

# MINUTES

## Rules Review Committee

Senator Alan Solano, Chair  
Representative Jean Hunhoff, Vice Chair



Three hundred seventy-ninth meeting  
Monday  
May 6, 2019

Room 414  
State Capitol  
Pierre, South Dakota

The three hundred seventy-ninth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Vice Chair), at 10:03 a.m. CDT, on May 6, 2019, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Craig Kennedy and Lance Russell, and Representatives Ryan Cwach, Jon Hansen, and Jean Hunhoff (Vice Chair). Senator Alan Solano (Chair) was excused. Staff members present were Doug Decker, Code Counsel, and Kelly Thompson, Senior Legislative Secretary.

*All material distributed at the meeting is attached to the original minutes on file at the Legislative Research Council (LRC). For continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://sdlegislature.gov> under "Interim."*

### Approval of Minutes

***Senator Russell moved, seconded by Senator Kennedy, that the March 28, 2019 meeting minutes be approved. Motion prevailed on a unanimous voice vote.***

### Staff Report

**Mr. Doug Decker, Code Counsel**, announced that he will be retiring from LRC effective June 7, 2019. Representative Hunhoff thanked him for his service to the Legislature and the committee.

### Rules Reviewed

**Department of Transportation:** Amend rules to update definitions of terms, address changes in South Dakota law, and clarify requirements relating to bridge improvement plan updates and bridge improvement grant eligibility; and update definitions of terms, eliminate redundancy, clarify and simplify grant requirements, and expand the time for incurring reimbursable expenses related to a grant award.

**Ms. Karla Engle, Department of Transportation**, reviewed the proposed rules.

Representative Hunhoff asked how often the National Bridge Inventory is updated and how counties eligible for grants access that information. Ms. Engle verified the information is updated annually and available to the public online.

Regarding whether extending the timeframe for project completion means a grant recipient is not in compliance with the terms of the grant, Ms. Engle noted non-compliance is not always the issue. Some entities receiving grants do not have the expertise to know if their project plans are complete so the Department of Transportation may take an active role in helping those entities which may require extra time.

***Senator Russell moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Russell.***

**Department of Game, Fish and Parks:** Amend or establish rules to alter the boundary of an existing big horn sheep hunting unit as described in rule; close the antlerless elk units listed in ARSD 41:06:47:01; allow for an individual who submits a habitat solution with such solution being deemed worthy by the Secretary to receive either authorization to access the state park system or hunt small game without a fee for one calendar year; establish a resident special any whitetail deer license and set a fee; establish a nonresident special any whitetail deer license and set a fee; set application fees and create one Custer State Park any bison license and three super license packages that include tags for one any elk, one any deer, and one any antelope; extend the date from May 1 to August 31 that traps, snares, and associated equipment may be used on public lands and improved road rights-of-ways; require that traps, snares, and associated equipment be actively operated and checked in accordance with trap-check rules; outline the guidelines of the Nest Predator Bounty Program; simplify the times the park system is open for certain uses; establish fees for commercial use and limit the restriction to the state park system; strike the "fifteen day" limitation and change it to "fourteen nights" for camping in state parks, recreation areas, and state lakeside use areas; repeal the rule prohibiting uncased .22 caliber rimfire firearms in the state park system; alter the dates that tree stands, elevated platforms, and portable blinds be allowed on lands owned, leased, or controlled by the department; allow any enrolled Crow Creek tribal member and their family to enter West Bend Recreational Area without a park entrance license; simplify the times a daily park entrance license is valid; allow South Dakota veterans organizations or groups to participate in permitted group activities on the Mickelson Trail without purchasing a trail pass; allow a user without a pass the option to purchase a daily pass or an annual pass depending on the length of time they plan to use the trail; and remove the \$15 annual pass late fee.

**Mr. Tony Leif, Department of Game, Fish and Parks, Wildlife Division, and Mr. Bob Schneider, Department of Game, Fish and Parks, Parks and Recreation Division,** reviewed the proposed rules.

Senator Kennedy asked the department to review and fix grammatical issues in 41:03:03:03.01 and 41:03:05:02. Mr. Leif said if the rules are approved, the errors will be corrected before final filing.

