

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred sixty-eighth meeting
Monday
September 25, 2017

Room 414
State Capitol
Pierre, South Dakota

The three hundred sixty-eighth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair), at 10:00 a.m. CDT, on September 25, 2017, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following location: University Center, 4801 N. Career Ave., Room FADM 145, Sioux Falls, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Craig Kennedy, Lance Russell, and Alan Solano (Vice Chair) and Representatives Julie Bartling, Steven Haugaard, and Jean Hunhoff (Chair). Staff members present were Doug Decker, Code Counsel, and Kelly Thompson, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file at the Legislative Research Council (LRC). For continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://sdlegislature.gov> under "Interim."

Approval of Minutes

Senator Kennedy moved, seconded by Representative Bartling, that the minutes of the August 22, 2017 meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Rules Reviewed

Department of Health: Division of Health Systems Development and Regulation – Adopt rules to give the department authority to license and regulate community living homes in South Dakota.

Mr. Tom Martinec reviewed the proposed rules.

Representative Bartling moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Health: Division of Health Systems Development and Regulation is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Human Services: Division of Developmental Disabilities – Amend rules to revise the definition of a community support provider to align the rule with statute; change the definition of an organized health care delivery system to include community services provider; align the rule definition

of community services provider with statutory definition, allowing a for profit entity to provide direct services; add a definition of home and community services; repeal duplicative rule; require similar enrollment documents for profit and not for profit entities; replace the phrase "CSP or SP" with provider; clarify the applicable ARSD chapters for the biennial review of providers; change the language from CSP to provider to make the process applicable to SP's; clarify that either a CSP or SP provider of direct HCB services establish and use a human rights committee for certain rights restrictions; clarify that either a CSP or SP must have policies and procedures for calculations of wages owing to participants in a vocational training and employment setting; extend the time frame for implementing ISP revisions; require providers of direct HCB services to meet certain standards in owned or leased buildings and meet certain fire extinguisher requirements, and update the DOH reference to linens and fire code; require any provider of direct HCB services to provide a medication administration system; extend fair hearing protections to a termination of waiver services by a SP; allow an individual employed by a SP to be a coordinator of family support waiver services; allow a SP to be an employer of record; allow a SP to provide home and community based services; allow a SP to be a provider and specify the responsibilities of being a provider; correct references to ARSD; transfer a section regarding confidentiality; add SP to entities required to provide notice of a critical incident; add SP to those entities available to deliver services under the family support program; add SP to the agency of choice model of service delivery; allow an individual to use a SP to deliver services; allow a SP to provide family support coordination; clarify the services available through the agency with choice service model; add SP to the transfer of records process; add SP to the entities subject to biennial review and to a participant satisfaction survey; add SP to those entities subject to revocation of a provider agreement for failure to meet ARSD standards; require CSP's, SP's and qualified providers to recognize rights of participants, parents and guardians; expand definition of coordinator; remove definition of provider; specify that a local family support provider can be a SP; shorten and clarify rule by changing phrase to provider; and clarify that community training services must meet the service standards of Chapter 46:11:05. The primary effect of the rules will be to allow for profit entities to deliver community services to individuals with intellectual and developmental disabilities.

Ms. Carole Boos and Mr. Darryl Millner reviewed the proposed rules.

Senator Russell moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Human Services: Division of Developmental Disabilities is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Health: South Dakota Board of Nursing - Amend rules to include a definition of registrant; add the requirements for the operation of the unlicensed assistive personnel registry by defining the application process for registration, the renewal and reactivation requirements, and the process for denial or removal from the registry; and amend the process for disciplinary action for licensed nurses and registrants.

Ms. Gloria Damgaard, Sioux Falls, South Dakota Board of Nursing, reviewed the proposed rules.

Senator Solano moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Health: South Dakota Board of Nursing is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Agriculture: Division of Agricultural Services - Amend rules to change the requirement for testing of lawn seed from every 12 months to every 15 months; require liquid feed manufacturers to label the moisture content for feed that contains more than 20% moisture; and repeal rules pertaining to the manufacture of ruminant livestock feed that are unnecessary.

