

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred seventy-second meeting
Monday
June 4, 2018

Room 414
State Capitol
Pierre, South Dakota

The three hundred seventy-second meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair), at 10:05 a.m. CDT, on June 4, 2018, in Room 414 at the State Capitol, Pierre, 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 Steven Haugaard, and Jean Hunhoff (Chair). Senator Solano participated by telephone. Representative Julie Bartling was excused. 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

Representative Haugaard moved, seconded by Senator Kennedy that the minutes of the April 9, 2018 meeting be approved with one correction: that the misspelling of Nick Wendell's last name on page 4 of the minutes be corrected. Motion prevailed on a roll call vote with 4 ayes. Voting aye: Haugaard, Hunhoff, Kennedy, and Solano.

Rules Reviewed

Department of Game, Fish and Parks - Amend rules to adjust the available Black Hills elk licenses to 425 "any elk" and 700 "antlerless elk"; adjust the number of available archery elk licenses to 142 "any elk" and 80 "antlerless elk"; adjust the number of available prairie elk licenses to 68 "any elk" and 73 "antlerless elk"; establish a new prairie elk unit comprised of Harding County with season dates of September 15 to October 31 and December 1 to 31; adjust the Custer State Park elk hunting season dates to October 1 to 31; modify the unit boundary of CAE-CU1 and CAE-CU2 to that portion of Custer State Park south of the R&D Pasture fence line for the special Custer State Park antlerless elk hunting season; clarify restrictions and application on preferences that are given to entities for landowner preferences; and increase the minimum number of acres from 240 to 1,000 acres in order to qualify for landowner preference, add language that would allow a landowner-operator to qualify if any amount of privately owned/operated land had over 2,000 elk use days, and allow for lease agreements to be oral in addition to in writing to qualify as a leasee.

Mr. Tony Leif, Department of Game, Fish and Parks, Wildlife Division, reviewed the proposed rules.

Representative Hunhoff asked for confirmation that the first two rules in the department's original packet were not approved by the Game, Fish and Parks Commission and were therefore not up for consideration by the Rules Review Committee. Mr. Leif agreed that was the case. She then inquired whether the anticipated revenue decrease of \$55,000 resulting from the rules changes would be factored into the department's budget; Mr. Leif said the budget would be adjusted accordingly.

Representative Hunhoff moved, seconded by Representative Haugaard, 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. Voting aye: Haugaard, Hunhoff, Kennedy, and Solano.

Department of Game, Fish and Parks - Amend rules to eliminate the term "youth" and replace it with "apprentice hunter" in designating areas where free antlerless deer licenses can be used by farmers and ranchers; require any resident and nonresident deer hunter possessing an archery deer license to obtain and possess a free access permit to hunt in the Black Hills as defined in ARSD 41:06:19:02; replace the term "youth" with "apprentice hunter" regarding access permits required for specific deer hunting units and public lands; eliminate the term "youth deer" and replace it with "apprentice hunter deer", and add the word "youth" to the term "antelope" for hunting license fees; reinstate the antlerless-only hunting dates to nine consecutive days following the conclusion of the West River deer season; reduce East River deer hunting resident license numbers from 21,085 one-tag to 20,900 one-tag and modify the antlerless-only deer hunting season dates to nine consecutive days beginning the Saturday following the 16th day of the East River deer season; create a new Limited Access Unit (Unit 59L) in Hughes and Sully counties limited to all Game Production Areas, Corps of Engineer, and Park Recreation Area Lands north of Oahe Dam in Hughes County and west of U.S. Hwy 1804 to Bush's Landing boat ramp in Sully County at 182nd Street, excluding the Spring Creek Recreation area; eliminate Unit 59B; modify Unit 59A to include all of Sully County except that portion within Unit 59L; modify Unit 36A to include all of Hughes County, excluding that portion within Unit 59L, Farm Island Recreation Area, LaFramboise Island, and the land from the entrance to Farm Island Recreation Area west through the city of Pierre; modify the archery deer hunting season end date from January 15 to January 1 and make invalid antlerless whitetail deer licenses after January 1; modify unit ARD-LM1 to close unit ERD-59L; change the archery season end date for Sand Lake National Wildlife Refuge, Lacreek National Wildlife Refuge, Waubay National Wildlife Refuge, and Waubay State Game Refuge from December 31 to January 1, except during the firearm deer seasons established for such refuges; extend the trophy bull bison harvest in Custer State Park from 47 days to 61 days and move the start from the last Monday to the third Monday in November; rename appropriate rules from the "Youth Deer Hunting Season" to "Apprentice Hunter Deer Season"; amend language regarding closed areas to expand eligibility to deer hunt; allow an apprentice hunter to qualify for a deer license under the provisions of ARSD 41:06:44; change the availability of both any deer and antlerless whitetail deer licenses as valid only from December 1 to January 1 for the General muzzleloading deer hunting season; modify unit MZD-LM1 to close unit ERD-59L; change the time period in which depredation hunts (excluding elk) may occur, from December 1 to March 31 to August 15 to March 31; expand the time period for pool hunters for depredation purposes from April 15 to December 31; eliminate the \$20 fee for an elk depredation permit; and reduce the non-trophy bull bison harvest in Custer State Park from 47 days to 40 days and move the start date from the last Monday to the first Monday in October.

