

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Lance Russell, Vice Chair

Three hundred eighty-seventh meeting
Tuesday
April 7, 2020

Room 414
State Capitol
Pierre, South Dakota

The three hundred eighty-seventh meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, Chair, at 10:01 a.m. (CT) on April 7, 2020, via electronic conference and in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Ryan Cwach, Jon Hansen, and Jean Hunhoff, Chair; and Senators Craig Kennedy, Lance Russell, Vice Chair, and Margaret Sutton. Staff members present were Wenzel Cummings, Code Counsel, Kelly Thompson, Senior Legislative Secretary, and Hilary Carruthers, IT Support Specialist.

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

Approval of Minutes

Senator Kennedy moved, seconded by Representative Cwach, that the March 12, 2020, meeting minutes be approved. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hunhoff, Kennedy, Russell, and Sutton. Excused: Hansen.

Rules Reviewed

Board of Medical and Osteopathic Examiners (Department of Health): Amend rules for the general application requirements regarding an applicant's condition related to their ability to practice.

Mr. Tyler Klatt, Board of Medical and Osteopathic Examiners, reviewed the proposed rules.

Representative Hunhoff asked how it would be determined if a person is being appropriately treated for their condition. Mr. Klatt replied the determination would be made on a case by case basis and depend upon the individual's diagnosis.

Senator Russell moved, seconded by Representative Cwach, that the review of the rules proposed by the Board of Medical and Osteopathic Examiners (Department of Health) is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hunhoff, Kennedy, Russell, and Sutton. Excused: Hansen.

South Dakota Board of Economic Development (Governor's Office of Economic Development): Amend rules to:

- Authorize the Board of Economic Development to make loans from the Revolving Economic Development and Initiative Fund for the construction and refurbishment of multi-family housing;
- Allow for the amortization of loans for multi-family housing for a term of up to 30 years; and
- Repeal a transitional rule adopted in 2007, which is now obsolete.

Mr. Tim Engel and Ms. Cassie Stoesser, South Dakota Board of Economic Development, reviewed the proposed rules.

Public Testimony

Ms. Julie Johnson, Homes for South Dakota, expressed the support of the organization for the proposed rules, saying its members will work with the board to make the program workable in communities of all sizes in South Dakota.

Senator Russell asked whether the proposed program is in line with the purpose of the Revolving Economic Development and Initiative (REDI) Fund, as defined in SDCL 1-16G-3. Senator Kennedy, who serves as a non-voting legislative representative on the board, replied that the purpose of the REDI Fund is to make grants and loans for economic development. He stated part of economic development involves having sufficient workers, the availability of which can be negatively impacted by a lack of housing.

Representative Hunhoff inquired if under the proposed loan program, the refurbishment of a building could include both housing and commercial properties. Ms. Stoesser responded as long as the majority of the building is used for housing, economic development opportunities for businesses could be considered for inclusion in the facility.

Representative Hunhoff asked if the public, including groups such as that represented by Ms. Johnson, will have the opportunity to provide input on the parameters of the loan program, if the proposed rules are approved. Ms. Stoesser replied that the loan policy process would be set at a public REDI Fund Board meeting and public comment will be accepted.

Senator Russell said the purpose of the proposed loan program does not fall within the parameters of economic development, and it represents a "small idea" when in the past it has been "big ideas" that drove economic development in South Dakota. Representative Hunhoff said she sees the situation differently. Housing is an issue in her area (Yankton), and she is hopeful that after the COVID-19 pandemic has ended, the economic situation in the state will rebound.

Representative Cwach moved, seconded by Senator Sutton, that the review of the rules proposed by the South Dakota Board of Economic Development (Governor's Office of Economic Development) is complete. Motion prevailed on a roll call vote with 4 ayes, 1 nay, and 1 excused. Voting aye: Cwach, Hunhoff, Kennedy, and Sutton. Voting nay: Russell. Excused: Hansen.

South Dakota Board of Examiners in Optometry (Department of Health): Amend rules to:

- Clarify existing language for release of prescriptions;
- Establish and clarify the process for license renewal and late renewal fees;
- Update and clean up continuing education requirements and documentation;
- Revise requirements of notification of change in professional corporation membership; and
- Add one CPT code to clinical procedures approved for optometrists.