Mr. Tom Gere reviewed the proposed rules.

Senator Kennedy asked in regard to repealing the rules pertaining to ruminant livestock feed whether that action needed to be taken legislatively. Mr. Gere replied that he would need to review the law to make that determination. **Mr. Doug Decker**, Code Counsel, advised that neither the Rules Review Committee nor the Department of Agriculture could supersede a direct statutory mandate. Representative Bartling concurred with Senator Kennedy that a legislative change may be needed.

Senator Kennedy moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Agriculture: Division of Agricultural Services is complete and the rules be approved with the exception of ARSD 12:53:01:14, 12:53:01:15 and 12:53:01:16 which should be reverted to a prior step according to SDCL § 1-26-4.7 (7). Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Transportation - Amend rules to change and extend a limited speed zone on State Trunk Highway 115 in and around Dell Rapids, reducing the speed limit from 65 miles per hour to 55 miles per hour on a 1.08 mile segment of State Trunk Highway 115 immediately southeast of the existing speed limit zone and proposing a 35 mile per hour zone for a 1.44 mile segment in Dell Rapids and then a 50 mile per hour speed zone for a 0.2 mile segment immediately west of the 35 mile per hour zone; extend a 35 mile per hour speed zone on U.S. Highway 14 east of the Interstate Highway 29 interchange in Brookings an additional 0.42 mile and then transition to 50 miles per hour for 0.20 mile; replace a 40 mile per hour speed zone on U.S. Highway 18 over Interstate Highway 29 at Exit 62 with a 55 mile per hour speed zone; and reduce the speed limits on U.S. Highway 18 in and around Mission and the Antelope Community in Todd County by extending a 35 mile per hour speed zone an additional 0.58 mile to the east of Mission and a 45 mile per hour speed zone to the east of the Antelope Community.

Ms. Karla Engle reviewed the proposed rules.

Representative Hunhoff wondered whether a study had been done to determine the need for the speed limit changes on U.S. Highway 18 in Mission, similar to the speed zone studies conducted in other parts of the state. **Ms. Christina Bennett**, Operations Traffic Engineer, Department of Transportation, said while no speed study was conducted in Mission, as the current reconstruction project there is moving the lanes closer to pedestrian paths, the department determined reducing the speed limits in that area was a good idea.

Senator Kennedy moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Game, Fish and Parks - Amend rules to create a "no boating zone" on the waters of Swan Lake in Clark County from October 20 to December 31, inclusive; and establish a process whereby an owner of private property underlying any nonmeandered lake listed in SDCL 41-23-8 may petition the Game, Fish and Parks Commission to allow the owner of private property to restrict recreational use of the water overlying the owner's private property.

Mr. Tony Leif and **Mr. Jon Kotilnek** reviewed the proposed rules. Mr. Leif clarified that the Game, Fish and Parks Commission had tabled the rules regarding Swan Lake, leaving only the non-meandered lake proposed rules up for consideration.

Senator Russell voiced concern over there not being equal protections for landowners on specific lakes not mentioned in the statute, saying neither the department nor the legislature can arbitrarily decide who receives the rights. Representative Hunhoff noted that the public had the opportunity to comment on the proposed rules but did not. Senator Solano said the department did what the legislature asked them to do regarding the issue.

Senator Kennedy moved, seconded by Representative Hunhoff, 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 5 ayes and 1 nay. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano. Members voting nay: Russell.

Department of Revenue: South Dakota Lottery Commission - Amend a rule to increase the price of a Mega Millions play from \$1 to \$2, raise the starting jackpot from \$15 million to \$40 million, reconstruct the game matrix, and allow the Just the Jackpot Promotion for the Mega Millions lotto game; and adopt rules to allow the sale of the Lotto America lotto game.

Mr. Norm Lingle reviewed the proposed rules.

Representative Haugaard inquired whether decreases in lottery revenue are an indication of waning player interest in games that have been in place for a while. Mr. Lingle confirmed lotto sales were down the end of the last fiscal year and conceded it's a continuing challenge to find games that draw player interest. Representative Haugaard pointed out that the overall odds of winning for Mega Millions will be less when the proposed game changes take effect and wondered if players take that into consideration when choosing what games to play. According to Mr. Lingle, some players do pay attention to the game odds but when jackpots are high they will play anyway just for the chance of winning.

