

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Lance Russell, Vice Chair

Three hundred ninety-first meeting
Tuesday
August 18, 2020

Room 414
State Capitol
Pierre, South Dakota

The three hundred ninety-first meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, Chair, at 10:00 a.m. (CT) on August 18, 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

Representative Hansen moved, seconded by Senator Sutton, that the July 14, 2020, meeting minutes be approved. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Rules Reviewed

Department of Health: Amend rules to update the form used by a physician to comply with the requirements of SDCL 34-23A-10.1 (1).

Mr. Justin Williams, Department of Health, reviewed the proposed rules.

Representative Hansen expressed concern over how the proposed rules were laid out. He said if the legislature had intended that there be a section listing the medical risks of carrying a child to term, the language as presented would be appropriate. He said legislators called for a comparison between the risks of carrying a child to term, as opposed to having an abortion, and the current language did not reflect that. He said the information did not appear in a logical order in the form, and suggested the rules be reverted to allow the Department of Health to revise the form so it would be more in line with the legislature's direction.

Representative Hansen moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Health is complete, and proposed rule 44:67:04:12 be reverted to a prior step according to SDCL 1-26-4.7. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Hansen, Hunhoff, Kennedy, Russell, and Sutton. Voting nay: Cwach.

Department of Human Services: Amend rules to transfer the chapter concerning Adult Protective Services from the Department of Social Services to the Department of Human Services.

Ms. Beverly Katz and Ms. Yvette Thomas, Department of Human Services, reviewed the proposed rules.

Representative Hansen moved, seconded by Senator Sutton, that the review of the rules proposed by the Department of Human Services is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

South Dakota State Historical Society (Department of Education): Amend rules to set standard fees for services provided by the State Historical Society.

Dr. Ben Jones, Department of Education, and Mr. Jay Vogt, South Dakota State Historical Society, reviewed the proposed rules.

Senator Sutton asked about the percentage of growth in attendance at the Cultural Heritage Center. Mr. Vogt replied there is minimal annual growth in visitation. For calendar year 2020, he said attendance was down about 5,000 people compared to the prior period.

Responding to Representative Hunhoff on when fees were last increased, Mr. Vogt said service fees were increased three years ago while it has been five years since membership fees were increased.

Representative Hunhoff inquired if the fee increases were mentioned during the department's 2020 legislative budget hearing. Dr. Jones responded that he did not think so and the new revenue would not be reflected in the operating budget.

Senator Russell noted the proposed rules were missing some required information and as the Rules Review Committee had previously reverted rules from another agency for that reason, he would be voting against passage of these rules.

Representative Hansen moved, seconded by Senator Sutton, that the review of the rules proposed by the South Dakota State Historical Society (Department of Education) 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.

Department of Social Services: Amend rules to:

- Reflect annual changes; and
- Update several citations.

Mr. Jeremy Lippert, Department of Social Services, reviewed the proposed rules and announced the department's intention to appeal LRC's suggested edits regarding equity limits on page 4 of the proposed rules. He stated the edits appear to change the requirements for spouses and disabled individuals and said the edits involve existing not new language.

Senator Kennedy said the language, including the edit, is confusing. Representative Hansen commented the committee's options would be to revert only that rule and allow the department to offer some clarifying language this interim or pass the proposed rules in their current form with the department bringing new language forward next year.

Representative Hunhoff said if that section of the proposed rules were reverted, it would delay the implementation of other parts of the section that need to go forward.

Representative Hunhoff moved, seconded by Senator Sutton, that the appeal by the Department of Social Services regarding the LRC edits on page 4 of the proposed rules be denied. 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 Sutton, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Department of Social Services: Amend rules to:

- Align with federal subsidy language and federal requirements stemming from the Model Licensing Standards for Foster Care;
- Clean up outdated or incorrect language; and
- Add a new rule detailing the grievance procedures for group care facilities.

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

Public Testimony

Ms. Amy Iversen-Pollreisz, Capital Area Counseling Services, said her organization supports the proposed changes and worked with the department on the clarification of some issues. The changes will give entities needed flexibility in hiring qualified staff.

Representative Hunhoff noted South Dakota has a shortage of qualified providers, especially at the Master of Social Work (MSW) level. She asked if existing statutes or rules would allow another level of provider with the same skill set to provide the same services. Ms. Iversen-Pollreisz replied that the proposed rules would allow an expansion beyond the MSW level so that individuals with other qualifications could provide services. She said other categories of providers could also offer assessments and supervision, if the rules are approved.

Representative Cwach asked why proposed immunization language creates an exception due to religious reasons and if the issue was making it difficult for the department to find foster parents. **Ms. Virgena Wieseler, Division of Child Protection Services, Department of Social Services,** said the division is always in search of additional foster families and did not want to exclude anyone who does not get immunized because of religious or health reasons.

Representative Cwach inquired how the division prioritizes between two competing foster families. Ms. Wieseler said, without the proposed rule change, potential foster families that do not get immunized

could not be licensed. When drafting the proposed rules, the intention was to include people who might be left out of the process for that reason.

Representative Hunhoff moved, seconded by Senator Sutton, 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: Hansen, Hunhoff, Kennedy, Russell, and Sutton. Voting nay: Cwach.

