

# MINUTES

## Code Commission



Margaret V. Gillespie, Chair  
Thomas E. Lee, Vice Chair

**One hundred thirty-second Meeting**  
**Friday, March 05, 2021**

**Room 412, State Capitol**  
**Pierre, South Dakota**

The one hundred thirty-second meeting of the South Dakota Code Commission was called to order by Chair Margaret Gillespie at 10:03 a.m. (CT) on March 5, 2021, via electronic conference and in Room 412 at 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 Justin Goetz, 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 purposes of continuity, these minutes are not necessarily in chronological order.*

### **Approval of Minutes**

***Commissioner Rusch moved, seconded by Commissioner Lee, that the November 20, 2020, meeting minutes be approved. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Decker, Gillespie, Haugaard, Lee, and Rusch.***

### **Acknowledgement of Guests**

**Mr. Andrew Fergel, State Bar of South Dakota, and Ms. Lila Hambleton, Thomson Reuters,** were in attendance, participating remotely.

### **Review of Code Counsel Actions Taken Since November 2020**

**Mr. Justin Goetz, Code Counsel,** provided an overview of the statute corrections he has made since November of 2020, under the authority delegated to him by the Code Commission. Thirteen requests for corrections were received from outside entities or initiated by the code counsel. Those entities submitting requests include the Department of Labor and Regulation; Office of the Governor; South Dakota High School Activities Association; South Dakota Real Estate Commission; and Thomson Reuters.

### **Status of 2021 Legislation**

An update was given by Mr. Goetz on four types of legislation: draft legislation adopted by the Code Commission at its November 2020 meeting; technical corrections legislation; measures implicating the Code Commission's authority to update the Code; and measures impacting SDCL chapters 2-14 or 2-16.

Both bills adopted by the Code Commission, [Senate Bill 1](#) and [Senate Bill 2](#), were signed into law by Governor Noem on February 8, 2021. Twenty-five bills were introduced containing substantial amounts of technical corrections, all of which have either been signed by the Governor or are awaiting signature.

Three measures, [Executive Reorganization Order 2021-03](#), [House Bill 1078](#), and [Senate Bill 70](#) implicated the Commission's authority to update the Code. The Executive Reorganization Order intends to consolidate the Departments of Agriculture, and Environment and Natural Resources into a single agency known as the Department of Agriculture and Natural Resources. House Bill 1078, signed by the Governor on February 22, 2021, authorizes the Code Commission to delete any reference to "State Historical Society" and substitute "South Dakota State Historical Society." Senate Bill 70 directs the Code Commission and code counsel to reorganize chapter 10-6 and address any resulting cross-references. It is currently awaiting approval by the Governor.

Mr. Goetz noted that the Senate attempted to adopt [Senate Resolution of Disapproval 901](#), which sought to negate Executive Reorganization Order 2021-03. The measure failed March 8, 2021, on a vote of 17-18.

To date, no legislation impacting SDCL chapters 2-14 and 2-16 has been introduced.

Commissioner Gillespie asked members if there were other chapters that warranted review by the code counsel.

Commissioner Rusch inquired whether the State Bar of South Dakota should revisit the criminal code, noting the last comprehensive review was conducted 15 years ago. **Mr. Andrew Fergel, State Bar of South Dakota**, offered to relay the request to the Bar Commission and related committees, saying it would be helpful to research how the previous review was done and develop a timeline for a new review to include both planning and implementation.

Commissioner Haugaard asked Mr. Fergel to review civil versus criminal penalties, noting that in many cases, Class 2 misdemeanors are rarely charged out but are still referenced in the Code.

Commissioner Gillespie acknowledged these were all important issues to review. Mr. Goetz and Mr. Fergel will be communicating further to determine how a new review should be conducted.

### **Request by Code Counsel for Commission Guidance on Codification Framework**

Mr. Goetz briefly explained the updated LawMaker+ system used by the LRC's research staff to draft bills, and asked whether Code Commission instructions should be incorporated into the Bill Drafting Manual used by the research staff in navigating the drafting process.

Commissioner Decker asked if the proposed bills submitted by the drafters require a lot of changes by the code counsel. Mr. Goetz replied that he reviews all of the drafts before introduction and also has reviewing capabilities through each step of the process, including the release of drafts to the requesting legislator or agency, and engrossing and enrolling.

Commissioner Lee proposed a minor grammatical edit to three sections of the language Mr. Goetz suggests be added to the Bill Drafting Manual.

Commissioner Gillespie wondered when the manual last underwent a major revision and if Code Commission action was needed to authorize the code counsel to provide edits to the document. Commissioner Decker speculated the document had not been revised except for minor changes for nearly 10 years and advised that Mr. Goetz should speak to the LRC's Chief Research and Legal Analyst about the revisions.

### **Proposal to Compile the Directives of the Commission on the Compilation of the Code**

During the 2021 Legislative Session, questions have arisen from legislators and LRC staff regarding prior Code Commission directives and guidance. Mr. Goetz told commissioners it may be beneficial to compile the Commission's guidance and directives into a single document. He requested input on the scope of the information that should be compiled, what type of review and renewal process to use, how far back the review should go, and where the document should be memorialized publicly, if it were a public as opposed to internal document.

Commissioner Lee asked if making such a document public risks misinterpretation of the Code Commission's guidance by outside parties. He noted that nothing prevents Mr. Goetz from compiling the information into a document to be used internally by LRC staff. Commissioner Decker agreed, saying the Commission's guidance is detailed in the meeting minutes which are available to the public.

Commissioner Gillespie said while the information is beneficial as a reference for the code counsel, she did not believe it needed to be published.

### **Public Testimony**

Mr. Fergel advised members that his organization's Annual Meeting, June 16-18, 2021, in Sioux Falls, will likely offer both in-person and remote events.

### **Closing Comments**

Commissioner Gillespie said the Code Commission's next scheduled meeting will be in June during the State Bar of South Dakota's Annual Meeting. Other meetings may be held prior to that, if needed.

### **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 10:57 a.m.