Representative Hansen inquired why it is necessary to begin charging fees for commercial photography in state parks. Mr. Schneider responded the fee is appropriate for commercial photography because photographers may be tying up large, popular areas for extended periods of time, blocking use by other members of the public who have paid for access into the park. He advised fees will be assessed at the discretion of the park manager when such events occur. As to whether commercial photographers would be charged for shooting weddings or receptions held in state parks, Mr. Schneider said it is not the intent

of the rules to charge a fee in those situations if the couple to be married has already secured a permit and paid a use fee to hold the event there.

The commercial photography fees are aimed at imagery taken for business or commercial activity, by a publishing company, or a private for-profit business promoting its product. Mr. Schneider referenced Dodge truck commercials shot in Custer State Park in the past as an example. Representative Cwach commented he was unsure the photography fee language was ready to be approved as written.

Representative Hunhoff questioned the proposed rules regarding the distribution of free park entrance licenses to people submitting habitat suggestions to the department, wondering how it would be determined what constitutes a "good" suggestion. Mr. Leif said hundreds of suggestions have already been received through the Second Century Initiative crowdsourcing effort, and the determinations for free passes will be made by the department secretary and chair of the Game, Fish and Parks Commission with input from members of the Second Century Habitat Foundation and other sources. When Representative Hunhoff asked what the fiscal impact would be from the giving away of park entrance licenses, Mr. Leif replied that compared to the millions of dollars collected from license fees annually, the impact would be negligible.

Responding to Senator Kennedy on the formation of the Second Century Habitat Foundation, Mr. Leif clarified it is a work in progress and will build off of the existing habitat foundation. Senator Kennedy said he is troubled by the continual reference to the Second Century Habitat Foundation as an entity that will be a decision maker in South Dakota when it is not under the supervision of the legislature or the department.

Representative Hunhoff asked if the proposed rules will expand pheasant hunting in state parks and recreation areas. Mr. Schneider responded pheasant hunting is already allowed in some state parks. Mr. Leif added while pheasant hunting generates the most interest in South Dakota, habitat is important to all wildlife in the state.

Due to the diverse nature of the rules proposed in the department's package, the committee decided to take action on the rules by division as opposed to the entire package at once, beginning with those changes proposed by the Division of Parks and Recreation.

***Senator Kennedy moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Game, Fish and Parks is complete and that 41:03:01:07 and 41:03:03:03.01 should be reverted to a prior step according to SDCL § 1-26-4.7. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Russell.***

***Senator Russell moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Game, Fish and Parks is complete and that the following rules be approved: 41:03:01:01.02, 41:03:01:15, 41:03:01:16.01, 41:03:01:19, 41:03:03:04, 41:03:05:02, 41:03:05:03, and 41:03:05:06. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Russell.***

Mr. Leif presented rules proposed by the Division of Wildlife pertaining to hunting for habitat as authorized by the passage of Senate Bill 153, changes to several hunting seasons and units, trapping, and the nest predator bounty program.

Senator Russell asked why the rule regarding elk in Custer State Park was being repealed and what the status is of elk depredation in that area. Mr. Leif responded the department is well short of their 800 elk objective there (with closer to 250 to 300 animals) and they are working with concerned constituents in the region to move animals from Wind Cave to Custer State Park.

Representative Hunhoff wondered if licenses obtained through the lottery could be used anywhere in the state, including on private land. Mr. Leif confirmed the licenses are valid anywhere a season is open and the participant abides by the restrictions of that particular season. Hunters could use them on private land if they have permission from the landowner to hunt there.

Mr. Leif clarified the law authorizing the lottery program takes effect July 1. The department will launch a major media campaign after that date with the first drawing anticipated for mid-August.

Representative Hunhoff asked about the source of the funding to be used to purchase traps to be given away. Mr. Leif said the monies will come from those taken in from license sales with the cost spanning two fiscal years. Budget managers within the department were asked to identify areas where spending could be curbed to free up funds.

Representatives Cwach and Hunhoff and Senators Kennedy and Russell expressed concerns over the formation and operation of the nest predator bounty program.

Mr. Leif explained the program was created under the statutory authority of the Department of Game, Fish and Parks with the intent to reduce the impact of predators and provide game officers with more regulatory options in the field. Department officials began talking to the Game, Fish and Parks Commission about it in January and proposed the rule at the commission's March meeting with the goal to have the program in place by April 1 when nesting started.

