



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

Two Hundred Fortieth Meeting
Tuesday
August 5, 2003

Room 413
State Capitol Building
Pierre, South Dakota

The two hundred fortieth meeting of the Rules Review Committee was called to order by Chair Senator Royal "Mac" McCracken at 9:05 a.m., August 5, 2003, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Eric Bogue, H. Paul Dennert, and Royal "Mac" McCracken; and Representatives Richard Engels, Jean Hunhoff, and Orville Smidt.

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

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council. For the purpose of continuity, these minutes are not necessarily in chronological order.

Approval of Minutes

Representative Engels moved, seconded by Senator Dennert, that the minutes of the June 10, 2003, meeting be approved. Motion prevailed unanimously on a voice vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Staff Report

Mr. Decker reported that there have been questions from agencies as to what specific documents and when the rule packets should be mailed to the committee. He noted that on page 3 of the Guide to Style and Form, SDCL 1-26-4(9) states which documents an agency must serve on the committee at least five (5) days before the Rules Review meeting - for example, for the August 5 meeting, the documents should have been in the committee's hands by July 30.

Rules Reviewed

Department of Revenue and Regulation: Division of Insurance - Adopt, amend, and repeal rules regarding reference updates; eliminate duplication and to change a cross-reference for group policies; repeal current grievance procedures and clarify the scope of certain requirements contained in HB 1047; clarify the term contract of more than six-month duration; amend rules regarding disability plans.

Mr. Jack Magee appeared before the committee and withdrew the above proposed rules until the September meeting.

Department of Transportation – Repeal rules to eliminate the requirements regarding issuance, possession, and display of pilot photo identification.

Mr. Darin Bergquist stated that the FAA has passed uniform rules regarding pilot photo identification and that the state rules are no longer necessary.

Representative Smidt moved, seconded by Representative Hunhoff, to approve the rules proposed by the Department of Transportation. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Transportation – Amend speed zones in Brown County on US Highway 12 and on SD Highway 37 through the city of Groton, amend speed zones in Charles Mix County on Highway 44 near Platte, amend speed zones in Marshall and Roberts Counties on Highway 10, and amend the extended period permit for movement of oversize or overweight vehicles to include baled solid waste.

Mr. Bergquist reviewed the proposed speed zone changes. He stated that the "annual" permit was being changed to an "extended period" permit to more clearly define that a permit could be issued up to one year.

Senator Dennert moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Transportation. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Tourism and State Development: Board of Economic Development - Adopt rules to implement the Value Added Tourism Subfund.

Ms. Tina Van Camp reported that as a result of Senate Bill 58, \$3 million was being transferred from the Redi Fund to establish the Value Added Tourism Subfund and these rules were being implemented to begin this program.

Representative Engels stated that he felt that the conflict of interest prohibition was weak and he would like it to include family members also. Ms. Van Camp responded that board members have excused themselves from votes if they thought there was any potential conflict of interest. Mr. Decker stated that making this change would be a substantive change and it was his recommendation that the board make this change the next time rules are promulgated.

Representative Smidt moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Tourism and State Development: Board of Economic Development. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Education: Board of Education - Adopt and amend rules that ensure that all teachers become highly qualified and to recognize the achievements of National Board Certified teachers; require that alternative certification teacher candidates submit copies of their state licensure exams to the department; and establish a teacher mentorship program.

Ms. Melody Schopp distributed a summary of the rule changes being proposed by the Board of Education (**Document #1**). She reviewed the new content testing requirements for alternative certification that were effective July 1, 2003. She stated that the *No Child Left Behind Act* requires that new teachers pass a content and a pedagogy test in order to be state certified beginning July 1, 2005. The proposed rule changes regarding National Board Certification (NBC) will provide that applicants from out of state with NBC be required to take only the South Dakota Indian Studies course and that the Human Relations course will be waived. She also reviewed the new mentoring program.

Public Testimony

Ms. Lesta Turchen, Pierre, representing the Board of Regents (BOR), stated that the BOR strongly supports the proposed rule changes. She stated that the content test is currently being given the semester before student teaching and that the pedagogy exam has been used as an exit exam by the BOR since 2000.

Ms. Janet Wilson, Pierre, representing the South Dakota Education Association, stated that the Association also strongly supports the proposed rule changes.

Senator McCracken moved, seconded by Senator Dennert, 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: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Labor: Public Utilities Commission - Adopt rules regarding the South Dakota Do-Not-Call Register.

