



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Two hundred ninety-ninth meeting
Tuesday
September 1, 2009**

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

The two hundred ninety-ninth meeting of the Rules Review Committee was called to order by Chair Representative Roger Hunt at 9:32 a.m. CDT, September 1, 2009, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators James Hundstad, Jean Hunhoff (Vice-chair), and Mike Vehle; and Representatives Peggy Gibson, Roger Hunt (Chair), and David Lust (appearing telephonically).

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 web cast live. The archived web cast 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 July 28, 2009, meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Staff Report

Mr. Doug Decker informed the committee that in reviewing the agencies that would be on the agenda for the October meeting, it was discovered that the Department of Health: Board of Funeral Service would be past the 75-day rule if the next meeting is held as scheduled. Chair Hunt stated that the next meeting date would be discussed at the end of the meeting.

Rules Reviewed

Bureau of Personnel – Amend rules to insure that any applicant or employee with a position in the Department of Agriculture, Wildland Fire Suppression Division, whose duties include firefighting, be drug free.

Ms. Lynn Valenti reviewed the proposed rules. The proposed rules are the result of Senate Bill 51 which was passed during the 2009 Legislative session.

Senator Hundstad moved, seconded by Representative Gibson, to approve the rules proposed by the Bureau of Personnel. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Health: Administration – Amend a rule to define the disinterment process.

Ms. Laurie Gill reviewed the proposed rule which is necessary to comply with Senate Bill 130 from the 2009 Legislative session.

Senator Hundstad moved, seconded by Senator Vehle, to approve the rule proposed by the Department of Health: Administration. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Health: Board of Optometry Examiners – Amend Appendix A to add codes to the Procedural Code List.

Ms. Naomi Cromwell, Pierre, Attorney representing the Board, reviewed the proposed rules.

Representative Hunt moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Health: Board of Optometry Examiners. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Tourism and State Development: State Historical Society – Amend, update and clarify definitions that pertain to historic preservation; set standard fees for archaeological services and eliminate obsolete interlibrary book loaning services; revise the fee structure for state historic property tax moratorium processing fees and increase the existing fees; increase the fee for maps that are included with National Register of Historic Places nomination forms; update the effective date of the referenced regulations and publications; update the name and effective date of the referenced regulations and publications; and change the wording to reflect the current requirements for historic tax certification applications.

Mr. Jay Vogt reviewed the proposed rules. He stated that the fee increases were necessary to enhance revenue and would still not cover all of the cost of the services.

Public Testimony

Ms. Angela Ehlers, Presho, representing the South Dakota Conservation Districts and Ag Unity, testified that the groups were not opposed to the increase in fees; however, they were unaware of the proposed rules and would like the rules to be sent back for additional hearing so their input could be heard.

Mr. Craig Bobzien, Custer, United States Department of Agriculture (USDA), Forest Service, submitted a letter dated August 31, 2009, and a Briefing Memo, in opposition to the proposed fees (**Document 1**).

Mr. Reuben Leal, Pierre, representing the USDA Forest Service, spoke in opposition to the proposed fees regarding archaeological services. He stated that the Black Hills Forest Services had a Memorandum of Understanding (MOU) with the State that will be affected by the fee increases. At the request of Representative Gibson, Mr. Leal stated he would provide the committee with a copy of the MOU.

Senator Vehle moved, seconded by Representative Hunt, to send the rules proposed by the Department of Tourism and State Development: State Historical Society back to a prior step for additional hearing. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Environment and Natural Resources: Board of Minerals and Environment – Update the state's existing hazardous waste rules by incorporating updated federal regulations by reference. These updates reflect changes made to the federal hazardous waste rules from July 1, 2007, through June 30, 2008. Changes include amending existing requirements for recycling; clarification of compliance monitoring requirements for hazardous waste combustion operations; and amending requirements for the management of wastewater treatment sludges generated by automobile assembly operations.

Ms. Carrie Jacobson reviewed the proposed rules.

