



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

Two Hundred Fifty-fourth Meeting
Tuesday
December 7, 2004

Room 413
State Capitol Building
Pierre, South Dakota

The two hundred fifty-fourth meeting of the Rules Review Committee was called to order by Vice-Chair Representative Jean Hunhoff at 9:07 a.m., December 7, 2004, 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 and H. Paul Dennert; and Representatives Richard Engels, Jean Hunhoff (Vice-Chair), and Orville Smidt (appearing via telephone). Senator Royal "Mac" McCracken (Chair) was excused.

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 Engels moved, seconded by Senator Dennert, that the minutes of the November 17, 2004, meeting be approved. Motion prevailed on a voice vote.

Rules Reviewed

Department of Transportation - Amend existing speed rules in Bon Homme County due to recent reconstruction of State Highway 37 and the addition of State Highway 37P into the City of Springfield; establish a speed limit in Bon Homme County for State Highway 37P in Running Water; extend a 45 mph speed zone in Hyde County on U.S. Highway 14 east of the junction with SD Highway 47 in Highmore; amend a speed zone in Lake County on U.S. Highway 81 from Madison west; and add a speed zone in Lake County on U.S. Highway 81 through Junius.

Mr. Bill Nevin reviewed the proposed speed zone changes.

Senator Dennert moved, seconded by Representative Engels, to approve the rules proposed by the Department of Transportation. Motion prevailed on a roll call vote with 5 ayes,

1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.

Department of Transportation: Railroad Board - Adopt a rule to clarify the information required from railroads that intend to claim property tax credits for qualifying capital investments in railroad infrastructure.

Mr. Nevin reviewed the proposed rule.

Representative Engels moved, seconded by Senator Dennert, to approve the rule proposed by the Department of Transportation: Railroad Board. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.

Department of Revenue and Regulation: Division of Banking - Amend and adopt rules to authorize banks to provide mobile banking services to their customers and to change the date when trust company license fees are due.

Mr. Roger Novotny reviewed the proposed rules.

Following discussion regarding the definition of banking business in statute and whether "*any other services covered under this chapter*" included the delivery of loan papers, *Senator Bogue moved, seconded by Representative Engels, to revert the bank messenger services rules proposed by the Department of Revenue and Regulation: Division of Banking back to a prior step for further clarification. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.*

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

Department of Agriculture - Amend rules to reduce the tonnage inspection fee for fertilizer and feed products distributed in South Dakota.

Secretary Larry Gabriel distributed a handout of the proposed rules (**Document 1**) and explained the changes. **Mr. Brad Berven** reviewed the revised fiscal note that had been provided earlier to the committee.

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

Department of Health - Adopt and amend rules to add pediatric influenza deaths to the list of reportable events and simplify the "standard precautions" disease control measure section.

Dr. Lon Kightlinger reviewed the proposed rules and distributed a handout entitled "Reportable Diseases in South Dakota" (**Document 2**).

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

Attorney General: Law Enforcement Officers Standards and Training Commission - Adopt rules to provide for the terms and conditions upon which a license as a computer voice stress analyzer will be issued or may be revoked or denied; amend rules that will restrict the appointing authorities eligible to make application to allow a rejected applicant to reapply for law enforcement certification, limit the occasions upon which law enforcement certification will expire, reduce the number of subject areas of the basic training course, clarify the application of restrictions on student conduct, reduce the subject areas of the 911 telecommunicator training program, clarify hours that are included in reportable duty hours for reserve law enforcement officers, change the license period from one to three years for polygraph examiners, clarify the remedies available to the commission for a law enforcement officer that has engaged in misconduct, change the burden of proof in proceedings to revoke or suspend law enforcement certification, restrict the appointing authorities available to request a rejected applicant be allowed to reapply for certification as a 911 telecommunicator, limit the occasions upon which certification as a 911 telecommunicator expires, clarify the application of restrictions on student conduct, clarify the remedies available to the commission for a 911 telecommunicator that has engaged in misconduct, and change the burden of proof in proceedings to revoke or suspend 911 telecommunicator certification.

