



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Three hundred second meeting
Monday
December 21, 2009**

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

The three hundred second meeting of the Rules Review Committee was called to order by Chair Representative Roger Hunt at 9:37 a.m. CST, December 21, 2009, in Room 414 of the State Capitol, Pierre, South Dakota and via the Dakota Digital Network (DDN) at the following location: Department of Transportation, 1306 W. 31st St., Yankton, 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 Representative Lust (appearing telephonically). Senator Hunhoff 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 Vehle that the minutes of the November 18, 2009, meeting be approved. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Rules Reviewed

Secretary of State: Board of Elections - Amend rules to allow additional mailing options for certain notices; provide additional information in the notice of voter registration deadline; clarify retention provisions for certain notices; correct the ballot format for special districts; add a title and attorney general explanation to ballot question petitions; provide for representation area designation on school board petitions; clarify the use of a hand-count during a recount; add language to absentee voting materials to accommodate independents voting in the primary and military and overseas voters requesting voting materials electronically; and adding a definition for over vote.

Mr. Chris Nelson, Secretary of State reviewed the proposed rules.

Senator Hundstad moved, seconded by Representative Gibson, 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 Human Services: Division of Alcohol & Drug Abuse – Amend rules to reflect the current process used to track information and remove outdated information both in definition and throughout the administrative rule; clarify the time period required to complete the treatment plan depending on the level of care; correct an incorrect administrative rule citation in ARSD 46:05:15:05; for Level 1.0, allows a new exception of a weekly progress note if no counseling is provided and clarifies the maximum amount of counseling services to be provided in a one week period.

Mr. Gib Sudbeck reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Human Services: Division of Alcohol & Drug Abuse. 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 rules to amend the director areas of the East Dakota Water Development District and the James River Water Development District.

Mr. Pete Jahraus reviewed the proposed rules.

Senator Hundstad moved, seconded by Senator Vehle, 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 Environment and Natural Resources: Board of Water Management - Amend Drinking Water Standards rules to incorporate by reference the most recent published version of the Code of Federal Regulation for drinking water. Additional sections of federal rules associated with the Ground Water Rule, Stage 2 Disinfection By-Product rule, Long Term 2 Enhanced Surface Water Treatment rule, and the minor revisions to the Lead and Copper rule will be added.

Mr. Mark Mayer reviewed the proposed rules.

Senator Hundstad moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Water Management. 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: Division of Environmental Services - Amend Water Hygiene rules to address requirements of the most recent published version of the Code of Federal Regulation for drinking water.

Mr. Mark Mayer reviewed the proposed rules.

Senator Hundstad moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Environment and Natural Resources: Division of Environmental Services. 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 - Adopt rules to facilitate the administration of the Auxiliary Placement Program.

Ms. Laura Ringling reviewed the proposed rules.

Mr. Tom Oster, Secretary of the Department of Education, answered questions regarding the funding for the program.

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 Revenue and Regulation: Appraiser Certification Program - Amend rules to adopt the National Credit Union Administration's regulations establishing the \$250,000 threshold level; correct the term throughout the rules for supervising appraiser; correct spelling of a word, remove repetitive language; specifically state that personal inspections are the collective total of all of a state-registered appraiser's supervising appraisers; require the specific general college courses to be the equivalent of 3 semester credit hours; adopt the 2010-2011 Edition of the Uniform Standards of Professional Appraisal Practice; grant the secretary the authority for disciplinary action of an appraiser that has voluntarily surrendered a license or certificate in lieu of disciplinary action; require completion of the 7-hour uniform standards course to be completed in a timely manner after adoption; and require educational providers to submit student evaluations of each course offering to the secretary.

Ms. Sherry Bren reviewed the proposed rules.

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

Representative Lust was excused from the meeting at 11:00 a.m.

Department of Revenue and Regulation: Commission on Gaming – Amend Racing rules to repeal the limit on number of trainers; change the date that education courses are required from January 1, 2010, to January 31, 2012; and repeal the time for claiming payments from pari-mutuel pool; amend Gaming rules to clarify that coins and currency can be inserted into slot machines; and adopt a rule to require patrons to actively be engaged in playing slot machines in order to be entitled to credits or payouts.

Mr. Larry Eliason and **Mr. Mike Shaw**, Pierre, Attorney for the Commission, reviewed the proposed rules.