Senator Hundstad moved, seconded by Representative Hunt, 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: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Social Services: Adult Services and Aging – Amend Crime Victims' Compensation Program rules to revise definitions; specify requirements and limitations of covered services; update reference to overall payment limit of the program; remove specific dollar amount limits for covered expenses; remove unnecessary examples and duplicate language; update notice procedures to reflect current practice; allow the department and commission joint authority for claims reconsiderations; and allow loss of support compensation for victims in certain situations.

Ms. Laura Ringling and **Ms. Marilyn Kinsman** reviewed the proposed rules.

Senator Hunhoff moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Social Services: Adult Services and Aging. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Transportation – Amend a speed zone in Meade County on South Dakota Highway 79 north of Sturgis to reduce the speed limits on a segment of highway north of Highway 34 during the first two weeks of August.

Mr. Randy Bingner reviewed the proposed rule.

Representative Gibson moved, seconded by Representative Hunt, to approve the rule proposed by the Department of Transportation. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Game, Fish and Parks – Amend a Public Water Zoning rule to establish a 100 foot wide "no wake zone" extending from the existing no wake zone on the southwest arm of McCook Lake (Union County) to the extreme southeast corner of the lake; amend East River Deer Hunting Season rules to establish season dates, requirements and restrictions, open areas, shooting hours, and number of licenses/tags available; modify the season starting date to begin the Saturday before Thanksgiving; eliminate the 7-day anterless extension following the 16-day regular season, and adjust the 9-day anterless extension to begin the Saturday after Christmas; and eliminate the "Super Unit" (McPherson, Edmunds, Faulk and Spink counties) where unfilled tags are valid for all four units; amend an Antelope Hunting Season rule to establish season dates, requirements and restrictions, open areas, shooting hours, and number of resident and nonresident licenses/tags available; and adjust the boundary for Butte County Units 15A and 15B; amend Custer State Park Antelope Hunting Season and License Forms and Fees rules to reopen the season, establish requirements and restrictions, open areas, and shooting hours; establish season dates to begin the Tuesday following Native American Day in October and running for 9 consecutive days (October 13-21, 2009); establish the number of licenses at 3 "any antelope" and 10 "doe/kid" licenses available only to state residents through the drawing system, and establish the fee for the licenses; remove the "archery only" restriction and allow use of any legal weapon with rifle restrictions to follow the guidelines established in the state antelope hunting season regulations; and not allow hunting within 1320 feet (440 yards) of any numbered Custer State Park road; amend a National Wildlife Refuge Deer Hunting Season rule to establish season dates, requirements and restrictions, open areas, shooting hours, and establish the number of resident and nonresident licenses/tags available on Sand Lake National Wildlife Refuge; amend an Early Fall Canada Goose Hunting Season rule to establish season dates, requirements and restrictions, shooting hours, open area, bag and possession limits; and modify the season ending date from the Friday prior to the last Saturday of September to September 30; and amend a Mountain Lion Hunting Season rule to establish season dates, open area, requirements and restrictions, number of resident licenses available; and increase the total mountain lion harvest limit from 35 to 40 and increase the female harvest limit from 15 to 25. *(Due to a time restriction of the availability of the DDN at the July 28th meeting, the chair continued the above set of the Department of Game, Fish and Parks rules to the September 1st meeting. Public testimony was taken on the department's rules for those in attendance at the DDN sites.)*

Mr. Tony Leif reviewed the proposed rules. He noted that because of the 75-day filing deadline, the department had filed the proposed mountain lion rules. There was no additional public testimony on the proposed rules.

