The one hundred twenty-seventh meeting of the South Dakota Code Commission was called to order by Chair Margaret Gillespie at 3:55 p.m. CT, February 20, 2020, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Commissioners Margaret Gillespie (Chair), Tom Lee (Vice Chair), Doug Decker, Steven Haugaard, and Arthur Rusch.

Staff members present were Wenzel Cummings, Code Counsel; and Cindy Tryon, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For purposes of continuity, these minutes are not necessarily in chronological order.

Approval of Minutes

Commissioner Rusch moved, seconded by Commissioner Lee, that the January 15, 2020, meeting minutes be approved. Motion prevailed on a roll call vote with 4 AYES; 1 EXCUSED. Voting AYE: Decker, Gillespie, Lee, and Rusch. EXCUSED: Haugaard.

Permission to access and use the South Dakota Codified Law

Mr. Wenzel Cummings, Code Counsel, said he has received two requests for access to the South Dakota Codified Laws found on the LRC website. The first request is from Deloitte and a copy of the email request was distributed to the Commissioners [Document #1].

Mr. Anthony Fanizza, Managing Director, Deloitte, addressed the Commission via phone. Deloitte offers a service that helps clients adhere to regulations and laws within the U.S. especially at the state level. This service requires Deloitte to be able to access state laws and regulations. Giving Deloitte permission to access the LRC website would allow Deloitte to collect information, digitize that information, and break it down so that clients can easily access the information that applies to them. Deloitte does charge clients a fee for this service.

Commissioner Doug Decker asked how many other states participate in this program. Mr. Fanizza said there are about 36 states that provide information and 2 or 3 states have declined. Deloitte is negotiating with the states that chose not to participate.
Commissioner Lee asked if Deloitte uses any information that is not available to the public. Mr. Fanizza said all the information used is available to the public and permission is being requested to be transparent about commercial use of the information. Mr. Fanizza said Deloitte would be willing to execute an MOU clearly stating Deloitte’s responsibility if needed.

The Commissioners asked the LRC IT Manager for comments on this proposal.

**Mr. Scott Darnall, Information Technology Manager, LRC**, said Deloitte’s proposed process should not be a problem for the network system as the need to sweep the website for updates should not be often except during session.

Commissioner Gillespie said there is a need to be sure any decision is consistent with how these requests have been handled in the past. The Commission will discuss this issue further at the next Code Commission meeting.

A motion was made by Commissioner Rusch, seconded by Commissioner Lee, that the Code Counsel engage in negotiations with Deloitte and assure consistency with previous agreements regarding requests for access to laws and regulations found on the LRC website. Motion prevailed on a roll call vote with 4 AYES; 1 EXCUSED. Voting AYE: Decker, Gillespie, Lee, and Rusch. EXCUSED: Haugaard.

**Mr. Zach Merrill, IT Project Manager, Attorney General’s Office**, said he requested access to the LRC database through an e-mail message sent to Mr. Darnall (Document #2). Mr. Merrill said access to this information would assist in keeping the Attorney General’s new case management system up to date.

Mr. Darnall said the information being requested by the Attorney General’s office is currently in use by the LRC internally and could be offered externally but any additions to that request would mean increasing the LRC IT staff’s workload.

A motion was made by Commissioner Lee, seconded by Commissioner Rusch, that the Legislative Research Council Information Technology Manager work with the Attorney General’s Office Information Technology team to see if Mr. Merrill’s request can be advanced without raising cost factors for the LRC in terms of time, money, or changes to the LRC system. Motion prevailed on a roll call vote with 4 AYES; 1 EXCUSED. Voting AYE: Decker, Gillespie, Lee, and Rusch. EXCUSED: Haugaard.

West Publishing Contract

Mr. Cummings presented information regarding contract negotiations with Thomson Reuters regarding access to Westlaw for LRC staff and State Legislators. The LRC staff use the program frequently and several Legislators have requested access to the same Westlaw information as the staff. West has agreed to increase the number of licenses for use of the program by the LRC from 10 to 85 for an additional $900 a month. The Director of the LRC has approved this request if the Code Commission chooses to move forward with the contract offer.

Available by phone to answer questions from the Commissioners were James Hanggi, Anne Barnard, Lila Hambleton, Nickie Nielsen, Joe Amos, and Joel Hurwitz, with West, a Thomson Reuters business.
Commissioner Lee said he is concerned with the 36 month term and if the extension works with the current contract which does not end until July 1.

Commissioner Gillespie said rather than amending the existing contract it may be cleaner to wait and begin July 1. Mr. Hanggi said West is offering a bridge for about $980 a month for three months and the increase in rates per the contract would not go into effect until July 1. This would allow LRC staff full access to the program immediately.

Commissioner Decker said SDCL 2-16-7.1 allows for the continuation of the contract by extending the contract for up to two years. The 36-month extension may be an issue in regard to that statute.