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

Department of Revenue and Regulation: Division of Insurance – Amend a rule to delete life insurance from the provisions of the rules relating to cancellation and earned/unearned premium requirements.

Mr. Randy Moses reviewed the proposed rule.

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

Department of Revenue and Regulation: Division of Insurance – Amend Producer Licensing rules to repeal continuing education requirements that are specific to new licensees, delete unnecessary provisions pertaining to instructor CEC hours, include requirements regarding new qualifications, and clarify certain CE hours; and amend Individual Plans, Employer Plans, and Health Insurance Risk Pool rules to define a Children's Health Insurance Program as creditable coverage. *(This is an informational item – no committee action will be taken.)*

Ms. Melissa Klemann reviewed the proposed rules which are scheduled for public hearing on December 22nd. The final rules will be acted upon by the committee at the April 2010 meeting.

Department of Transportation - Amend a speed zone in Custer County on US Highway 16 from 11.5 miles east of the South Dakota – Wyoming border, then easterly for 3.5 miles to 35 mph; and amend a speed zone in Harding County on US Highway 85 through the town of Ludlow to 55 mph. *(This is an informational item – no committee action will be taken.)*

Mr. Bill Nevin reviewed the proposed rules that are scheduled for hearing on January 28, 2010. The final rules will be acted upon by the committee at the April 2010 meeting.

Department of Game, Fish and Parks - Amend a Park Licenses rule to create a temporary park entrance license for motorcycles entering Custer State Park during the 14-day period beginning on the Monday preceding the Sturgis Motorcycle Rally and ending on the last Sunday of the Sturgis Motorcycle Rally and establish the fee for the temporary motorcycle PEL at \$10 per motorcycle; amend Camping Permits and Rules that would (a) establish a definition for a new "large group camping reservation" and require all campers to pay a non-refundable \$7.70 reservation fee for each campsite reserved as part of a large group reservation; (b) transfer Springfield and Rocky Point campgrounds from being campgrounds subject to the "modern campground" fee to being campgrounds subject to the "preferred campground" fee; and (c) establish certain park facility use fees for Fort Sisseton State Park and Pierson Ranch Recreation Area, i.e., Fort Sisseton or Pierson Ranch picnic shelter with kitchenette - \$50 per day; Fort Sisseton south barracks - \$125 per day; and Fort Sisseton event tent – on-site \$150 per day (must be rented for a minimum of two consecutive days, and off-site \$750 per day; amend General Provisions (Fishing Seasons and Methods) rules that would allow for the use of dead baitfish in the Black Hills Trout Management Area and other specified waters where use or possession of live bait fish is restricted; amend Fish Limits rules that would (a) change harvest regulations (length and possession limits) for a number of South Dakota lakes to make largemouth/smallmouth (black) bass (approximately 16 lakes) and walleye/sauger (approximately 25 lakes) for these waters consistent with regulation toolbox options; (b) extend the area without daily and possession limits for catfish on the Grand River to include the area from SD Hwy 73 to Shadehill Reservoir dam; (c) change the limit for northern pike on the Missouri River and Lake Pocasse in Campbell County from 3 fish/day to 6 fish/day to make reservoir regulations consistent with statewide regulations; (d) eliminate the special yellow perch regulation on Reetz Lake to make the regulations consistent with those on other Northeast South Dakota Lakes, i.e., the daily limit of perch will increase from 5 to 10 with no length limit; and (e) eliminate the catch and release restrictions for anglers 16 years of age and older and water-specific daily harvest limits for all anglers from Snake Creek Pond in Charles Mix County; amend Snagging of Paddlefish rules that would clarify that a person may not continue to snag rough fish after they have harvested a paddlefish, clarify when final processing of a legally taken paddlefish may take place, and clarify that the limitation on the maximum number of hooks and lines allowed for snagging paddlefish also applies to snagging rough fish; amend Bait rules that would (a) establish an expiration date for bait dealer licenses; and (b) allow seines, nets and traps used for the commercial taking of bait to contain rigid mesh no larger than one-half inch square constructed out of metal or plastic; amend Private Fish Hatcheries rules that would add licensed veterinarians to the list of persons allowed to perform fish inspections and clarify the qualifications required for persons who perform such inspections; amend Importation of Fish rules which would (a) create an annual commercial fish importation permit, establish application requirements, which will include the assessment of a \$40 fee per source facility covered by such a permit, eligibility criteria, restrictions on use, reporting requirements, and expiration date, for such permits; and provide for the issuance of non-commercial fish importation permits valid only for the dates specified on the fish importation permit and with no assessment of a fee per source facility; (b) add Infectious Salmon Anemia-I.S.A. virus to the list of fish diseases of regulatory concern, emergency prohibitive diseases; and (c) add licensed veterinarians to the list of persons allowed to perform fish health inspections and establish qualifications required for persons who perform such

