

# MINUTES

## Rules Review Committee



Representative Jean Hunhoff, Chair  
Senator Lance Russell, Vice Chair

Three hundred eighty-ninth meeting  
Tuesday  
June 9, 2020

Room 414  
State Capitol  
Pierre, South Dakota

The three hundred eighty-ninth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, Chair, at 10:02 a.m. (CT) on June 9, 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 Anita Thomas, Principal Legislative Attorney, 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 Russell moved, seconded by Senator Sutton, that the May 5, 2020, meeting minutes be approved. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Cwach, Hunhoff, Kennedy, Russell, and Sutton.***

### Rules Reviewed

**South Dakota Board of Accountancy (Department of Labor & Regulation):** Amend rules to update references and language to allow for CPA exam candidates to have continuous testing.

**Ms. Nicole Kasin, South Dakota Board of Accountancy,** reviewed the proposed rules.

Senator Kennedy referenced the style and form questions and concerns from LRC regarding the definition of disability and asked why they were not addressed in the final rules. Ms. Kasin replied that she had spoken to Code Counsel to determine if there was any specific language LRC was recommending and as there was not, the rules were left as initially proposed.

Representative Hunhoff asked if the manual referenced in the rules is updated on a regular basis. Ms. Kasin confirmed the publication is updated annually and the rules reference the latest updated version.

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

**Civil Service Commission (Bureau of Human Resources):** Amend rules, pursuant to the passage of SB 186 by the 2020 Legislature, to:

- Expand when a state employee can use sick leave; and
- Set forth the parameters of paid family leave upon the birth or adoption of a child.

**Ms. Mallori Barnett, Bureau of Human Resources,** reviewed the proposed rules.

Representative Hunhoff asked why no fiscal impact is anticipated if the rules are approved. Ms. Barnett said the Fiscal Year 2021 budget already covers any anticipated costs, although there may be additional minimal costs to compensate employees picking up extra duties as a result of the changes. Representative Hunhoff replied there may still be some unintentionally hidden fiscal impact.

Representative Cwach commented that some of the new language added to the rules did not appear to be related to the legislation and asked if there were issues with the current rules regarding family medical leave that prompted the proposed changes. Ms. Barnett responded that the purpose behind the change to the sick leave rule was to not limit its use to just the illness of an employee, but to allow it to be used for other purposes such as illness of a family member. She confirmed the state employee handbook would be updated explaining the changes if the rules are approved.

Senator Russell asked if the terms used in the proposed rules were defined in current rule. Ms. Barnett said some terms are defined in ARSD 55:09:01:01 but others are not. He inquired whether the agency was satisfied that the proposed rules give sufficient parameters to employees and their supervisors regarding how this leave should be used. Ms. Barnett replied that in addition to updating the handbook, implementation policies and FAQs will be updated to provide notice to the affected parties.

Representative Hunhoff noted the Bureau of Human Resources has the opportunity to provide more clarification as they go forward with implementing the new policies and they could be challenged in the future on whether the new rules are applied consistently.

***Representative Hunhoff moved, seconded by Senator Sutton, that the review of the rules proposed by the Civil Service Commission (Bureau of Human Resources) is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Sutton. Voting nay: Russell.***

**South Dakota Electrical Commission (Department of Labor and Regulation):** Amend rules to:

- Adopt the 2020 National Electrical Code; and
- Document the ability to temporarily extend deadlines.

**Mr. JJ Linn, South Dakota Electrical Commission,** and **Mr. Graham Oey, Department of Labor and Regulation,** reviewed the proposed rules which had been reverted by the Interim Rules Review Committee at its May 5, 2020, meeting.

Representative Hanson asked what changes had been made to the reverted rules since they were last presented to the committee. Mr. Oey said the rules were now less broad regarding continuing education requirements and deadlines, and other concerns raised by the Electrical Commission were addressed.

Representative Hunhoff inquired why the proposed rule regarding deadline extensions is necessary. Mr. Oey said with the Covid-19 pandemic, the commission was unsure if other avenues would be available; legislation offered on Veto Day and ultimately signed by Governor Noem addressed those situations. Senators Kennedy and Sutton also expressed concern over the proposed rules regarding deadlines.

***Senator Kennedy moved, seconded by Representative Hunhoff, that the review of the rules proposed by the South Dakota Electrical Commission (Department of Labor and Regulation) is complete, and proposed rule 20:44:15:07 be reverted to a prior step according to SDCL 1-26-4.7. 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 remaining rule be approved as presented. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.***

**South Dakota Board of Education Standards (Department of Education):** Amend rules to:

- Accurately reflect the federal Individuals with Disabilities Education Act (IDEA) rules amended by the Every Student Succeeds Act (ESSA); and
- Correct the definition of preschool age and preschool program to align with the IDEA preschool age.

