



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Three hundred twenty-third meeting
Tuesday
July 10, 2012**

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

The three hundred twenty-third meeting of the Rules Review Committee was called to order by Chair Senator Jean Hunhoff at 9:25 a.m. CDT, July 10, 2012, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: Department of Human Services, 2361 Dakota Ave. S., Huron, South Dakota; SD School of Mines and Technology, 501 E. St. Joseph St., Room CB 109, Rapid City, South Dakota; University Center, 4801 N. Career Ave., Room FADM 153, Sioux Falls, South Dakota; and the Department of Transportation, 1306 W. 31st St., Yankton, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jean Hunhoff (Chair) and Mike Vehle; and Representatives Peggy Gibson and Roger Hunt. Representative R. Shawn Tornow (Vice Chair) joined the meeting later. Senator Angie Buhl was excused. 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 recorded by South Dakota Public Broadcasting. The archived recording 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 May 29, 2012, meeting be approved. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Hunt, and Vehle. Members excused: Buhl and Tornow.

Rules Reviewed

Department of Health: Health Systems Development and Regulation – Repeal the health professional recruitment incentive program rules and adopt rules to establish a program to assist rural health care facilities in the recruitment of certain health care professionals.

Mr. Tom Martinec reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Health: Health Systems Development and Regulation. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Hunt, and Vehle. Members excused: Buhl and Tornow.

Governor's Office of Economic Development: Board of Economic Development – Amend rules to provide for a permanent credit committee, along with other committees, of the Board of Economic Development, and to grant certain powers to the credit committee; and to repeal the Tourism Enhancement Program.

Mr. Nathan Lukkes and **Mr. Tim Engel**, Pierre, Legal Counsel, reviewed the proposed rules. It was noted that there was an error in ARSD 68:02:01:33(4). The reference to "§ 68:03:01:56" should read "§ 68:02:01:56."

Senator Vehle moved, seconded by Representative Hunt, to approve the rules proposed by the Governor's Office of Economic Development: Board of Economic Development. Motion prevailed on a roll call vote with 3 ayes, 1 nay, 2 excused. Members voting aye: Hunhoff, Hunt, and Vehle. Member voting nay: Gibson. Members excused: Buhl and Tornow.

Department of Agriculture: State Brand Board – Adopt a rule to increase the fee for replacing a duplicate brand certificate.

Mr. Larry Stearns reviewed the proposed rule.

Senator Hunhoff moved, seconded by Representative Hunt, to approve the rule regarding a duplicate brand certificate proposed by the Department of Agriculture: State Brand Board. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hunhoff, Hunt, and Vehle. Members excused: Buhl and Tornow.

Department of Agriculture: State Brand Board – Adopt a rule to increase the per head inspection fee for livestock ownership inspection.

Mr. Stearns explained the necessity for the proposed fee increase.

Public Testimony

Ms. Syliva Christen, Rapid City, representing the SD Stockgrowers, spoke in support of the proposed fee increase.

Mr. Nathan Sanderson spoke in support of the proposed rule. He explained the process that the board had followed and stated that the \$.10 increase was a compromise. He also noted that the report to the Legislature required by statute is by calendar year, whereas all of the budget information is reported by fiscal year.

Mr. Kenny Fox, Belvidere, spoke in opposition to the proposed fee increase. He also expressed concerns with some of the Brand Board reports. He previously provided various documents to the committee to support his concerns.

Mr. Bill Kluck, Mud Butte, spoke in opposition to the proposed fee increase at this time. He stated it was premature and he would like to see more of the "transparency" that they were promised when the State took over the program before an increase is allowed.

Representative Hunhoff moved, seconded by Representative Hunt, to approve the rule regarding the per head inspection fee proposed by the Department of Agriculture: State Brand Board and that the Government Operations and Audit Committee be asked to review operational items of the board. Motion prevailed on a roll call vote with 3 ayes, 1 nay, 2 excused. Members voting aye: Hunhoff, Hunt, and Vehle. Member voting nay: Gibson. Members excused: Buhl and Tornow.