Representative Hunhoff questioned how the revenue projections were calculated for the fiscal note submitted with the rules. Mr. Lingle explained the projections were based on the impact similar changes made to similar games had on sales – for example, the price increase on Powerball several years ago can correspond to the proposed price increase on Mega Millions. He advised the committee that the Bureau

of Finance and Management has requested that he provide more reference materials and clarification when preparing fiscal notes in the future.

In response to Representative Haugaard on whether the negative impact of gambling and the associated social costs are considered in compiling fiscal notes, Mr. Lingle responded that only lotto sales are used. He reminded committee members that Lottery annually provides \$214,000 to the Department of Social Services for gambling treatment services.

Representative Hunhoff moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Revenue: South Dakota Lottery Commission is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Members voting aye: Bartling, Hunhoff, Kennedy, Russell, and Solano. Members voting nay: Haugaard.

Department of Labor and Regulation: Division of Insurance - Adopt the National Association of Insurance Commissioners' Own Risk and Solvency Assessment (ORSA) Guidance Manual; and update the credit for reinsurance rules for domestic insurance companies.

Ms. Mallori Barnett reviewed the proposed rules.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Labor and Regulation: Division of Insurance is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Revenue: South Dakota Commission on Gaming - Amend rules to add outriders to the officials for a race meeting; set forth the duties of outrider officials; clarify workouts necessary for the eligibility of a horse; eliminate the requirement that deposits of money for multi-jurisdictional totalizator hubs be located in banks in South Dakota; adopt a new variation of the game of blackjack called TriLux Bonus Blackjack with Super 3; allow an option to play the game of Texas Hold'em twice; adopt a new variation of the game of poker called Cover All Bonus; and adopt a new variation of the game of craps called Sharp Shooter.

Mr. Mike Shaw and **Mr. Larry Eliason** reviewed the proposed rules.

Mr. Mike Rodman, Deadwood, Deadwood Gaming Association, voiced support for the rule changes and game variations.

Representative Hunhoff wondered if the new games were requested by players and how the games are introduced in casinos. Mr. Eliason confirmed the poker revision was specifically requested by players while the other game changes were requested by a vendor or licensee. To sell the game in Deadwood, the vendor needs approval, and a casino in Deadwood to sponsor the game, offer it to players for at least 3 months, and evaluate the market success of the game at the end of that period.

Senators Kennedy and Russell, and Representative Hunhoff all expressed concern over regulation of the banks involved with the multi-jurisdictional totalizator hubs and what safeguards exist for the players

who have accounts through them. Mr. Eliason replied that the institution must be a state or federally chartered bank and that the Gaming Commission would be apprised of any issues with specific player accounts. He advised his agency will assess and monitor the issue with the passage of the rule and work quickly to resolve any problems.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Revenue: South Dakota Commission on Gaming is complete. Motion prevailed on a roll call vote with 4 ayes, 2 nays. Members voting aye: Bartling, Hunhoff, Kennedy, and Solano. Members voting nay: Haugaard and Russell.

Department of Labor and Regulation: South Dakota Real Estate Commission - Adopt rules to update the disciplinary process for licensees to allow disciplinary actions against licensees to be resolved in a more timely and efficient manner.

Mr. Graham Oey reviewed the proposed rules.

Senator Solano moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Labor and Regulation: South Dakota Real Estate Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Labor and Regulation: Board of Barber Examiners - Amend rules to remove references to apprentice barbers; update and remove language; update reference to the Department of Labor and Regulation; and update laws implemented.

Mr. Graham Oey reviewed the proposed rules.

Senator Kennedy moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Labor and Regulation: Board of Barber Examiners is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Next Meeting Date

The next meeting of the Interim Rules Review Committee will be held on Tuesday, November 14, 2017.

Adjournment

Senator Solano moved, seconded by Representative Bartling, that the meeting be adjourned. Motion prevailed on a voice vote.

Chair Hunhoff adjourned the meeting at 12:38 p.m.