



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

Two Hundred Fifty-second Meeting
Friday
October 15, 2004

Room 413
State Capitol Building
Pierre, South Dakota

The two hundred fifty-second meeting of the Rules Review Committee was called to order by Chair Senator Royal "Mac" McCracken at 9:00 a.m., October 15, 2004, in Room 413 of the State Capitol, Pierre, South Dakota.

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

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 (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order.

Approval of Minutes

Representative Hunhoff moved, seconded by Representative Engels, that the minutes of the September 3, 2004, meeting be approved. Motion prevailed on a voice vote.

Rules Reviewed

Department of Transportation - Amend speed zones in Hughes County on U.S. Highway 14, U.S. Highway 83, and State Trunk Highway 34 through the city of Pierre.

Department of Transportation - Add a 30 mph speed zone in Lawrence County along US Highway 14A to lower the speed limit through an area near downtown Deadwood; add a 50 mph speed zone along South Dakota Highway 34 near the junction with South Dakota Highway 47 at Fort Thompson in Buffalo County; and extend 30 mph and 45 mph speed zones in Kingsbury County along US Highway 14 to the east through the city of Lake Preston near the east entrance to the park and swimming pool complex and in the city of DeSmet.

Mr. Bill Nevin reviewed the proposed changes to the five speed zones.

Representative Smidt moved, seconded by Representative Engels, to approve the rules proposed by the Department of Transportation. Motion prevailed unanimously on a roll call vote.

Department of Revenue and Regulation: Division of Insurance - Amend rules to update the continuing education requirements; specify when the long-term care suitability report is due; implement privacy guidelines for health information; and define terms and clarify that a report is required for group disability income products.

Mr. Randy Moses reviewed the proposed rules.

Senator Dennert moved, seconded by Representative Hunhoff, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed unanimously on a roll call vote.

Department of Health - Adopt and amend rules relating to Radiation Safety and Drug Control.

Mr. Dan Thayer distributed a summary (**Document 1**) and reviewed the proposed rules.

Senator Bogue moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Health. Motion prevailed unanimously on a roll call vote.

Department of Health - Adopt and amend rules relating to Medical Facilities.

Mr. Dan Thayer distributed a summary (**Document 2**) and reviewed the proposed rules.

Public Testimony

Mr. Kenneth Senger, Sioux Falls, representing the South Dakota Association of Healthcare Organizations, spoke in favor of the proposed rule changes.

Senator McCracken moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Health. Motion prevailed unanimously on a roll call vote.

Department of Education: Board of Education - Amend rules to clarify appropriate mileage and travel time reimbursement options for early intervention service providers.

Ms. Jan Elsing reviewed the proposed rules.

Representative Smidt moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Education: Board of Education. Motion prevailed unanimously on a roll call vote.

Department of Education: Board of Education - Amend rules to expand endorsement opportunities for principals.

Dr. Rick Melmer, Secretary of the Department of Education, reviewed the proposed rules.

Representative Smidt moved, seconded by Representative Engels, to approve the rules proposed by the Department of Education: Board of Education. Motion prevailed unanimously on a roll call vote.

Department of Labor: Public Utilities Commission - Amend a rule to require a telephone solicitor who makes unsolicited telephone calls to South Dakota residential telephone subscribers to download updates from the South Dakota do not call register every thirty-one days, instead of every ninety days.

Ms. Rolayne Wiest reviewed the proposed rule change. She stated that South Dakota currently has 170,000 subscribers to the federal do not call register.

Senator McCracken moved, seconded by Senator Dennert, to approve the rule proposed by the Department of Labor: Public Utilities Commission. Motion prevailed unanimously on a roll call vote.

Department of Environment and Natural Resources: Environmental Services/Drinking Water - Repeal an existing chapter of state rules for Consumer Confidence Reports and update it by incorporating by reference the most recent published version of the Code of Federal Regulations for drinking water.

Mr. Darron Busch reviewed the proposed rules.

Representative Hunhoff moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Environment and Natural Resources: Environmental Services/Drinking Water. Motion prevailed unanimously on a roll call vote.

Department of Environment and Natural Resources: Environmental Services/Operator Certification - Amend rules to clarify which operators are eligible to become certified as Class III or IV operators.

Mr. Darron Busch reviewed the proposed rules.

Senator McCracken moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Environment and Natural Resources: Environmental Services/Operator Certification. Motion prevailed unanimously on a roll call vote.

Department of Environment and Natural Resources: Water Management Board/Water Rights Program - Amend Water Rights Program rules to allow bentonite grout to be used instead of cement grout as an annular seal under certain conditions, and to require applicants for new well driller licenses to pass an examination.

Mr. Jim Goodman reviewed the proposed rules.

Senator Dennert moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Environment and Natural Resources: Water Management Board/Water Rights Program. Motion prevailed unanimously on a roll call vote.

Department of Environment and Natural Resources: Water Management Board/Groundwater Quality Program - Amend the Groundwater Quality Standards rules to set ground water quality standards to the updated maximum contaminant levels as set by the U.S. Environmental Protection Agency; and amend the Groundwater Discharge Permits rules to clarify who must apply for a ground water discharge plan, specify the maximum duration for a groundwater discharge facility construction permit, and specify renewal requirements for a groundwater discharge facility construction permit.

Ms. Anita Yan reviewed the proposed rules.

Representative Hunhoff moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Environment and Natural Resources: Water Management Board/Groundwater Quality Program. Motion prevailed unanimously on a roll call vote.