**Ms. Diane Roy, Department of Education, and Ms. Linda Turner, Division of Educational Services and Support, Department of Education,** reviewed the proposed rules.

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

**South Dakota State Library Board (Department of Education):** Amend rules to update fees charged to library users who damage or lose state library materials.

**Ms. Diane Roy, Department of Education, and Ms. Brenda Hemmelman, South Dakota State Library, Department of Education,** reviewed the proposed rules.

Senator Sutton asked how the replacement charge amounts were determined. Ms. Hemmelman said it depends on where the replacement item can be purchased and how difficult it is to find. Charges also include the processing fees to get the item back into the collection.

Representative Hansen wondered if the fees were designed to be punitive if the item is no longer available. Ms. Hemmelman replied the fees are rarely used in that manner. While the collection includes historical books, if an exact replacement cannot be found, the item would be replaced with a similar item.

Representative Hunhoff asked for library replacement charge amounts for Fiscal Year 2019. Ms. Hemmelman responded that, in the past three years, only one library patron has lost a book. The replacement cost was \$29.95 with a \$7.00 processing fee. Representative Hunhoff wondered what prompted the proposed rules changes if books are rarely lost. Ms. Hemmelman noted the fees had not been reviewed in 25 years. A new employee who joined the library staff three years ago began reviewing the administrative rules and asked the Library Board to consider updating them.

***Representative Hunhoff moved, seconded by Senator Kennedy, that the review of the rule proposed by the South Dakota State Library Board (Department of Education) is complete. Motion failed on a roll call vote with 3 ayes and 3 nays. Voting aye: Cwach, Hunhoff, and Kennedy. Voting nay: Hansen, Russell, and Sutton.***

***Representative Hansen moved, seconded by Senator Russell, that the proposed rule be reverted to a prior step according to SDCL 1-26-4.7. Motion failed on a roll call vote with 3 ayes and 3 nays. Voting aye: Hansen, Russell, and Sutton. Voting nay: Cwach, Hunhoff, and Kennedy.***

***Senator Russell moved, seconded by Representative Hansen, that the proposed rule be reverted to a prior step according to SDCL 1-26-4.8. Motion prevailed on a roll call vote with 4 ayes and 2 nays. Voting aye: Hansen, Hunhoff, Russell, and Sutton. Voting nay: Cwach and Kennedy.***

**Department of Social Services:** Amend rules to eliminate the current disqualification for TANF assistance for individuals with felony drug convictions, pursuant to the passage of Senate Bill 96 during the 2020 Legislative Session.

**Mr. Jeremy Lippert, Department of Social Services,** reviewed the proposed rules.

***Senator Kennedy moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Sutton. Voting nay: Russell.***

**South Dakota Division of Insurance (Department of Labor and Regulation):** Amend rules to:

- Update the sources referenced in rule;
- Incorporate 2020 Medicare Supplement coverage amounts set by the federal government; and
- Clarify the information required for insurance companies to complete the Corporate Governance Annual Disclosure provided by the passage of House Bill 1017 during the 2020 Legislative Session.

**Mr. Frank Marnell, South Dakota Division of Insurance, Department of Labor and Regulation,** reviewed the proposed rules.

Senator Russell asked if the increases in deductibles were required by federal statute. Mr. Marnell confirmed that the rates are set at the federal level. Senator Russell responded that while this is an inopportune time to increase them, he understood the need to correspond with the federal increases.

***Representative Hunhoff moved, seconded by Representative Cwach, that the review of the rules proposed by the South Dakota Division of Insurance (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.***

**South Dakota Weed & Pest Control Commission (Department of Agriculture):** Amend rules to:

- Add absinth wormwood to the statewide noxious weed list and remove Russian knapweed from the same list; and
- Add palmer amaranth to the list of locally noxious weeds and remove absinth wormwood from the same list.

**Ms. Brenda Sievers, Division of Agricultural Services, Department of Agriculture,** reviewed the proposed rules. She noted that there was initial opposition from county weed boards, prompting the commission to return the rules for further review. The rules were subsequently approved.

***Senator Russell moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Weed & Pest Control Commission (Department of Agriculture) is complete. 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:

- Make an allowance for an additional single-tag "antlerless any deer" license that would be distributed amongst all municipal archery deer hunting units;
- Create new units for municipal archery deer hunting within city limits of certain cities;
- Modify the start date for the Lacreek National Refuge and Sand Lake National Wildlife Refuge archery deer seasons;
- Modify the age requirement for who would qualify for the youth waterfowl hunting season;
- Modify the dates from "five consecutive days beginning on the first Saturday of October" to "9 consecutive days beginning 21 days prior to the third Saturday of October" for the special youth pheasant hunting season;
- Limit the harvest of flathead catfish 20 inches or longer to one fish as part of the daily limit; and
- Remove the River Otter from the list of threatened mammals.