Ms. Bonnie Bjork reported that South Dakota is using the national "do-not-call" registry that was established and is maintained by the Federal Trade Commission (FTC). She reported as of the 30th of June, 93,000 South Dakotans had enrolled, 66,000 via the Internet. She stated that because the rules of the Federal Communications Commission (FCC) and the FTC do not allow an exemption for face to face appointments, this exemption was preempted by federal law. She stated that the stricter federal law will take precedence and the company will have twelve months to win back the customer. She also stated that the FCC & FTC are looking to the state for enforcement and that the Public Utilities Commission is gearing up for this, which will take effect October 1.

Representative Smidt moved, seconded by Representative Engels, to approve the rules proposed by the Department of Labor: Public Utilities Commission. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Social Services - Amend rules relating to the Medical Services' program.

Ms. Jill Wellhouse reviewed the proposed rules regarding the Medical Services program. She stated that part of the proposed rule changes will allow the department to move the lists of the Diagnosis Related Groups (DRGs) and the Outpatient Laboratory Services to their Web site.

Representative Smidt moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Social Services. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Social Services - Adopt a rule relating to the Food Stamp Program that will consider some additional income as exempt.

Ms. Jill Wellhouse reviewed the proposed rule.

Senator McCracken moved, seconded by Senator Bogue, to approve the rule proposed by the Department of Social Services. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Social Services - Adopt a mandatory rule under the authority of the Food Stamp Act of 1977, which establishes the parameters under which the Food and Nutrition Service (FNS) sets the monthly gross and net income eligibility standards for food stamp households based on the established thrifty food plan.

Department of Social Services - Adopt a mandatory rule under the authority of the Food Stamp Act of 1977, that will prohibit the state agency from increasing a food stamp household's benefits if public assistance benefits that the household is also receiving are reduced under a federal, state, or local means-tested public assistance program because of the failure of a food stamp household member to perform an action required under the assistance program or for fraud.

Ms. Jill Wellhouse reviewed the mandatory rules regarding the Food Stamp Program and TANF households.

Representative Smidt moved, seconded by Representative Hunhoff, to approve the mandatory rules proposed by the Department of Social Services. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Environment and Natural Resources: Board of Water and Natural Resources - Revise the director areas for the Central Plains water development district.

Mr. Mike Perkovich explained how the director areas were being changed for the Central Plains water development district.

Senator McCracken moved, seconded by Senator Bogue, 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: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Environment and Natural Resources: Board of Minerals and Environment - Amend rules to comply with revisions to the federal regulations for the air pollution control program.

Mr. Brian Gustafson reviewed the proposed rule changes.

Senator Bogue moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Minerals and Environment. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Environment and Natural Resources: Board of Minerals and Environment - Update existing hazardous waste rules by incorporating the federal rules by reference.

Ms. Carrie Jacobson reviewed the proposed rule changes. She stated that in lieu of the EPA, the state does the inspections and enforcement.

Senator Dennert moved, seconded by Representative Hunhoff, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Minerals and Environment. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Labor: State Plumbing Commission - Amend definitions, adopt rules for licensing and examination requirements for restricted licensees, and repeal the requirement for identification for work installed.

Mr. Dan Smith reviewed the proposed rules regarding a restricted license in rural areas or a municipality of less than fifteen hundred population. He stated that some of the proposed rules were the result of House Bill 1161. Senator Bogue stated he was still not in favor of the licensing changes; however, he would support the proposed rule changes.

Representative Smidt moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Labor: State Plumbing Commission. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Labor: State Plumbing Commission - Adopt and amend rules regarding the plumbing installation certificate and inspections.

Mr. Smith reviewed the proposed rules. In response to Senator Bogue's question as to the justification of raising an estimated \$200,000 in revenue from the proposed inspection fees, Mr. Smith replied that the commission anticipates hiring an additional two inspectors plus upgrading office equipment to cover the anticipated workload and expenses. Mr. Smith stated that they are modeling the proposed inspection rules after the electrical rules.

Senator Dennert moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Labor: State Plumbing Commission.

Following committee discussion, Senator Bogue moved a substitute motion, seconded by Representative Hunhoff, to send the proposed rules back to the State Plumbing Commission for additional justification of the fees being charged for the inspections. Substitute motion prevailed on a roll call vote, with 4 ayes, 2 nays. Members voting aye: Bogue, Engels, Hunhoff, and McCracken. Members voting nay: Dennert and Smidt.