Department of Labor: Cosmetology Commission - Amend rules to update requirements for apprentice senior instructor license applications, change the annual renewal dates to birth dates for individuals and to opening dates for salons starting in 2006, change the work credit for reciprocity applicants, update and clarify safety and sanitation procedures, clarify non-invasive chemical use on skin, update prohibited products, update training and curriculum requirements for apprentices, increase the continuing education for instructors from ten annual hours to twelve annual hours, require continuing education for the use of electrical nail files, add that the commission will provide certificates for continuing education, require all foot spas to be disinfected after each use, allow a verification fee and pre-approval for a course provider to teach a course, clarify the type of education required by senior instructor to teach apprentices, and add a newly published textbook to the approved textbooks.

Ms. Susan Monge reviewed the proposed rules.

Senator McCracken moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Labor: Cosmetology Commission. Motion prevailed unanimously on a roll call vote.

Department of Game, Fish and Parks - Amend camping fees at Buryanek and West Pollock Recreation Areas; allow shotguns using shot shells and bow and arrow to be used during established hunting seasons at Okobojo Recreation Area; and amend handicapped persons hunting permits.

Mr. Doug Hofer reviewed the proposed rules concerning the Division of Parks.

Mr. Doug Hansen explained the proposed rules concerning the handicapped persons hunting permits.

Representative Engels 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.

Department of Game, Fish and Parks - Amend rules to increase the fee for certain licenses and permits (hunting, fishing, falconry, fur dealer, and taxidermist).

As requested by the Interim Rules Committee at their September 8, 2004, meeting, **Mr. Hansen** provided additional information on the proposed fee increases. He stated that the revenue impact was based on projections because the department does not know how many licenses will be sold. He stated that the primary motivation for the fee increases was to keep the prices current within the region. Mr. Hansen stated that the plans for the additional revenue are: 1) help fund salary increases (similar to what the Legislature has approved in recent years), 2) additional costs with regard to fleet management, 3) walk-in program enhancements, 4) capital developments, i.e. fish hatchery renovations, and 5) an additional 13.3 FTE's (conservation officers) for landowner relations. Mr. Hansen reviewed a graph that the department had mailed earlier to the committee which showed the Division of Wildlife's revenue, expenditures and cash balances for the FY 1990 - 2006 (**Document 3**). He stated that the administration's policy is to maintain fifty percent of the operating budget in the game and fish fund as a safety net.

Public Testimony

Mr. Ken Barker, Belle Fourche, Chair of the Game, Fish and Parks Commission, spoke in favor of the proposed fee increases. He stated that the commission has the responsibility to manage the state's wildlife, fish and parks and in doing so, they need to determine what the appropriate fees are. He stated that some of the increased revenue will be used to enhance the services that are provided to sportsmen, farmers and ranchers. He stated that the consultant's report on the fish hatcheries was worse than anticipated and that the Cleghorn Hatchery needs to be rebuilt. He stated that the Legislature has told the commission to be innovative, creative and aggressive in what they do. He feels that the commission has been prudent and rational in requesting the fee increases.

Mr. John Cooper, Secretary of the Department of Game, Fish and Parks, spoke in favor of the proposed fee increases. He stated that there are different sides to the issues of where the department should position itself. In this particular issue, a lot of work has been done and the public wants the department to run it like a business and maintain something for a rainy day. He stated that they are trying to be fiscally responsible.

In response to a question if the department was planning on purchasing additional land, Secretary Cooper replied that there is a lot of opposition to the outright fee title purchase by most public agencies. The West River Issues Working Group will be making recommendations later regarding this. Mr. Hansen stated that the department sees leasing as the approach for more "bang for the buck" and more politically acceptable.

Senator Bogue voiced concern about putting the cart in front of the horse. He stated that the proposed fee increases should have been justified to the Appropriations Committee and that this

committee needs to concentrate on the rule-making process. He stated that it looks the picture is evolving; however, we don't know what they are going to cost.

Senator Bogue moved, seconded by Representative Hunhoff, to revert the proposed rules by the Department of Game, Fish and Parks to a prior step for an additional public hearing specifically to be held in conjunction with the Interim Appropriations Committee.

Representative Hunhoff stated that a business plan is what she was looking for. She was concerned about the process and the lack of information provided to the public at the Freeman commission meeting.

Representative Hunhoff delivered a letter to Mr. Barker from a gentleman from the southeastern part of the state which states where he thought the fees should come from.

Representative Smidt stated that he understands where the department is going with this; if they did get into a situation where they had no cash reserves, they would be asking appropriations for general funds. He was torn on whether additional public testimony was necessary.

Senator Dennert stated that as a member of the West River Issues Working Group he has been listening to the issues for the past four months. He was mainly concerned with where the money was going. He stated that South Dakota residents are not complaining about the fee increase and the department has explained that some of the money will be spent for more public access. He was satisfied and will not support the motion.

Motion prevailed on a roll call vote with 4 ayes, 2 nays. Members voting aye were: Bogue, Engels, Hunhoff and McCracken. Members voting nay were: Dennert and Smidt.

Meeting Dates

Chair McCracken stated that the next committee meeting would be Tuesday, December 7, 2004, at 9 a.m.

Following a brief discussion regarding the possibility of a special meeting to hear the Department of Game, Fish and Parks rules that had been sent back, Chair McCracken stated that depending on the outcome of the meeting on December 8 with the Interim Appropriations Committee, there may be a special Interim Rules Review meeting held the afternoon of December 8. Mr. Decker stated that according to SDCL 1-25-1.1, twenty-four hours' notice is the minimum notice requirement.

Adjournment

Chair McCracken adjourned the meeting at 12:40 p.m.



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