**Mr. Tom Kirschenmann, Wildlife Division, Department of Game, Fish and Parks,** reviewed the proposed rules and noted that the rule regarding removing the River Otter from the list of threatened mammals is the result of the passage of House Concurrent Resolution 6014 by the 2020 Legislature.

### **Public Testimony**

**Ms. Nancy Hilding, Prairie Hills Audubon Society,** spoke in opposition to the River Otter rule, stating the department lacks the population data to accurately determine whether numbers of the animal in all parts of the state warrant its removal from the list. She said approval of the rule along with the implementation of a proposed trapping season on River Otters will decimate the animals' West River population.

**Ms. Christine Sandvik, self**, expressed her opposition to the River Otter rule, saying further surveys with a wider range to include West River are needed to get more accurate population data. She told committee members the animals also have an impact on tourism and naturalism that should be considered, and since the proposed delisting would be statewide, a delisting plan should be established before the action is taken.

In rebuttal, Mr. Kirschenmann noted the department conducted a species status review in 2018 for those animals on the threatened and endangered list which included an outline for recovery if otters were delisted. Other states with River Otter populations such as Iowa, Nebraska, and Colorado were asked to comment on the species status review; the information was also made available for public comment. Mr. Kirschenmann stated the status review met all necessary thresholds and criteria.

Representative Hunhoff asked if the opponents were correct in that numbers of River Otters vary between East River and West River. Mr. Kirschenmann said numbers are stronger in the eastern part of the state, especially near the Big Sioux and James Rivers and in wetland areas.

Responding to Representative Hunhoff as to whether hearings were held on the otter plan, as indicated in the resolution, Mr. Kirschenmann responded that the management plan is currently out for review and public comment, and the status review went through the public input process two years ago. He clarified the trapping recommendations are statewide although comments from the public and the commission are prompting them to look at changing those recommendations. The issue will be discussed at the July meeting of the Game, Fish and Parks Commission.

Representative Cwach commented that River Otters were introduced in South Dakota by the Flandreau Santee Sioux Tribe and asked if the department had contacted them about the delisting. Mr. Kirschenmann confirmed department staff does talk to the tribe about the otters and lets them know when rules changes are being proposed. While he could not confirm what the tribe said about the delisting, Mr. Kirschenmann offered to obtain that information and provide it to the committee.

***Senator Russell moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 4 ayes and 2 nays. Voting aye: Hansen, Hunhoff, Russell, and Sutton. Voting nay: Cwach and Kennedy.***

**Department of Transportation:** Amend rules to:

- Revise the dates for temporary reduced speed limits on Interstate Highway 90 between Sturgis and Rapid City, State Trunk Highway 34 in Sturgis, and State Trunk Highway 79 immediately north of its intersection with State Trunk Highway 34 in Meade County; and
- Impose a new temporary reduced speed limit on State Trunk Highway 79 in and around its intersection with Big Horn Road in Meade County.

**Ms. Karla Engle, Department of Transportation**, reviewed the proposed rules and said the purpose of the changes is to promote traffic safety during the 2020 Sturgis Motorcycle Rally.

Senator Sutton asked if organizers were expecting reduced numbers at the Rally this year due to the Covid-19 pandemic. Ms. Engle said the situation is making it difficult for organizers, city officials, and law enforcement to estimate attendance. The City of Sturgis is scheduled to meet on June 15 to determine if Rally events

would go forward within city limits. Ms. Engle said many of the activities are not confined to city limits and large traffic generators such as the Buffalo Chip Campground and the Full Throttle Saloon are planning to go forward with their events.

Senator Sutton inquired about Rally statistics on accidents and deaths. **Ms. Christina Bennett, Department of Transportation**, said while she could not provide specific numbers, accidents and deaths increased significantly for the 75<sup>th</sup> Sturgis Rally in 2015 and have been lower in recent years. Prior to the pandemic, traffic for the 2020 event was estimated at over 500,000 vehicles into Sturgis, the same level as in 2015.

***Senator Russell moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Transportation 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 thanked LRC staff and those testifying in person and online for appearing at today's meeting and noted that electronic conferencing is proving to be a successful meeting option. Currently five rules packets will be considered at the July 14, 2020, meeting.

Senator Russell offered his appreciation to Mr. Wenzel Cummings, who recently resigned as Code Counsel, for his work with the Rules Review Committee and the Senate Judiciary Committee for the past three years.

### **Adjournment**

***Representative Hansen moved, seconded by Senator Russell, that the meeting be adjourned. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.***

Chair Hunhoff adjourned the meeting at 1:48 p.m.