Department of Game, Fish and Parks - Adopt rules regarding taxidermists.

Mr. Doug Hansen gave a brief history of the proposed rules and the legislation that was passed this last year regarding taxidermists. He stated that the proposed rules have been simplified and the onerous provisions removed. The record retention provision had been set at five years to coincide with the federal requirement and aid in the investigative process not only for state cases but also federal cases.

Public Testimony

Mr. Ken Barker, Belle Fourche, Commissioner of the Game, Fish and Parks Commission, testified on behalf of the commission that this has been a very long process and that it is their duty to protect and preserve public resources. He stated the proposed rule regarding record retention was a compromise. He stated that most violations take place in secret and it is after the fact the knowledge comes forth. He felt the proposed rules were simple, concise, practical, and protect the natural resources of the state.

Mr. Decker distributed a letter dated July 30, 2003, from **Dr. Brettrick J. Sutton**, Rapid City, stating that he was in opposition to the proposed rules (**Document #2**).

Mr. William Klager, Stratford, Vice-President of the South Dakota Taxidermist Association, provided and read testimony in opposition to the proposed rules (**Document #3**). He stated that the proposed rules "violate our Fourth Amendment rights" and that the "federal regulations only require a taxidermist to maintain their records for one year." In response to Senator McCracken's question if all of the members of the association felt this way, Mr. Klager responded that not everyone does and that the association had lost a member or two because of this issue.

Mr. Roger Heintzman, Aberdeen, President of the South Dakota Taxidermist Association, spoke in opposition of the proposed rules. He stated that a local conservation officer once told him that he was supposed to visit the taxidermists once per year. In seventeen years of

being in the business, Mr. Heintzman stated he has never had an inspection. In response to this statement, **Mr. Hansen** stated that there is no written rule that a conservation officer make a yearly visit. Mr. Heintzman also felt that the taxidermists should not be forced to keep records and that losing their license should not be part of the penalty.

In response to Representative Engels' question if the rules limit where conservation officers may look, **Mr. Barker** responded that the limit is the records that are presented by the taxidermist. If there is reason to believe that there are more records, the department would need a subpoena.

Representative Engels commented that the requirements for taxidermists may be more stringent than other states; however, the rules were similar to owners of pawn shops, who also must open their records for police investigations.

Senator McCracken moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Game, Fish and Parks - Amend the West River deer hunting season, tagging requirements for bobcats, amend the classification of the bald eagle and the mountain lion, increase the number of deer and antelope licenses that a person may apply for and receive, and decrease the fee for resident one-tag and two-tag antlerless deer or antelope licenses.

Mr. Doug Hansen reviewed the proposed rules. He stated that the bald eagle was being moved from the endangered list to the threatened list and the mountain lion was being moved from the threatened list to the big game animal list. In response to Representative Engels' question if the next step for mountain lions was a hunting season, Mr. Hansen stated there was no plan in place. If the mountain lion was not classified as a game animal, it would be considered a varmint.

Senator Dennert moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote, with 5 ayes, 1 nay. Members voting aye: Bogue, Dennert, Hunhoff, McCracken, and Smidt. Member voting nay: Engels.

Department of Game, Fish and Parks - Amend antelope, East River deer, and early fall Canada goose hunting seasons; amend the application process for private shooting preserves; establish waterfowl refuges on Lake Oahe at Dry Creek, Okobojo Creek, and at the Whitlock Bay area; and modify traps and snares requirements.

Mr. Doug Hansen reviewed the proposed rules. He stated that there are 65,000 East River deer tags and 8,000 antelope tags available this year. He noted that the commission is proposing rules that East River trappers check their traps every two days and West River trappers every three days because of the greater distance involved between traps.

Senator Dennert moved, seconded by Representative Engels, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Committee Discussion

It was suggested that a standardized format for minutes be used by the agencies. It would make it easier to understand the issues when reviewing the rules. The form used by the Department of Social Services was given as a good example. Staff will incorporate this suggestion into the cover memo that is sent to the agencies.

Also, it was so noted that the fiscal note is only required to be served on the Legislative Research Council and the Bureau of Finance and Management at the time of service. The committee would like to also receive a copy of the fiscal note when served with the rules. Staff will draft legislation to this effect.

The next Rules Review Committee meeting is scheduled for Monday, September 8, 2003.

Representative Hunhoff moved, seconded by Representative Smidt, that the committee adjourn. Motion prevailed unanimously on a voice vote.

The committee adjourned at 1:40 p.m.



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