Department of Game, Fish and Parks – Amend Fall Wild Turkey Hunting Season rules to establish the number and types of licenses available in the East River Prairie and Black Hills units and close Harding and Turner counties to fall turkey hunting; amend a Waterfowl Hunting Seasons (Goose Hunting Season – August Management Take) rule to expand the open area to include Brown, Hutchinson, Spink and Turner counties; amend Black Hills Deer Hunting Season rules to establish the number and types of licenses available; amend West River Prairie Deer Season rules to eliminate the Fall (September 29, 2012 – October 14, 2012) west river "antlerless deer" season, establish the number and types of licenses/tags available, modify the boundary description for Unit WRD 27L to add some additional public lands adjacent to the Cheyenne River and Angostura Reservoir and to make the unit boundary more easily identifiable for hunters, and provide that only unfilled "antlerless deer" and "antlerless whitetail deer" tags are valid during the antlerless deer season extension beginning the Saturday after Christmas; amend Archery Deer Hunting Season rules and a Uses of Parks and Public Lands rule to add Brookings, Deuel, Hamlin and McCook counties to the restricted area where only one (1) single-tag antlerless deer license is valid, provide that "any antlerless deer" licenses are not valid for the Sand Lake NWR, allow 45 "antlerless deer" and 5 "any deer" resident licensees to hunt deer at the Adams Homestead and Nature Preserve and 5 "antlerless deer" and 5 "any deer" resident licensees to hunt deer at the Blood Run Nature Area through "Access Permits" issued via lottery drawing by the Department, and allow an individual to possess an uncased bow and allow the use of bow and arrow to hunt deer and turkey within the Blood Run Nature Area; amend an Archery Antelope Hunting Season rule to eliminate the two-tag license valid for one "any antelope" and one "doe-fawn antelope", and adjust the open area to include those portions of Custer and Pennington counties within the Black Hills Fire Protection District (except Custer State Park) and issue 5 special access permits via lottery drawing to those licensees who possess a valid "any antelope" resident archery license; amend a Youth Deer Hunting Season rule to add Brookings, Codington, Deuel, Grant, Hamlin, Lake, Lincoln, McCook, Minnehaha, Moody, Roberts, Turner, and Yankton counties to the restricted area where only one youth deer license is valid; and amend a General Muzzleloading Deer Hunting Season rule and Hunting Requirements and Prohibited Methods rules to add Brookings, Deuel, Hamlin, and McCook counties to the restricted area where only one (1) single tag "antlerless deer" license is valid.

Mr. Tony Leif reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Hunhoff, to approve the season 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, Hunhoff, Hunt, Tornow, and Vehle. Member excused: Buhl.

Department of Game, Fish and Parks – Amend Furbearer Seasons rules to authorize a limited season in certain counties (Buffalo, Brule, Charles Mix, Bon Homme, and Yankton) east of the Missouri River with a limit of one (1) bobcat per trapper or hunter and establish a limited hunting season for muskrats; and amend Trapping Prohibitions rules to change the date that traps may

be placed prior to the mink season, clarify the dimensions of colony traps used for muskrat trapping, and require on public lands and public road rights-of-ways statewide, the body grip traps with an opening greater than 36 sq. inches (larger than 160 Conibears) when used in conjunction with any bait, lure, or scent be recessed a minimum of seven inches in cubbies, baited box traps, or bucket traps.

Mr. Leif reviewed the proposed rules regarding furbearer seasons and trapping.

Public Testimony

Mr. Dave Rieck, Humboldt, spoke in opposition to ARSD 41:08:02:06 as written as it would eliminate beaver trapping statewide due to the size restriction and recessed cubby.

Mr. Kerry Hansen, Columbia, spoke in opposition to the trapping rules. He stated that the 220 trap is the best tool that the sportsman has and does not want the changes.

Mr. Kevin Parmeley, Huron, spoke in opposition to trapping rules. He read SDCL § 41-2-8 (14) and stated that the 220 change should be a legislative change, not a commission change. He also stated that the wording with regard to the height and width of a trap is confusing and should be rewritten.

Mr. Myron Simons, Huron, spoke in opposition to the size restrictions on colony traps.

In response to the public testimony, Mr. Leif further explained the size restrictions and also commented on the public hearing process.