inspections; amend Fishing Tournaments rules that intend to prohibit tournaments for walleye/sauger, or for walleye/sauger hybrids where fish are caught and not immediately released back into the water, from June 1 to September 15, inclusive. The stipulation that catch and release tournaments for salmon be prohibited from June 1 to September 15 would not be affected by this amendment.

Mr. Doug Hofer reviewed the proposed rules for the Division of Parks and **Mr. Tony Leif** reviewed the proposed rules for the Division of Wildlife.

Senator Hundstad moved, seconded by Representative Hunt, 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, Hunhoff, Hunt, and Vehle. Member excused: Lust.

Department of Game, Fish and Parks - Adopt an EMERGENCY rule to increase the number of licenses the Game, Fish and Parks Commission has authorized the Department to issue for the 2009 East River Deer Hunting Season from the original quota of 21,920 licenses to a new total of 22,393, an increase of 473 licenses due to a computer error which took place during the normal drawing process. *(This is an informational item.)*

Mr. Leif explained the need for the emergency rule.

Department of Game, Fish and Parks - Amend a Uses of Parks and Public Lands rule to change the spring wild turkey hunting season unit from PST 55B to PST 48A (Marshall and Roberts Counties) and change the season ending date for the unit to eight days prior to Memorial Day; amend a Camping Permits and Rules rule to require same-day reservation campers to occupy their reserved campsite by no later than 10:00 p.m. on the first night of their reservation or pay a cancellation fee and forfeit the remainder of their reservation; amend Spring Wild Turkey Hunting Season rules to establish season dates, requirements and restrictions; establish the number of licenses/tags available which will include offering residents 220 more one-tag "male turkey" and 50 more two-tag "any turkey" licenses for the Prairie Units than 2009; eliminate the split season for Deuel, Grant, and Hamlin County units (23A&B, 29A&B, and 32A&B) and create one unit for each county (23A, 29A, and 32A, respectively) with one season; open Jerauld County to statewide archery hunting; and change the end of the spring wild turkey hunting season from the third Sunday of May to eight days prior to Memorial Day; and amend a Waterfowl Hunting Season rule to retain the light goose Conservation Order and establish requirements and restrictions, season dates, open area, daily bag and possession limits for light geese; and change the dates for the light goose Conservation Order from February 14 through May 3 to opening statewide beginning on the 106th day from the Saturday closest to November 1 for 79 consecutive days (2010 season dates would begin February 13 and end on May 2).

Mr. Hofer and **Mr. Leif** reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Hundstad, 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, Hunhoff, Hunt, and Vehle. Member excused: Lust.

Senator Hunhoff was excused from the meeting at 12:41 p.m.

Staff Report

In response to Senator Hunhoff's request that staff research to see what other states require for notice of hearing on proposed rules, **Mr. Decker** stated that South Dakota is in the middle of what neighboring states require. North Dakota requires notice in every legal newspaper in their state whereas others only require notice in their state's Register. The model APA requires notice in the Register 30 days prior to the hearing. South Dakota currently requires notice in three newspapers; interested parties must receive notification; and it is published weekly in the South Dakota's Register. In addition, staff plans to include in the press release language to encourage people to sign up for MYLRC to receive email notification of the South Dakota Register. Because rule making is an Executive branch function and oversight is the Legislature's function, it was suggested that a letter be sent to the Executive Committee encouraging that the Governor use the Open Government website for public access to proposed rules.

It was also suggested that a second letter be sent to the Executive Board regarding the Rules Review Committee's use of the DDN technology, the letter should describe the successes along with the problems that have been encountered. Chair Hunt and Mr. Decker will send the letters to the Executive Board and copies to the committee.

Adjournment

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

Chair Hunt adjourned the meeting at 1:02 p.m.