Mr. Jim Carlon explained the proposed rule changes. In response to a question by Representative Engels regarding directives in 2:01:06:09, Mr. Carlon stated that language could be added to the rule that would state that all directives must be in writing in advance so that everyone is aware of the directive.

Senator Bogue moved, seconded by Representative Smidt, to approve the rules proposed by the Attorney General: Law Enforcement Officers Standards and Training Commission. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.

Department of Education: Board of Education - Amend rules to align the rule to current statutes and remove the State Board of Education from the exemption process; and change the new technical education program proposal deadline to April 1.

Ms. Melody Schopp and **Ms. Gloria Smith-Rockhold** reviewed the proposed rules.

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

Department of Education: Professional Teacher Practices and Standards Commission

- Amend rules that will place all licensure actions regarding teaching certificates, licenses, and other credentials incurred in South Dakota on the National Association of State Directors of Teacher Education and Certification database, and to notify other states of certification violations and actions taken against South Dakota certification holders.

Ms. Lisa Lomheim reviewed the proposed rules.

Public Testimony

Mr. Tom Harmon, Pierre, testified in favor of the proposed rules. He stated that the communication process between states is important and urged the committee's approval.

Representative Engels moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Education: Professional Teacher Practices and Standards Commission. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.

Department of Health: Board of Examiners in Optometry - Amend rules to establish that the date and place for examinations is to be fixed by the National Board of Examiners in Optometry; change the amount of the application fee and fee paid upon issuance of certificate; revise the rules relating to the scope of practice; authorize one annual renewal fee of \$175, instead of the two separate fees, \$150 for renewal for licensed optometrists not certified in the use of pharmaceutical agents, plus an additional \$25 for those licensed optometrists certified in the use of pharmaceutical agents; increase the reinstatement fee after default; and increase the reciprocity fee to be the same as the application fee.

Mr. Harmon, on behalf of the Board of Examiners in Optometry, reviewed the proposed rules.

Following a brief discussion on the fiscal impact of the change in the fees, Senator Bogue requested that the board file a corrected fiscal note with the Legislative Research Council.

Representative Hunhoff moved, seconded by Senator Dennert, that the board file a corrected fiscal note and that the rules proposed by the Department of Health, Board of Examiners in Optometry be approved. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.

Secretary of State: Board of Finance - Amend rules to increase per diem rates for meal expenses incurred by employees traveling both in-state and out-of-state on official business.

Mr. Rodger Leonard explained the proposed rules.

Representative Smidt moved, seconded by Senator Bogue, to approve the rules proposed by the Secretary of State: Board of Finance. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.

Department of Labor: Board of Accountancy - Amend rules to carry out the functions of the nationally adopted continuing professional education standards, following approval by the Legislature for implementation July 1, 2005.

Ms. Bobbie Barnhill reviewed the proposed rules.

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

Department of Environment and Natural Resources: Board of Water and Natural Resources - Amend rules regarding the Brownfields Revitalization and Economic Development Program funds for clarification on how the Water and Natural Resources Board will administer the Brownfields Revolving Loan Subfunds and the Brownfields Assessment and Cleanup Subfunds, and liability protection for state designated Brownfields sites.

Ms. Kim McIntosh reviewed the proposed rules.

Representative Smidt moved, seconded by Representative Hunhoff, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Water and Natural Resources. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Dennert, Engels, Hunhoff, and Smidt. Members excused: Bogue and McCracken.

Department of Environment and Natural Resources: Board of Water and Natural Resources - Amend rules to make revisions so that recipients of assistance through the Consolidated Water Facilities Construction Program, the State Water Pollution Control Revolving Fund Program, the Solid Waste Management Program, and the Drinking Water State Revolving Fund Program will only be required to conduct an entity-wide audit when required by existing state and federal law.

