



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Two Hundred Forty-first Meeting
Monday
September 8, 2003**

**Room 413
State Capitol Building
Pierre, South Dakota**

The two hundred forty-first meeting of the Rules Review Committee was called to order by Chair Senator Royal "Mac" McCracken at 9:00 a.m., September 8, 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

Senator Dennert moved, seconded by Representative Smidt, that the minutes of the August 5, 2003, meeting be approved. Motion prevailed unanimously on a roll call vote, with 5 ayes, 1 excused. Members voting aye: Dennert, Engels, Hunhoff, McCracken, and Smidt. Excused: Bogue.

Staff Report

Mr. Decker presented a proposed amendment to the letter sent to agencies before the agencies appear at the Rules Review Committee meeting. The letter asks that when verbatim transcripts of the public hearing are used by the agency, a summary of the minutes be included in the packet mailed to the committee and with the final draft that is returned to staff (**Document #1**).

Representative Hunhoff moved, seconded by Representative Engels, that the committee approve the change to the letter with the amended verbiage. Motion prevailed unanimously on a roll call vote, with 5 ayes, 1 excused. Members voting aye: Dennert, Engels, Hunhoff, McCracken, and Smidt. Excused: Bogue.

Rules Reviewed

Department of Agriculture: State Brand Board - Increase the ownership inspection fee by ten cents.

Ms. Julie Kongslien and **Mr. Ken Halligan** reviewed the need for the proposed fee increase and stated that the last fee increase was five cents in 1996.

Public Testimony

Mr. Jim Reed, Belle Fourche, Chief Brand Inspector, South Dakota Stockgrowers Association (SDSGA), testified that the cost of the brand inspection for fiscal year 2001-2002 was fifty-nine cents per head, and for fiscal year 2002-2003, the cost was fifty-four cents per head. He stated that the ten-cent increase was proposed to raise the inspector's wages by one hundred dollars per month. The current salary range for inspectors is \$22,320 to \$28,224 per year. Mr. Reed stated that a lot of cattle had been sold over the past years because of the drought; however it will be another four or five years before those numbers are back.

Mr. Bill Hutchinson, White River, President of the SDSGA, briefly explained the history and association between the Brand Board and the SDSGA. He stated that in 1984 the Brand Inspection Audit Fee Committee established a cost accounting schedule which is used to prorate expenses between the Brand Board and the SDSGA. He stated that the SDSGA is now current with the statutory requirement to file monthly reports with the board, the Secretary of Agriculture, and the Auditor General. He felt the SDSGA has a right to make a profit because they are assuming a lot of financial risk running the program. He stated that with the proposed ten cent increase they will be losing \$100,000 and without the increase there would be a \$240,000 loss this year.

Mr. Dean Strong, Belle Fourche, Brand Board member, testified that he was in support of the increase and that he had contacted all of the sale barns in West River concerning the proposed rule. He looks for the inspection numbers to be down approximately forty percent from last year.

Mr. Richard Meyer, Sturgis, Brand Board member, testified that the issue of the SDSGA being in noncompliance with the monthly reports was never brought up at their meetings. He stated that the Brand Board needs the SDSGA and that the noncompliance issue did not matter either way. He felt the SDSGA had kept the Brand Board abreast of the issues.

Secretary Larry Gabriel, Department of Agriculture, testified against the proposed rule. He stated that SDCL 40-20-28 states that the amount of the fee should cover the cost of the brand inspection and that SDCL 40-21-8 states that monthly income and expense reports must be filed and that a separate bank account should be used. He testified that he was a supporter of the Brand Board; however, the board should be following the laws. There had been no monthly reports filed until July 2003 and the money is being held by the SDSGA. He stated that there should be a reserve to cover the shortfall expected.

Mr. Gary Hoscheid, staff member of the Department of Legislative Audit, testified according to information provided to the Auditor General by Casey Peterson & Associates' audit of the SDSGA as of April 30, 2003. Since 1993 the total income less expenses for brand inspections was \$711,000 (without the interest earned). Over the past eleven years, \$125,478 in interest was earned on this income which he stated should result in a fund balance of \$836,912. Senator McCracken commented that SDSGA's Combined Report Balance shows Total Cash and Investments of \$611,414 as of April 30, 2003. Mr. Hoscheid stated that the SDSGA's operation, without the brand inspection, had lost money over the years and that the SDSGA is making this up with revenue generated by the brand inspections.

Ms. Carrie Longwood, Rapid City, Executive Secretary of the SDSGA, agreed with Secretary Gabriel that the statute states that the fee must cover the cost. Over the past two years, the cost averaged fifty-nine cents per head. She testified that they were not going to be able to operate on sixty cents per head. Ms. Longwood stated she came on board in 2001 and the reserve balance at that time was \$250,000 and that over the past few months the SDSGA has had to dip into the reserve.