Senator Hunhoff moved, seconded by Representative Hunt, 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: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Game, Fish and Parks – Amend a Uses of Parks and Public Land rule to permit hunting only with shotguns using shot shells and bow and arrow on the Lake Andes Units Game Production Areas in Charles Mix County; amend a Park Licenses rule to establish the procedure by which a qualifying disabled veteran may obtain a free lifetime park license; amend Waterfowl Hunting Seasons (Duck Hunting Season) rules to establish season dates, which would include establishing a split season for the High Plains Unit in order to extend the season for an additional week, and establish daily bag and possession limits for duck, coot, and merganser, which would include increasing the daily bag limit for Wood Duck from 2 to 3 depending on the current adjustment consideration at the Flyway level by the U.S. Fish and Wildlife Service; amend Elk Depredation Permit rules to establish requirements and restrictions; allow elk depredation hunts to be conducted in areas not designated as an elk unit; allow elk depredation hunts to be conducted before a regular season is opened; base hunter selection for elk depredation hunts on unsuccessful hunters for that unit from the first drawing, then unsuccessful hunters for that unit from the second drawing, then unsuccessful applicants for that unit, then unsuccessful applicants for elk units closest to the depredation hunt area; base hunter selection for pre-season depredation hunts on successful applicants for that unit, then unsuccessful applicants for that unit, then unsuccessful applicants for elk hunting units closest to the depredation hunt area; collect fees only from elk depredation hunters who did not pay for a license during the current season; unsuccessful applicants selected for a depredation hunt who elect to participate would not lose their preference points; and amend Private Shooting Preserve rules to increase the daily bag limit for pheasants on shooting preserves from 15 to 20; establish both a single-season and 3-year season private shooting preserve permit and provide for the manner in which acreage adjustments are handled for 3-year permits; and provide that all pen-reared and wild birds harvested on a shooting preserve be tagged with tags that distinguish whether the harvested bird is pen-raised or wild, increase the fee for kill tags for pen-reared birds harvested on a shooting preserve from five to fifteen cents each, and establish a new fee for kill tags issued for wild birds harvested on a shooting preserve at fifty cents each.

Mr. Tony Leif reviewed the proposed rules. He noted that the commission had changed the fee for kill tags from five to twenty-five cents each for both pen-reared birds and wild birds. It was noted that these rules, if approved, would not be in effect for twenty days as the shooting preserve's season opens today (September 1st).

Public Testimony

Mr. Brett Koenecke, Pierre, Attorney representing the South Dakota Sport Hunting Association (SDSHA), spoke in support of the proposed increased bag limits for pheasants on shooting preserves. The SDSHA had petitioned the commission for the proposed rule change. An editorial from the Aberdeen News entitled "Pheasant limit on preserves should go up" was distributed (**Document 2**).

Mr. Caleb Gilkerson, Pierre, Steamboat's Inc., spoke in support of the proposed rules. He stated that as a game processor, he sees a different side of the business. The leftover birds in his business are donated to help alleviate hunger around the state and on some of the Indian reservations.

Mr. Curt Korzan, Kimball, representing himself, testified in support of the increased pheasant limits. He stated that their hunting preserve is the reason why he and his family are still on the farm. In response to a question on how many birds that shooters do not take, he stated that they harvested 4,500 birds last year and gave away 400.

Mr. Robert Emmick, Dakota Dunes, representing E Circle E Hunting Farms, testified in support of the increased pheasant limits. He stated that the surrounding states do not have limits. In order to be competitive, South Dakota needs to increase the limits. In 2007-2008 they released 14,000 birds of which 3,400 were not harvested. He stated that the percentage of wild birds shot runs in the high teens to low twenties.

Mr. Jim Dailey, Clear Lake, representing Dakota Ridge Hunting, testified in support of the increased pheasant limits. He stated that he does not have a lot of hunters that would want to hunt more birds but believes they should have the opportunity. He stated that the majority of the pen-reared birds are grown in natural habitat and have a greater chance of survival.

Mr. Paul Nelson, Gettysburg, representing his shooting preserve in Sully County, provided the committee with a history for the request for the additional pheasant limits. He stated that the most expensive part of the hunt is the travel to South Dakota. He asked the committee to support the increased pheasant limits to make South Dakota competitive with neighboring states.