Ms. Naomi Cromwell, South Dakota Board of Examiners in Optometry, reviewed the proposed rules. **Dr. Craig Dockter, Board President,** and **Ms. Deni Amundson, Board Executive Secretary,** participated electronically to provide additional information as needed.

Representative Hansen asked if the proposed increase in the fee for reinstatement after a default was intended to be punitive. Ms. Amundson noted there is currently no limit on how long the late fee can be paid and the change was being proposed to address that.

Senator Russell moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Board of Examiners in Optometry (Department of Health) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Department of Revenue: Amend rules relating to the issuance of physical disability placards to permit certification of physical disability by nurse practitioners.

Ms. Morgan Nelson, Department of Revenue, reviewed the proposed rules. **Ms. Rosa Yaeger, Division of Motor Vehicles, Department of Revenue,** participated electronically to provide additional information, if needed.

Representative Hansen noted that SDCL 32-5-76.1 specifically requires a physician's certificate, and he asked if a certificate from a nurse practitioner would qualify under the statute. Ms. Nelson responded that she had overlooked the term "physician" in the statute, but the issue was not raised in the Legislative Research Council's review of the proposed rules.

Representative Hunhoff requested clarification from LRC. **Mr. Wenzel Cummings, Code Counsel,** said it was an oversight on his part that the reference was not noted in the LRC edits.

Senator Kennedy commented that he had identified the same issue in his review of the rules, and that while the proposed changes were well-intentioned and a good idea, likely a mistake had been made in 2002 when the rules were last changed. It was his opinion the proposed rule was not statutorily authorized.

Representative Hansen moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Revenue is complete and the rules be reverted to a prior step according to SDCL 1-26-4.7(7). Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Department of Game, Fish and Parks: Amend rules to:

- Eliminate unnecessary language;
- Amend form and style;
- Update authorities;
- Amend language for the purposes of consistency;
- Repeal 41:06:04:16, 41:06:11:02, 41:06:14:05, 41:06:15:04, 41:06:17:02, 41:06:34:02, 41:06:35:02, 41:06:39:02, 41:06:40:02, 41:06:41:05, 41:06:42:03, 41:06:47:05, 41:06:49:02, 41:06:60:03, and 41:07:02:05;
- Consolidate rules;
- Eliminate a public swimming area on Mina Lake;
- Eliminate the no wake zone on Lake Norden;
- Modify the endemic area by adding additional deer and elk hunting units;
- Alter the start date for the low plains middle and north zones duck hunting season;
- Decrease the daily bag limit of scaup ducks from three to one;
- Modify the start date for the youth waterfowl hunting season;
- Create two additional bighorn sheep units; and
- Restrict the taking of one flathead catfish over 28 inches to one per day per person.

Mr. Jon Kotilnek and Mr. Tom Kirschenmann, Department of Game, Fish and Parks, reviewed the proposed rules, which were divided into two sections: style and form changes, and substantive changes impacting the Division of Wildlife.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of those rules proposed by the Department of Game, Fish and Parks on pages 1 to 238 regarding the repeal of existing rules is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Senator Kennedy moved, seconded by Representative Hunhoff, that the review of those rules proposed by the Department of Game, Fish and Parks beginning on page 239 containing the substantive changes is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Representative Hunhoff moved, seconded by Senator Kennedy, that the review of those rules proposed by the Department of Game, Fish and Parks on pages 1 to 238 not addressed in the initial motion is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Closing Comments

Representative Hunhoff asked for feedback on the use of electronic conferencing to conduct the Rules Review Committee's meetings during this period of social distancing under the COVID-19 guidance.

Mr. Kotilnek commented that the process worked well and asked if it was the members' preference to still receive hard copies of proposed rule documents in addition to electronic versions. All members with the exception of Representative Cwach requested both hard copies and electronic documents.

Representative Hunhoff agreed that while there were some minor technical issues with the electronic conferencing, overall it was a successful way to conduct the business of the committee. The format in which the May 5, 2020, meeting will be held will be determined closer to the meeting date. At this time, four packets of proposed rules are anticipated to be heard at that meeting.

Adjournment

Senator Russell moved, seconded by Senator Sutton, that the meeting be adjourned. Motion prevailed on a unanimous roll call vote. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Chair Hunhoff adjourned the meeting at 12:04 p.m.