Mr. James Feeney reviewed the proposed rules.

Senator Dennert moved, seconded by Representative Hunhoff, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Water and

Natural Resources. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.

Department of Environment and Natural Resources: Board of Minerals and Environment - Adopt revisions to federal regulations including surface coating of metal furniture, integrated iron and steel manufacturing facilities, brick and structural clay products manufacturing, asphalt processing and asphalt roofing manufacturing, flexible polyurethane foam fabrication operations, engine test cells/stands, and miscellaneous metal parts and products.

Mr. Kyrik Rombough reviewed the proposed rules.

Representative Hunhoff moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Minerals and Environment. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Member excused: McCracken.

Department of Game, Fish and Parks - Repeal the license exemption at Farm Island and Oahe Downstream Recreation Areas from September 17-19, 2004; permit a lost or destroyed paddlefish tag to be replaced after authorization and payment of \$5; open the prairie dog shooting season to include shooting of prairie dogs during certain times at the Conata Basin; permit possession and use of baitfish in Dante Lake; prohibit possession/transportation of snakehead fish within and into South Dakota; repeal the list of waters classified as a liberalized fishing water, delete reference to the list in the section imposing fishing restrictions in the listed bodies of water, and replace with reference to bodies of water determined by the Secretary to constitute liberalized fishing waters; change the daily limit for largemouth or smallmouth bass for Enemy Swim, Campbell Slough, Roy Lake, Lake Cochrane, Clear Lake (Marshall County), and Pickerel Lake; repeal the catch and release requirement for largemouth and smallmouth bass in the Oahe Subimpoundment; restrict fishing at Lake Haven Crossing Pond (Black Hills) to catch and release and use of artificial lures; impose a daily limit for bluegill, sunfish, crappie, and perch in the waters of Deuel County and Lake Mitchell; add a new subdivision (26) - Angostura in Fall River County and restrict the daily possession limit of crappie in this body of water and add subdivision (26) to exceptions to the statewide daily possession limits found at ARSD 41:07:03:01(7); at Belle Fourche Reservoir remove the 14 inch minimum length requirement and 1 walleye daily limit 20 inches or greater and implement a size restriction so that only those walleye less than 15 inches in length or 18 inches or greater may be taken and only 1 may be taken daily 18 inches in length or greater; open North and South Scatterwood Lakes to game fish spearing from December 1 through the end of February; increase the length of the paddlefish archery season and permit the taking of more than 1 paddlefish daily if the person has a valid tag for the South Dakota/Nebraska boundary waters; and open the following bodies of water to the taking of baitfish: Lake Bryon (Beadle County), East and West Oakwood (Brookings County), Whitewood and Spirit (Kingsbury County), and Beaver (Minnehaha County); and close the following bodies of water to the taking of baitfish: Wilmarth (Aurora County), Henry (Bon Homme County), Ethan and Hanson (Hanson County), Dimick and Menno (Hutchinson County), Iroquois (Kingsbury County), and Mud Lake (Lawrence County).

Mr. George VanDel reviewed the proposed rules.

On behalf of the committee, Representative Hunhoff expressed sympathy to the department on the loss of the department's employee.

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

Committee Discussion

Following a brief discussion on whether certain agencies had mailed their proposed rules to the committee in a timely manner, Senator Bogue stated that the mail service in his area tends to be slower than in other parts of the state. It was also noted that an agency had mailed proposed rules for this meeting with proposed rules from a previous meeting. The committee requests that all agencies mail only one packet of rules at a time.

Next Meeting Date

Vice-Chair Hunhoff set the last meeting of the interim for Monday, January 10, 2005, at 1:00 p.m.

Adjournment

Senator Dennert moved, seconded by Representative Engels, that the meeting adjourn. Motion prevailed unanimously on a voice vote.

Vice-Chair Hunhoff adjourned the meeting at 11:06 a.m.