Representative Gibson moved, seconded by Representative Tornow, to send the furbearer season and trapping rules proposed by the Department of Game, Fish and Parks back to a prior step for additional hearing.

Following a brief discussion on the purpose for the additional hearing on only two rules, *Representative Gibson amended her motion, seconded by Representative Tornow, to approve the furbearer seasons and trapping rules proposed by the Department of Game, Fish and Parks with the exception of ARSD 41:08:02:06 and 41:08:02:08 which shall be reverted to a prior step for additional hearing and clarification. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hunhoff, Hunt, Tornow, and Vehle. Member excused: Buhl.*

Department of Game, Fish and Parks – Consolidate and repeal rules to eliminate redundancy throughout the administrative rules of the department.

Mr. Leif reviewed the proposed clean up rules.

Representative Hunt moved, seconded by Representative Tornow, to approve the cleanup 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, Hunhoff, Hunt, Tornow, and Vehle. Member excused: Buhl.

Department of Game, Fish and Parks – Adopt an EMERGENCY rule to amend ARSD 41:09:04:03 for the purpose of closing the East Vermillion River, West Vermillion River, and Firesteel Creek below Lake Mitchell to the commercial taking of bait and noncommercial taking of bait by lawful anglers. *(This is for informational purposes only.)*

Department of Game, Fish and Parks – Adopt EMERGENCY rules to amend ARSD 41:06:16:07 to start the August Management Take of Canada geese on the first Saturday of August (August 4, 2012) and amend ARSD 41:06:16:09 to increase the daily bag limit to 15 Canada geese. *(This is for informational purposes only.)*

Mr. Leif also gave a brief summary of the two sets of emergency rules that the department had filed. He also informed the committee that the petition regarding the taking of 14" walleyes on Mina Lake had been withdrawn. No committee action was taken.

Department of Labor and Regulation: Division of Insurance – Amend rules to incorporate the new 2012 Medicare coverage amounts and allow for insurers to utilize persons other than insurance agents to complete applications for insurance.

Mr. Randy Moses reviewed the proposed rules.

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

Department of Social Services: Division of Medical Services – Amend rules to update and clarify the basis of reimbursement for inpatient services and certain outpatient services and replace the term "average wholesale price" with "consolidated price."

Ms. Laura Ringling and **Ms. Brenda Tidball-Zeltinger** reviewed the proposed rules.

Senator Hunhoff moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Social Services: Division of Medical Services. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hunhoff, Hunt, Tornow, and Vehle. Member excused: Buhl.

Secretary of State – Adopt rules to establish forms and procedures necessary for the issuance of a certificate of authorization to provide postsecondary education.

Mr. Michael Lauritsen and **Mr. Andrew Pietrus** reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Tornow, to approve the rules proposed by the Secretary of State. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hunhoff, Hunt, Tornow, and Vehle. Member excused: Buhl.

Department of Public Safety – Adopt EMERGENCY rules to temporarily permit the sale of 85 Octane gasoline on an emergency basis throughout South Dakota but to require accurate

labeling as well as mandatory cautionary labeling and to require basic record keeping in accordance with already enacted federal regulations. (*This is informational only.*)

Ms. Jenna Howell reviewed the emergency rules that the department had filed. No committee action was taken.

Office of Attorney General: 24/7 Sobriety Program – Amend rules to change the time period for inspection and calibration testing of ignition interlock devices and amend the monitoring fees of ignition interlock devices.

Mr. Jeff Hallem and **Mr. Dennis Johnson**, Canton, Lincoln County Sheriff, reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Vehle, to approve the rules proposed by the Office of Attorney General: 24/7 Sobriety Program. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hunhoff, Hunt, Tornow, and Vehle. Member excused: Buhl.

Staff Report

Mr. Doug Decker provided a brief update on the emergency rule process. Chair Hunhoff asked that the emergency rule process be placed on the agenda of a future meeting.

Next Meeting Schedule

The next meeting of the Interim Rules Review Committee will be held on Tuesday, August 14, 2012.

Adjournment

Representative Hunt moved, seconded by Representative Gibson, that the meeting be adjourned. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hunhoff, Hunt, Tornow, and Vehle. Member excused: Buhl.

Chair Hunhoff adjourned the meeting at 2:16 p.m.