Senator Bogue moved, seconded by Representative Hunhoff, to send the rules proposed by the Department of Agriculture: State Brand Board back to a prior step in the rules promulgation process to collect further fiscal information, specifically to reconcile the available fund balance, agreed on jointly by the Brand Board and the South Dakota Stockgrowers Association, based on the most recent audit report, April 30, 2003. Motion prevailed on a roll call vote, with 4 ayes and 2 nays. Members voting aye: Bogue, Hunhoff, McCracken, and Smidt. Members voting nay: Dennert and Engels.

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"; and amend rules regarding disability plans.

Mr. Randy Moses reviewed the proposed rules.

Representative Smidt moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed unanimously on a roll call vote, with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, McCracken, and Smidt. Excused: Hunhoff.

Department of Revenue and Regulation: Business Tax - Amend rules to define the terms "commencement of the project," "prescription," and "medical device" to the uniform language of the Streamlined Sales Tax Agreement; amend what classes are exempt from tax; and clarify rules concerning the credit when tax is paid to another state if that tax was subsequently refunded to the taxpayer.

Mr. Scott Peterson reviewed the proposed rules.

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

Attorney General: Law Enforcement Officers Standards and Training Commission - Adopt a rule concerning compensation for a reserve officer.

Mr. Jim Carlon reviewed the proposed rule which was previously before the committee as an emergency rule.

Senator Dennert moved, seconded by Representative Smidt, to approve the rule proposed by the Attorney General: Law Enforcement Officers Standards and Training Commission. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Public Safety: Office of State Fire Marshal - Amend rules to change the name of the department to the Department of Public Safety; adopt the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, 2001 edition; and repeal requirements for the use of explosives for protection of sunflowers.

Mr. Al Christie and **Mr. Paul Merriman** reviewed the proposed rules.

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

Department of Education: Professional Administrators Practices and Standards Commission - Adopt rules requiring an annual meeting and specify how and when special meetings are called.

Ms. Lisa Lomheim reviewed the need for the proposed rules and distributed a handout (**Document #2**).

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

Bureau of Administration - Increase fees for publication of legal notices.

Mr. Leo Disburg reviewed the proposed rules. He stated that the proposed fee increase of 1.5% was due to inflation. The last fee increase was in January 2001. Senator Bogue stated

he felt that publishers that own more than one newspaper in a county should offer a discount. Senator Dennert agreed.

Representative Smidt moved, seconded by Representative Engels, to approve the rules proposed by the Bureau of Administration. Motion prevailed on a roll call vote, with 4 ayes, 2 nays. Members voting aye: Bogue, Engels, McCracken, and Smidt. Members voting nay: Dennert and Hunhoff.

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

Mr. Dan Smith and **Mr. Mike Richards** presented additional fiscal information as requested by the committee regarding the proposed inspection fees. Mr. Richards stated that as of June 30, 2003, the commission had a reserve of \$100,000 and that by year end their reserve would be approximately \$20,000. He stated that the majority of the commission's revenue comes in December and January with renewal fees.

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

Department of Revenue and Regulation: Real Estate Commission - Clarify licensing procedures and continuing education provisions; increase the duties authorized under an auctioneer's license and establish the time that an auction listing requires; and update materials incorporated by reference.

Mr. Larry Lyngstad reviewed the proposed rules.

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

Department of Game, Fish and Parks - Amend rules that will modify the daily bag limits and possession limits, hunting season dates, and length of applicable hunting seasons for certain waterfowl; provide prohibitions and exclusions therefrom for certain activities at Hunter Quarry Water Access Area in Grant County; more clearly define boating activities which are prohibited within an area designated as a "no wake zone;" and amend safety zones to "no wake zones" at Staum Dam, Lake Hanson, Lake Sharpe adjacent to Griffin Park, Lake Dimock, Lake Menno, Lake Tripp, Long Lake, Lake Alvin, Lake Lakota, Loss Lake, Lake Campbell, an area adjacent to and at the mouth of the Bad River near Fort Pierre, and at Lake Marindahl.

Mr. Doug Hansen reviewed the proposed rules. He explained some of the changes to "no wake" zones.

Representative Engels moved, seconded by Senator McCracken, 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

The next Rules Review Committee meeting is scheduled for Monday, October 6, 2003. The committee changed the date for the November meeting to Friday, November 14.

The committee adjourned at 11:40 a.m.



All Legislative Research Council committee minutes and agendas are available on the South Dakota Legislature's Homepage (<http://legis.state.sd.us>). Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.cfm>).