



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Three hundred fourth meeting
Tuesday
April 20, 2010**

**Room 414
State Capitol
Pierre, South Dakota**

The three hundred fourth meeting of the Rules Review Committee was called to order by Chair Representative Roger Hunt at 1:00 p.m. CST, April 20, 2010, in Room 414 of the State Capitol, Pierre, South Dakota and via the Dakota Digital Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., Room Lib 117, Aberdeen, South Dakota; Department of Transportation, 901 Dakota St., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; SD School of Mines and Technology, 501 E. St. Joseph St., Room CB 108, Rapid City, South Dakota; University Center, 2205 Career Ave., Room 282 S, Sioux Falls, South Dakota; and Department of Transportation, 1306 W. 31st St., Yankton, 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. All members appeared via the DDN. 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 Hundstad, that the minutes of the March 11, 2010, meeting be approved. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Senator Hundstad moved, seconded by Representative Gibson, that the minutes of the December 21, 2009, meeting be approved. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Rules Reviewed

Department of Revenue and Regulation: Division of Insurance - Amend Producer Licensing rules to repeal continuing education requirements that are specific to new licensees, delete unnecessary provisions pertaining to instructor CEC hours, include requirements regarding new qualifications, and clarify certain CE hours; and amend Individual Plans, Employer Plans, and Health Insurance Risk Pool rules to define a Children's Health Insurance Program as creditable coverage.

Ms. Melissa Klemann reviewed the proposed rules. It was noted that these rules had been filed on February 8, 2010, because of the 75-day rule.

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

Department of Revenue and Regulation: South Dakota Lottery Commission – Adopt rules to offer the Mega Millions game with the Megaplier option and establish the parameters for the game.

Mr. Norm Lingle reviewed the proposed rules. In response to a question regarding the sanctions available if ARSD 48:03:15:03 (Ineligible players) is violated, Mr. Lingle stated that he would research the question and follow up with the committee.

Representative Lust moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Revenue and Regulation: South Dakota Lottery Commission. 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 Custer County on US Highway 16 from 11.5 miles east of the South Dakota – Wyoming border, then easterly for 3.5 miles to 35 mph; and amend a speed zone in Harding County on US Highway 85 through the town of Ludlow to 55 mph.

Mr. Bill Nevin reviewed the proposed rules. These rules had been filed on April 13, 2010 because of the 75-day rule.

Representative Lust moved, seconded by Representative Gibson, to approve the rules 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 Agriculture: Board of Veterinary Medical Examiners – Amend Licensure Requirements rules to state in rule the application fee is \$75, the license by endorsement fee is \$25, the veterinary technician registering fee is \$20, the renewal fee for a veterinarian's license is \$100 biennially and that there is a \$50 late fee for renewals after July first.

Dr. Dustin Oedekoven reviewed the proposed rules. At the request of Senator Hunhoff, Dr. Oedekoven will provide the committee with an updated fund balance statement.

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

Department of Education: Board of Education – Amend a postsecondary program rule to develop an equitable distribution of state funds for the Technical Institutes; and amend certification rules to reflect certification practices and clarify current language, and create new technology endorsements for individuals to add to their current certification.

Mr. Mark Wilson and **Ms. Melody Schopp** reviewed the proposed rules. In response to a question if the definition of "endorsement" was somewhere in rule, Ms. Schopp stated that she will research it and let the committee know.

Public Testimony

Mr. Greg Von Wald, Mitchell, President of Mitchell Technical Institute, spoke in support of the proposed rules and answers of the committee.

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

Department of Game, Fish and Parks – Amend Public Water Zoning rules to repeal the "no motors over 25 h. p. zone" on Putney Slough Game Production Area (Brown County); repeal the "no motors over 8 h. p. zone" on the waters of Blythe Slough (Codington County); and establish a "no motors zone" and "no swimming zone" on the waters of Family Park (Minnehaha County); amend Refuges rules to remove portions of the current refuge designation for the Chamberlain State Waterfowl Refuge and create two separate state waterfowl refuges; and remove the entire refuge designations of the Elm Creek, Buryanek, and Platte State Waterfowl Refuges; amend Special Buck Licenses rules to increase East River resident special buck licenses from 400 to 500 licenses; make available the opportunity to purchase a preference point for the West River Special Any Deer License by establishing a unit with no licenses (WSD-ZZ1); and make available the opportunity to purchase a preference point for the East River Special Any Deer License by establishing a unit with no licenses (ESD-ZZ1); and amend Raptors rules to adopt by reference the new federal

regulations as promulgated by the U.S. Fish and Wildlife Service in 50 C.F.R. Part 21 thereby making the falconry standards in South Dakota the same as the federal regulations. This recommendation would change the current falconry program by revising the take season for the trapping of passage raptors from between September 21 and January 31 to between August 1 and March 31 (eyas may be taken between May 1 and July 31), and all administrative duties and permitting now will be the responsibility of the Wildlife Division; applications and permits will no longer have to be approved by the U.S. Fish & Wildlife Service.

Mr. Tony Leif reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Hundstad, 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.

Committee Discussion

Chair Hunt opened the discussion of Senate Bill 155 (*An Act to revise the rules promulgation process for administrative rules with a financial impact upon political subdivisions of state government*). It was passed by the 2010 Legislature and is effective July 1, 2010. He stated that SB 155 requires that all proposed rules must comply with SDCL 6-15-1 (*Limited effect of state mandates to provide new activities or services. No state law, rule, or regulation which mandates any county, municipality, or school district to engage in any new activity, to provide any new service, to increase any current level of activity or to provide any service beyond that required by existing law has the force of law unless or until the state provides sufficient new funding or a means of new funding to the county, municipality, or school district to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed*). He proposed that a disclaimer be put on the committee's agenda that the proposed rules will have met the provision of SDCL 6-15-1 unless specifically addressed by the committee.

Representative Lust suggested that a protocol be developed that would trigger compliance with this statute.

Mr. Decker stated that SDCL 1-26-4.2 specifically states that a fiscal note must be prepared for proposed rules. The fiscal note is the mechanism that can be used to determine compliance with SDCL 6-15-1.

Senator Vehle stated that the committee is required to send rules back to a prior step if there is a cost to local government that is unfunded.

Representative Gibson stated that SB 155 was unnecessary because the process is already in place.

Senator Hundstad stated that the notifications of the fiscal impact had not been previously done for local governments. If an agency fails to provide proper notification to those parties impacted by the rules, it would be grounds to revert the rules back to a prior step.

Representative Lust stated that this will be a circular situation and the only fix will be thru legislation.

Because the statute does not take effect until July 1st, Chair Hunt deferred any action to the June 8th meeting.

Representative Gibson inquired if Representative Hunt had received a response from the Governor regarding greater access to proposed rules through the Open SD website. Neither Representative Hunt nor Mr. Decker had received a response. Mr. Decker will follow up on the matter with Representative Gibson.

Next Meeting

The next meeting of the Interim Rules Review Committee will be held on Tuesday, June 8, 2010.

Adjournment

Senator Vehle moved, seconded by Representative Gibson, that the meeting be adjourned. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Chair Hunt adjourned the meeting at 3:07 p.m.