*A motion was made by Commissioner Rusch, seconded by Commissioner Lee, to defer action on the contract with West for use of the Westlaw program until the end of the current contract and that the new contract not exceed two years. Motion prevailed on a roll call vote with 4 AYES; 1 EXCUSED. Voting AYE: Decker, Gillespie, Lee, and Rusch. EXCUSED: Haugaard.*

**Update on State Library Code Digitization Project**

Mr. Cummings said the State Library was approved to digitize the Code through 2003 and now has requested to digitize the Code after 2003 which includes annotations from Thompson Reuters. Thompson Reuters declined allowing that contract request. The State Library can digitize the code that is not through Thompson Reuters meaning they would have to redact the Thompson Reuters annotations. Due to the additional work required it is not clear where this project stands at this time.

**Resolving Conflicts between Initiated Measures and Legislative Amendments and Section Length and Organization**

Mr. Cummings presented a draft copy of a letter addressed to the State Bar of South Dakota *(Document #3)*. At the previous meeting, the Code Commission requested Mr. Cummings draft a letter to the State Bar regarding initiated measures and code section length and organization. The letter requests input from the members of the Bar on these two issues.

*Mr. Andrew Fergel, Executive Director, State Bar of South Dakota,* said the State Bar has a commission meeting by teleconference on Friday, February 28, and Mr. Fergel will present this request to the commission at that time. Mr. Fergel invited Mr. Cummings to take part in the February or March teleconference State Bar Commission meetings to further explain this project.

Commissioner Decker suggested including a copy of SB 102, *An Act to provide certain procedures regarding the effect of initiated measures and amendments*, with the letter to give a concrete idea of what is being proposed. This bill was introduced by Senator Nesiba and the State Affairs committee sent it to the 41st day.

Mr. Fergel said input on these issues should not just come from the members of the Bar but should come from others who use the code in their everyday business.
Commissioner Rusch said it is important to get input from the members of the Bar, but the results should indicate the Bar is just one of the resources for the information collected.

Commissioner Gillespie said this letter continues to be a work in progress and requested Mr. Fergel ask the State Bar Commissioners for their thoughts on this issue. Commissioner Gillespie said the initiated measure portion of the letter should be eliminated as the code section length is the most important issue at this time. The initiated measure portion should be a side issue. More time may be needed during the next Code Commission meeting to address this further.

**Code Annotatons on the LRC Website**

Mr. Cummings presented a draft disclaimer which he was requested to write for use on the LRC website [Document #4]. The LRC provides the service of including the South Dakota Codified Laws on their website and this disclaimer would help in further explaining that service. Mr. Cummings supplied copies of similar disclaimers used in Nebraska, Montana, North Dakota, and Wyoming [Document #5].

Commissioner Lee suggested some changes to the draft disclaimer.

A motion was made by Commissioner Rusch, seconded by Commissioner Decker to approve the disclaimer with Commissioner Lee’s changes, and request the LRC place the disclaimer on the LRC website. The approved disclaimer reads as follows, “The South Dakota Legislative Research Council takes reasonable precautions to assure the accuracy and reliability of the data contained on this website. No warranty, guarantee, or promise, express or implied, is made. The internet version of the South Dakota Codified Laws is made available as a public service. Online resources may be vulnerable to unauthorized changes or redirection. Any person who relies on any information obtained from this website does so at that person’s own risk. In the case of inconsistencies resulting from omissions or other errors, the current printed version of the Code will prevail. For matters affecting legal or other rights, or to confirm content, please refer to the current printed version of the Code or consult an attorney. The staff of the Legislative Research Council may not provide legal advice.” Motion prevailed on a roll call vote with 5 AYES. Voting AYE: Decker, Gillespie, Haugaard, Lee, and Rusch.

**Legislation Updates**

Mr. Cummings updated the Commissioners on current legislation. The technical corrections bills (HB 1012 and HB 1013) have passed through the House with some minor changes and will now go to the Senate. The Annual Codification Bill (HB 1164) has also passed through the House and will now go to the Senate.

Mr. Cummings said the style and form definition bill (HB 1107) is sponsored by Senator Nesiba and that Mr. Cummings was not involved in the research, drafting, or presentation of this legislation in any way. The bill has passed through the House with amendments and does define style and form. Mr. Cummings said he will speak with the bill sponsor prior to the bill being heard by the Senate Judiciary Committee.

Commissioner Decker said this bill is written to make changes to the Code Commission’s procedures and Mr. Decker asked that the Code Commissioners receive prior notification of any legislation relating to the Code Commission.
Commissioner Gillespie said she too would appreciate being informed of any legislation regarding the role of the Code Commission. Commissioner Gillespie said the Commission appreciates Mr. Cummings in his new role as Code Counsel adding that it is important the Code Counsel communicate with the Commissioners to keep everyone abreast of things affecting existing statutes. It is important to recognize all Code Counsel and Code Commission responsibilities are found in statute and those responsibilities need to be followed.

Commissioner Haugaard said the new Code Counsel has been working very hard and is doing a great job.

**Schedule for Next Meeting**

The date of the Commission's next meeting is June 17 in Pierre in conjunction with the State Bar Convention.

**Adjournment**

*Commissioner Rusch moved, seconded by Commissioner Lee, to adjourn. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Decker, Gillespie, Haugaard, Lee, and Rusch.*

Chair Gillespie adjourned the meeting at 5:30 p.m.