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

- Not require a park entrance license to be purchased for any enrolled Yankton Sioux tribal member and their family member to enter North Point Recreation Area, Fort Randall South Shore Recreation Area, Randall Creek Recreation Area, and Fort Randall Spillway Lakeside Use Area;
- Eliminate the administrative fee required for lost or destroyed licenses, permits or game tags;
- Establish a fee for nonresident landowner-on-own-land licenses;
- Reduce the number of resident single tag fall turkey licenses while increasing the number of resident double tag licenses for Prairie Units;
- Adjust the number of turkey licenses available in the Black Hills;
- Close certain Prairie Units;
- Establish a resident river otter trapping season from November 1 through December 31;
- Eliminate unnecessary language, amend form and style, update authorities; and
- Arrange rules to be consistent and concise.

Mr. Jon Kotilnek, Mr. Scott Simpson, Parks and Recreation Division, and Mr. Tom Kirschenmann, Wildlife Division, Department of Game, Fish and Parks, reviewed the proposed rules.

Public Testimony

Ms. Christine Sandvik, self, spoke in opposition to the proposed rules regarding the harvesting of river otters. She said the state's original river otter population was decimated by trapping and hunters often kill river otters when they are trapping beavers. She stated the current river otter population is not stable enough to support a trapping season and said the animals are also undervalued for tourism and wildlife purposes.

Ms. Nancy Hilding, Prairie Hills Audubon Society, expressed opposition to both the proposed river otter rules and those regarding turkey hunting licenses. Ms. Hilding said the department incorrectly handled public notices and public comments for their July 16, 2020, public hearing. She also referenced written comments that had been provided to the Rules Review Committee prior to the hearing.

Rebuttal

Mr. Kotilnek and Mr. Kirschenmann said the conversation regarding the river otters has been taking place since January of this year and since that time, the department has met the requirements for public notices, issued press releases, and taken written and public testimony. They noted that Ms. Hilding has testified at numerous Commission meetings on these and other proposed rules.

Mr. Kotilnek stated that while he thought the public notice on the turkey hunting changes may not have been broad enough to cover everything some commissioners wanted, it is up to the Commission to determine whether those concerns should be taken into consideration. Regarding Ms. Hilding's contention that her comments were not adequately provided to commissioners, he said their documentation includes 42 pages of comments from Ms. Hilding. He said her argument has been well represented.

Mr. Kirschenmann concluded their rebuttal by saying the department discussed the challenges of monitoring river other populations with the tribes, the U.S. Fish and Wildlife Service, and other states having river otter trapping seasons. He said the department will be meeting with South Dakota State University in the coming weeks to discuss possible monitoring methods.

Representative Hunhoff asked how trappers will notify the department when a river otter has been trapped. Mr. Kirschenmann replied the system will be similar to that used for mountain lions. He said the trapper will have to work with a conservation officer to prove the animal was taken legally and advised interactive updating will be utilized on the Game, Fish and Parks website to provide an accurate count of numbers taken in relation to the trapping limits.

He said the river otter trapping season is restricted to South Dakota residents. Once the season is finalized, the appropriate information will be submitted to the U.S. Fish and Wildlife Service so that Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) tags may be issued to signify the legal take of the otters.

Representative Hunhoff inquired as to what a trapper should do if a river otter is trapped after the season has ended. Mr. Kirschenmann said the trapper would have to contact a conservation officer and surrender the animal to the department as an incidental take.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Game, Fish and Parks is complete, and the substantive changes on pages 1 to 16 of the proposed rules be approved. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, Russell, and Sutton.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Game, Fish and Parks is complete, and the administrative changes on pages 17 to 129 of the proposed rules be approved. 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: Adopt an emergency rule to allow the department to designate Pickerel, Waubay, North Rush, South Rush, and Minnewasta Lakes as containment waters thus requiring boaters to follow decontamination rules as laid out in ARSD 41:10:04:08.

(NOTE: Emergency rules do not require a hearing and become effective on the date they are filed with the Secretary of State. Discussion of this rule was for informational purposes only.)

Mr. Tom Kirschenmann, Wildlife Division, Department of Game, Fish and Parks, briefed committee members on the spread of zebra mussels in South Dakota and the July 31, 2020, emergency meeting of

the Game, Fish and Parks Commission at which commissioners approved adding Pickerel Lake and adjacent bodies of water to the containment waters list. The addition triggered necessary decontamination measures for boats using those waters. Mr. Kirschenmann said zebra mussels are becoming a challenging management issue for state officials. Monitoring efforts have been increased at additional lakes in the northeastern part of the state, in part because Lake Cochrane was confirmed to have a zebra mussel infestation.

Department of Transportation: Amend rules to:

- Eliminate a limited speed zone on State Trunk Highway 50 west of Wagner;
- Redefine the starting point of the speed zones on State Trunk Highway 46 in and around Wagner;
- Shorten the current 35 miles per hour speed zone and introduce a 45 miles per hour speed zone on each end of the 35 miles per hour speed zone on U.S. Highway 16 adjacent to Jewel Cave National Monument;
- Correct the starting point references for the 50 miles per hour speed zone on U.S. Highway 212 in Faulkton;
- Extend the 45 miles per hour speed limit on U.S. Highway 14 in Highmore; and
- Govern the mowing of state trunk highway rights-of-way.

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

Senator Kennedy 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 commended members for doing a good job managing their respective hearings. She commented that the September 15, 2020, meeting could be lengthy, with 14 rules packets already on the agenda.

Adjournment

Senator Sutton moved, seconded by Representative Hansen, 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 1:10 p.m.