public testimony, the proposed rules are not a reasonable implementation of the law as it affects the convenience of the public or the persons affected by the proposed

rules thus *Representative Lust moved, seconded by Representative Gibson, to revert the rules proposed by the Department of Health: Health Systems Development and Regulation back to a prior step for an additional public hearing pursuant to SDCL § 1-26-4.7(8). Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

Department of Health: Health Systems Development and Regulation - Repeal license fees for certain health care facilities that are now established in statute and to update fees for controlled substance registration and abortion facility licenses.

Mr. Martinec reviewed the proposed rules.

Representative Lust moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Health: Health Systems Development and Regulation. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Health: Joint Boards of Nursing and Medical and Osteopathic Examiners - Amend a rule to change the collaboration requirements for a certified nurse practitioner or certified nurse midwife who practices at multiple or separate practice locations.

Ms. Gloria Damgaard, Sioux Falls, Executive Director, and **Ms. Linda Young**, Sioux Falls, reviewed the proposed rule.

Representative Lust moved, seconded by Representative Gibson, to approve the rule proposed by the Department of Health: Joint Boards of Nursing and Medical and Osteopathic Examiners. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Environment and Natural Resources: Board of Water and Natural Resources - Adopt permanent rules to establish a system for awarding funding provided to the State Revolving Fund programs by the American Recovery and Reinvestment Act of 2009, to allow the waiver of a financial status summary for certain applications, and to modify the deadline for forfeiture of principal forgiveness.

Mr. Mike Perkovich reviewed the proposed rules.

Senator Hundstad moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Water and Natural Resources. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Social Services: Economic Assistance - Amend rules to add definitions, remove sales tax on food refund eligibility for food stamp households, delete obsolete

provisions relating to automatically eligible households, and amend the time frame to submit a quarterly report.

Ms. Laura Ringling and **Ms. Judy Toelle** reviewed the proposed rules.

Senator Hundstad moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Social Services: Economic Assistance. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Social Services: Adult Services and Aging - Amend rules relating to reimbursement for nursing facilities which will amend definitions; update internal references; clarify administrative hearing procedure; delete obsolete provisions; update internal references; repeal rules that are either obsolete or no longer represent the Department's current reimbursement methodology; increase the ceiling for capital costs; establish a new rule that specifies the reimbursement methodology used if an existing facility experiences a change in operational ownership; and specify that the amount of a facility's add-on payment for the use of a specialty bed will be established in the Department's contract with the provider.

Ms. Ringling and **Ms. Brenda Zeltinger** reviewed the proposed rules.

Public Testimony

Mr. John Miller, Hot Springs, representing Fall River Health Services, spoke in support of the proposed rules.

Mr. Larry Potter, Huron, representing Violet Tschetter Memorial Home, inquired if facilities would be able to file a request for a re-examination of rates under the proposed rules. Ms. Zeltinger stated that the proposed rules do not change the current procedure for a recalculation.

Senator Hunhoff moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Social Services: Adult Services and Aging. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Agriculture: Weed and Pest Control Commission - Amend a rule to add Sulfur cinquefoil to the local noxious weed and declared pest list.

Mr. Darwin Kurtenbach reviewed the proposed rule.

Senator Vehle moved, seconded by Representative Gibson, to approve the rule proposed by the Department of Agriculture: Weed and Pest Control Commission. Motion prevailed

unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Revenue and Regulation: Division of Insurance - Amend rules to repeal duplicative authority and to define premium for premium tax reporting purposes.

Department of Revenue and Regulation: Division of Insurance - Adopt rules to establish a special state continuation election of continuation for individuals that were eligible prior to the enactment of the American Recovery and Reinvestment Act.

Department of Revenue and Regulation: Division of Insurance - Amend a rule to change a reference to reflect the new lifetime benefit maximum amount of two million dollars

Mr. Randy Moses and **Mr. Wendell Malsam** reviewed the proposed rules for the Division of Insurance.

Representative Gibson moved, seconded by Senator Vehle, to approve the three sets of rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Revenue and Regulation: Real Estate Commission - Amend rules to permit electronic filings of petitions for promulgation of declaratory ruling or rule, include a broker in the registration process for a business corporation or limited liability company, make provisions for commission splits paid out-of-country, prohibit the reproduction of a license, require nonresident licensees to provide certificates of licensure at time of application for licensure and when renewing a South Dakota license, require a South Dakota resident licensed as a salesperson by examination in another state to meet certain education and examination requirements, require a nonresident salesperson licensed in South Dakota who establishes residency in this state to meet certain education requirements, correct gender specific language, rename Course I, II and III and revise course content requirements, require an instructor seeking approval to offer prelicensing education to complete certain course work, allow electronic filing of a complaint and response to complaint, distinguish the type of license to be held when appraising real property, define postlicensing education and establish requirements thereof, eliminate fees of certain prelicensing courses, require out-of-state courses to meet certain requirements, repeal the requirement of notice given to students at beginning of continuing education course, and prohibit independent study courses from qualifying for postlicensing education.

Ms. Dee Jones Noordermeer and **Ms. Karen Callahan** reviewed the proposed rules.

Representative Lust moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Revenue and Regulation: Real Estate Commission. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Education: Board of Education - Amend rules to clarify the addition of state fees being charged students at the state Technical Institutes, establish a higher amount of funding for facilities at the state technical institutes, and clarify the distribution and allocation of funds for each full time equivalent student.

Mr. Mark Wilson reviewed the proposed rules.

Senator Hunhoff moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Education: Board of Education. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Public Utilities Commission - Adopt rules regarding the interconnection of small generator facilities to the electric systems of public utilities.