Representative Cwach asked for an example of another program that was created without going through the rule-making process. Mr. Leif stated the Walk-In Area program in which the department leases private land for public hunting access is such a program; the only rule in place pertaining to it is one that prohibits driving in those areas.

Representative Hunhoff asked Code Counsel if it was within the scope of the commission to create the program. Mr. Decker said the authority appears to exist under SDCL § 40-36.

***Senator Kennedy moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Game, Fish and Parks is complete and that 41:06:01:20 should be reverted to a prior step according to SDCL § 1-26-4.7. Motion prevailed on a roll call vote with 4 ayes and 1 nay. Voting aye: Cwach, Hunhoff, Kennedy, and Russell. Voting nay: Hansen.***

***Representative Hansen moved that the review of the rules proposed by the Department of Game, Fish and Parks is complete and the remaining rules be approved. Motion died for lack of a second.***

***Representative Hansen moved, seconded by Representative Cwach, that the review of the rules proposed by the Department of Game, Fish and Parks is complete and that 41:06:47:01 and 41:06:56:02 be approved. Motion prevailed on a roll call vote with 3 ayes and 2 nays. Voting aye: Cwach, Hansen, and Hunhoff. Voting nay: Kennedy and Russell.***

***Senator Russell moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Game, Fish and Parks is complete and that the following rules be reverted to a prior step according to SDCL § 1-26-4.7: 41:06:02:03(56)(d)(e), 41:06:62:01, 41:06:62:02, 41:06:62:03, 41:06:62:04, 41:08:02:13, and 41:08:03:02. Motion prevailed on a roll call vote with 3 ayes and 2 nays. Voting aye: Cwach, Kennedy, and Russell. Voting nay: Hansen and Hunhoff.***

**Department of Agriculture:** Amend rules to increase the number of voting districts for members of the Soybean Research and Promotion Council from seven to nine and reorganize the counties into those nine new districts.

**Ms. Kim Vanneman, Secretary, Department of Agriculture,** reviewed the proposed rules.

Representative Hunhoff inquired how it was decided which counties would go into what districts. **Mr. Michael McCranie, South Dakota Soybean Research and Promotion Council,** replied that the reorganization committee looked at soybean production statistics in each county and organized the districts to have equal production amounts. More than 200 million bushels of soybeans are produced in South Dakota.

***Senator Kennedy moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Agriculture is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Russell.***

**Department of Revenue: South Dakota Commission on Gaming:** Amend rules to add a new variation of blackjack known as Blazing 7's Progressive and increase players' chances of winning at the variation of blackjack known as Triple Win 20.

**Mr. Craig Sparrow, Department of Revenue, South Dakota Commission on Gaming,** reviewed the proposed rules.

Representative Hunhoff wondered about the longevity of casino games and how frequently they are changed or updated. Mr. Sparrow said it happens infrequently, some games last for decades while others just a few years. Change requests are usually brought to the commission by game developers, sometimes at the request of casinos.

Representative Cwach asked if the impact to Deadwood gaming revenue would be minimal regardless of if the rules were approved or reverted. Mr. Sparrow confirmed it would.

***Representative Hunhoff moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Revenue: South Dakota Commission on Gaming is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Russell.***

**South Dakota Retirement System:** Amend rules to update statutory citations of authority and internal cross references to correspond with the changes resulting from passage of House Bill 1010 of the 2019 Legislative Session, and to clarify language and repeal obsolete provisions.

**Ms. Jacquie Storm, South Dakota Retirement System,** reviewed the proposed rules which will go into effect July 1 when the legislation that prompted them becomes effective.

***Representative Hunhoff moved, seconded by Senator Kennedy, that the review of the rules proposed by the South Dakota Retirement System is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Russell.***

### Closing Comments

The next meeting of the Rules Review Committee is June 3, 2019. Currently nine rules packages are up for consideration. Representative Hunhoff encouraged all members to attend the June meeting in person to recognize Mr. Decker's retirement.

### Adjournment

***Senator Russell moved, seconded by Senator Kennedy, that the meeting be adjourned. Motion prevailed on a unanimous voice vote.***

Vice Chair Hunhoff adjourned the meeting at 12:43 p.m.