

MINUTES

Rules Review



Representative Jon Hansen, Chair
Senator Jean Hunhoff, Vice Chair

Three hundred ninety-ninth meeting
Monday, July 19, 2021

Room 414 – State Capitol
Pierre, South Dakota

The three hundred ninety-ninth meeting of the Rules Review Committee was called to order by Representative Jon Hansen, Chair, at 10:00 a.m. (CT) on July 19, 2021, 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, Chair, and Kevin Jensen; and Senators Jean Hunhoff, Vice Chair, Troy Heinert, and Timothy Johns. Staff members present were Justin Goetz, acting Chief Research and Legal Analyst/Code Counsel, Kelly Thompson, Supervisor of Text Editing Services, 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 Hunhoff moved, seconded by Representative Jensen, that the June 7, 2021, meeting minutes be approved. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Heinert, Hunhoff, and Jensen. Excused: Johns.

Staff Report

Mr. Justin Goetz, acting Chief Research and Legal Analyst/Code Counsel, presented a spreadsheet containing changes LRC made to administrative rule under its technical correction authority, pursuant to [SDCL 1-26A-1](#), since the June 7, 2021, meeting. Mr. Goetz said the purpose of the document is to give the Interim Rules Review Committee the ability to oversee the non-substantive changes made by LRC to determine if the edits were made properly. Members wanting additional information to be added to the spreadsheet were asked to provide such input to Mr. Goetz.

Draft Legislation Relating to the Official Citing of Administrative Rules

Mr. Goetz explained that under [SDCL 1-26A-7](#), the Administrative Rules of South Dakota (ARSD) should be cited as follows: "(year of publication) ARSD" followed by the title, article, chapter, or section. In legal practice as well as in the 199 South Dakota Supreme Court cases that cite the ARSD, that format is seldom, if ever, used. Rules instead are cited as "ARSD" followed by the numbered citation.

LRC staff is recommending that SDCL 1-26A-7 be revised to eliminate "(year of publication)" to reflect the dominant and historical practice regarding citation. To accomplish this, Mr. Goetz presented [Bill Draft 20](#) for consideration by the committee.

Representative Hansen said he supported the change as statute should reflect what is being done in practice.

Senator Hunhoff asked if by removing the year the rule was published, historical reference would be lost. Mr. Goetz replied that in both statute and rule, the year a change is made is always reflected in the source note. Additionally, Mr. Goetz noted that in citing specific language of rule that existed at an earlier time, but has since been revised, the parenthetical depicting the last year the rule was effective should come after "ARSD XX:XX:XX:XX" as provided in the Bluebook citation manual. Representative Jensen said as long as the history was reflected in such a manner, he was in support of the proposed bill draft.

Senator Hunhoff moved, seconded by Senator Heinert, that Bill Draft 20 as presented be adopted for introduction on behalf of the Interim Rules Review Committee for the 2022 Legislative Session. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.

Rules Reviewed

[South Dakota Board of Education Standards \(Department of Education\):](#) Adopt rules to establish the mandatory and permissive school district policies for schools to allow students to have access to medical cannabis on school property and at school-sponsored activities.

Ms. Tiffany Sanderson, Secretary, and Ms. Amanda LaCroix, Department of Education, reviewed the proposed rules, which were originally reverted at the June 7, 2021, meeting.

Ms. Sanderson said the rules, as presented today, have been amended to address all of the recommendations made by the Rules Committee at its June 7, 2021, meeting, and fall into three areas: limiting the rules to public schools only, cleaning up language for consistency, and addressing the Interim Rules Review Committee's request for clarity. If the rules are approved by the committee, school boards will begin holding hearings for any rules that may be needed on the local level in the coming weeks.

Ms. LaCroix advised members that although the amended rules did not have to be presented to the South Dakota Board of Education Standards again, the board received them for a second review on July 9, 2021. At that hearing, no public comments were received and the proposed rules were unanimously approved. The Department of Education also met with interested parties such as the Associated School Boards of South Dakota, School Administrators of South Dakota, South Dakota High School Activities Association, and the Office of the Governor on the changes.

According to Ms. LaCroix, the biggest change in the amended rules was to exclude non-public schools from the provisions. Colorado did not make that exclusion in their original law, which was the basis for South Dakota's rules per Initiated Measure 26 (IM 26) but amended the law for that purpose earlier this year. Ms. LaCroix said in talking to Colorado on this issue, they explained that that state has no jurisdiction over private schools so their amendment was only for clarification. Ms. LaCroix indicated that the Board relied upon SDCL 13-33A-2 as statute that limits its medical cannabis regulations to public schools.

Representative Jensen asked what the process will be regarding required documentation from the student's parent or legal guardian to the school if the Board of Education Standards' rules are in effect by

the first day of school but other rules concerning written certification and the identification registry are not ready yet. Ms. Sanderson noted that IM 26 required the Department of Education to have their rules in place by the start of the next school year. She acknowledged that the Department of Health is required to promulgate rules for the Medical Cannabis Program itself which won't happen until later this fall, meaning there will be a gap of a few months between school policies and Department of Health policies being in effect.

Senator Hunhoff thanked the department for addressing the committee's concerns with the amended rules package. She said medical marijuana constitutes "new waters" for South Dakota and it is important to have a comprehensive program in place.

Senator 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 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Jensen, and Johns. Excused: Heinert.

[South Dakota Commission on Gaming \(Department of Revenue\):](#) Amend rule to include sports wagering in adjusted gross revenue computations.

Mr. Mike Shaw, South Dakota Commission on Gaming (Department of Revenue), reviewed the proposed amendment to ARSD 20:18:22:12 meant to define the gaming tax treatment of sports wagering, which was originally reverted at the June 7, 2021, Interim Rules Review Committee meeting, and was presented again to the South Dakota Commission on Gaming on July 14, 2021. The amendment struck proposed language that would have excluded federal excise tax from the calculation of adjusted gross revenue for purposes of the state gaming tax on the basis that there did not appear to be express statutory authority for the Commission to promulgate this rule.

Senator Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Commission on Gaming (Department of Revenue) is complete. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Jensen, and Johns. Excused: Heinert.

Public Testimony: General Purposes

No public testimony was provided.

Adjournment

Senator Hunhoff moved, seconded by Representative Jensen, that the meeting be adjourned. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Jensen, and Johns. Excused: Heinert.

Chair Hansen adjourned the meeting at 10:32 a.m.