Mr. Charles Ross, Pierre, owner of a hunting preserve, testified against the proposed rules. He stated that in a direct mailing to 224 preserve operators, he received 76 responses. Eighty-eight percent of the 76 responses did not support the increased limits and 98% did not support the fee increase. He distributed a handout entitled "Administrative Costs for PSP Program" that he had received from the Division of Wildlife which stated that the program would have an excess of \$600,000 in estimated income (**Document 3**).

Mr. Chris Helsa, Pierre, representing the South Dakota Wildlife Federation, testified in opposition to the proposed rules. He stated that the neighboring states have no limits because they have no wild bird population. He also noted that the proponents talked about

shooting pheasants, not hunting. He believes that the commission did not live up to their mission statement by increasing the pheasant limits and asked the committee to send the proposed rules back for additional hearing.

Representative Gibson stated that because of the written testimony against the increase bag limit and because of the Department's mission statement she felt increasing tax revenue should not be a priority and could not support the increased pheasant limits.

Representative Gibson moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Game, Fish and Parks, with the exception of ARSD 41:09:01:03.01 Daily bag limit – Shooting hours be sent back for additional hearing.

Senator Hunhoff moved a substitute motion, seconded by Representative Hunt, 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: Hundstad, Hunhoff, Hunt, Lust, and Vehle. Member voting nay: Gibson.

Committee Discussion

Department of Revenue and Regulation: Gaming Commission – Discussion of a Declaratory Ruling, dated June 26, 2009, In the Matter of the Declaratory Ruling of Elektroncek D. D., the commission determined that Elektroncek's electronic gaming device with a roulette theme, also known as "Mechanical Double Zero Roulette," is a slot machine according to SDCL 42-7B-4(21), ARSD 20:18:17:05 .

Mr. Larry Eliason, Executive Secretary, and **Mr. Michael Shaw**, Legal Counsel, for the Commission on Gaming, reviewed the declaratory ruling process and provided a history of slot machines. Copies of SDCL 42-7B-4 and ARSD 20:18:17:05 were distributed (**Documents 4** and **5**). Based on the sworn testimony of the manufacturer and their testing laboratory, GLI, the Commission on Gaming made their determination in the above-referenced ruling. It was noted that "roulette" was the theme of the slot machine.

Mr. Samuel Weaver, Las Vegas, Nevada, Chief Compliance Officer, representing Elektroneck D.D., testified that this particular gaming device was more random than a slot machine.

In response to a question on why roulette was excluded in the constitutional amendment, former **Senator Tom Nelson**, Lead, representing Deadwood Gaming, presented a brief history of the gaming amendment.

In response to a question if this game, with a roulette theme, violates the concept of the constitutional amendment, Mr. Eliason stated that it is his opinion that it does not because it is not a live game. Representative Lust stated that although it may technically comply with the definition of a slot machine, he questioned if the spirit of the constitutional amendment had been violated. He suggested it may be up to the courts to decide.

Former **Senator Mike Diedrich**, Rapid City, Attorney for Elektroncek D.D., testified that the intent of the constitutional amendment was to revive tourism in the Northern Black Hills. The policy implemented had to be fair to both the player and operator, had to be accountable, secure, tested by independent laboratories, had to have meters and have random results. This particular slot machine has a roulette wheel which makes it more random than a slot machine.

Following the discussion on the declaratory ruling, Chair Hunt directed staff to put it on the agenda for the next regular meeting for further discussion and or action.

Meeting Schedule

Following a brief discussion of the need to change the next meeting date because of the 75-day filing requirement and there being only a few agenda items, Chair Hunt set the next meeting of the Interim Rules Committee for Tuesday, September 29, 2009, in Room 412 of the State Capitol in Pierre. The members will appear telephonically.

Adjournment

Representative Gibson moved, seconded by Senator Vehle, that the meeting be adjourned. Motion prevailed on a voice vote.

The meeting adjourned at 2:32 p.m.