Ms. Rolayne Wiest reviewed the proposed rules.

Senator Hunhoff moved, seconded by Representative Hunt, to approve the rules proposed by the Public Utilities Commission. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Game, Fish and Parks - Amend a Markings and Zones rule to require authorization of the department secretary prior to any person placing buoys on public waters; amend the Pheasant, Grouse, Quail, and Partridge Hunting Season rules to establish season dates, open areas, shooting hours, and daily bag and possession limits; and adjust the season ending date from the first Sunday of January to the second Sunday of January; amend a Partridge Hunting Season rule to remove LaCreek National Wildlife Refuge as an area open to hunting partridge; amend a Black Hills Elk Hunting Season rule to establish season dates for "any elk" and "anterless elk" (first and second season) licenses, types of available licenses, open areas, and shooting hours; adjust the number of licenses available from 755 "any elk" and 920 "anterless elk" licenses (total of 1,675 licenses) to 605 "any elk" and 760 "anterless elk" licenses (total of 1,365 licenses); and adjust Unit H3 to have a split season for antlerless tags; amend a Custer State Park Early Archery Elk Hunting Season rule to establish new season dates for the Custer State Park "any elk" archery licenses, number of available licenses, open area, and shooting hours (season dates would include the entire month of September and no longer allow unsuccessfully early archery elk hunters to return and hunt the late archery elk season); amend an Archery Elk Hunting Season rule to establish season dates for "any elk" and "anterless elk" (Black Hills Units and Unit 30A) licenses, types and numbers of available licenses, open areas, and shooting hours; adjust the number of licenses available from 124 "any elk" and 78 "anterless elk" licenses (total of 202 licenses) to 114 "any elk" and 71 "anterless elk" licenses (total of 185 licenses); and adjust the Unit 30A season dates to coincide with Nebraska season dates; amend a Special Custer State Park Anterless Elk Hunting Season rule to establish season dates for the special Custer State Park "anterless elk" (Units 1 and 2) licenses, number of available licenses, open areas, and shooting hours; adjust the number of licenses available in Unit 2 from 40 licenses to 20 licenses; and change the season dates for Unit 2 to always open on

the Tuesday following Native American Day for 9 consecutive days rather than the second Monday in October for 9 consecutive days; and amend a Prairie Elk Hunting Season rule to establish season dates for "any elk" and "anterless elk" (Units 09A, 11A, 11B, 11C, 15A and 30A) licenses, types and numbers of available licenses, open areas and shooting hours; add a third unit to Bennett County (Unit 11A) which will include the month of August; establish a new unit in Butte and Lawrence Counties (Unit 09A); adjust Unit 30A season dates to coincide with Nebraska season dates; and adjust the number of licenses available from 30 "any elk" and 46 "anterless elk" licenses (total of 76 licenses) to 45 "any elk" and 86 "anterless elk" licenses (total of 131 licenses).

Mr. Tony Leif reviewed the proposed rules. He noted that the Commission decided not to change the season dates for pheasant, grouse, quail, and partridge hunting seasons.

Senator Hundstad moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hundstad, Hunt, Lust, and Vehle. Member excused: Hunhoff.

Department of Game, Fish and Parks - Amend a Uses of Parks and Public Lands rule to expand archery hunting opportunities on Farm Island Recreation Area and LaFramboise Island Nature Area; amend a Park Licenses rule to allow a person towing a vehicle to enter a state park without having to purchase a park entrance license (PEL) for the towed vehicle if it will not be operated within the park; amend a Motorboats and Watercraft rule to require any child under seven years of age who is being towed by a watercraft to wear a personal flotation device; amend Archery Deer Hunting Season rules to establish season dates, number and types of available licenses, requirements and restrictions, open area, and shooting hours; remove the restrictions which pertain to archery deer hunting on Farm Island Recreation Area and LaFramboise Island Nature Area; allow purchase of one statewide "any antlerless deer" single-tag and single and double tag "any antlerless deer" licenses for all areas open to archery deer hunting excluding the Black Hills Fire Protection District and Codington, Grant, Roberts, Lake, Lincoln, Minnehaha and Moody counties in eastern South Dakota; amend an Archery Antelope Hunting Season rule to establish season dates, number and types of available licenses, requirements and restrictions, open area, and shooting hours; create an unlimited number of 3-tag licenses valid for one "any antelope" and two "any doe/fawn antelope"; and add Campbell County as an area open to archery antelope hunting; amend a Youth Deer Hunting Season rule to establish season dates, numbers of available single tag "any antlerless deer" licenses, requirements and restrictions, open areas, and shooting hours, and lower the total number of youth deer licenses that can be purchased from five (5) to two (2); amend a General Muzzleloading Deer Hunting Season rule to establish season dates, number of available "any deer" and "any antlerless deer" licenses, requirements and restrictions, open area, and shooting hours; allow purchase of one statewide "any antlerless deer" single-tag and single and double tag "any antlerless deer" licenses for all areas open to muzzleloader deer hunting excluding the Black Hills Fire Protection District and Codington, Grant, Roberts, Lake, Lincoln, Minnehaha, and Moody counties in eastern South Dakota.

Mr. Leif reviewed the proposed rules.

Representative Lust moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hundstad, Hunt, Lust, and Vehle. Member excused: Hunhoff.

Meeting Schedule

The next meeting of the Interim Rules Committee will be Tuesday, July 28, 2009, in Room 414.

Adjournment

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

Chair Hunt adjourned the meeting at 2:14 p.m.