Mr. Tony Leif reviewed the proposed rules.

Senator Solano wondered if the access permits referenced in the proposed rules cover a single hunting unit or multiple units. Mr. Leif responded that one permit covers the hunter for all areas described in the Black Hills deer hunting season.

Responding to questions regarding youth hunters, Mr. Leif explained that the hunter safety course requirement for youth under age 16 is in state statute and youth hunters are eligible for a license every year until they reach the age of 18.

Representative Hunhoff moved, seconded by Representative Haugaard, 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. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Transportation - Amend rules to revise the speed limits on the Interstate Highway 90 business loop through Chamberlain to match the speed limit signs currently in place on certain segments; adjust the location of speed limit signs at the east end of the bridge over the railroad tracks near Paul Gust Road; replace a reference to the county boundary with a reference to the American Legion Memorial Bridge; establish a 45 mile per hour speed zone on a segment of South Dakota Highway 46 at Pickstown; and extend a 35 mile per hour speed limit on U.S. Highway 14 in Miller to replace a 40 mile per hour speed zone.

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

Representative Haugaard moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Transportation - Amend speed limit rules for U.S. Highway 16 in Pennington County, U.S. Highway 385 in Lawrence County, State Trunk Highway 50 in Bon Homme County, State Trunk Highway 28 in Hamlin County, and State Trunk Highway 20 in Perkins County to match the speed limit signs in place along those highways; on State Trunk Highway 47 in Highmore, extend a 30 miles per hour limited speed zone north an additional 0.1 mile, extend a 35 miles per hour speed zone north for 0.3 mile rather than the 40 miles per hour speed zone currently in place, and extend a 45 miles per hour speed zone north for 0.2 mile in place of the current 65 miles per hour speed zone; implement a 55 miles per hour limited speed zone on State Trunk Highway 10 on the west side of Britton for 0.2 mile to establish a transition speed zone between a 65 miles per hour speed zone and a 45 miles per hour speed zone; set a 35 miles per hour speed zone for the Interstate Highway 90 frontage road (Captain Soelzer Street) on the west side of Sturgis Road beginning at Peaceful Pines Road and proceeding north for 0.40 mile and then establish a 40 miles per hour speed zone for an additional distance of 0.56 mile to the north; on State Trunk Highway 34, replace a 45 miles per hour limited speed zone with a 50 miles per hour speed zone beginning 0.5 mile west of Main Street in Howard then east for 0.2 mile, then heading east for 0.8 mile, reduce the speed limit on State Trunk Highway 34 to 30 miles per hour and then increase the speed limit to 50 miles per hour for 0.53 mile; and on State Trunk Highway 123 south of Wilmot, replace

a 25 miles per hour limited speed zone with a 45 miles per hour speed zone that will transition to a 55 miles per hour speed zone.

Ms. Karla Engle reviewed the proposed rules.

Senator Kennedy moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Environment and Natural Resources: Board of Water Management - Amend rules to update references; correct typographical errors; require additional testing requirements for certain tank components; clarify training requirements; require additional reporting requirements; extend regulatory compliance to field constructed tanks and airport hydrant tanks; place additional requirements on certain classes of emergency generator tanks; and eliminate the usage of ball float valves for overfill protection.

Mr. Doug Miller, Department of Environment and Natural Resources, Division of Environmental Services, reviewed the proposed rules.

Representative Hunhoff asked how the rules change would impact those individuals currently using existing underground tanks and the procedures for assessing compliance. Mr. Miller advised that interviews with tank owners and periodic inspections and testing of facilities will be used to determine compliance.

Senator Russell noted the Department of Environment and Natural Resources has a good history of successfully implementing federal programs.

Representative Haugaard moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Environment and Natural Resources: Board of Water Management is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Social Services - Amend rules to implement the appropriation for substance use disorder treatment for all Medicaid adults; update definitions; repeal duplicative language; and clarify prior authorization and coverage criteria related to treatment for substance use disorders.

Ms. Teresa Schulte, Department of Social Services, reviewed the proposed rules.

Public Testimony

Mr. Terry Dosch, Pierre, Executive Director, South Dakota Council of Substance Abuse Directors, voiced his organization's support for the changes.

Senator Russell inquired how the proposed changes would provide tools to address the methamphetamine problem in South Dakota, what the cost will be, and how Medicaid recipients will be pre-approved for the coverage. Ms. Schulte noted the biggest change is that coverage is being expanded

to any adult within Medicaid, providing services to a greater number of people; she confirmed the appropriation was for \$2 million. **Ms. Melanie Boetel, Department of Social Services, Division of Behavioral Health**, explained the pre-approval process.

Representative Haugaard expressed concern that the rules changes amounted to an expansion of Medicaid, which he doesn't believe was the intent of the appropriation passage by the 2018 Legislature. Ms. Schulte responded the \$2 million request was separate from the Department's budget request. **Mr. William Schneider, Department of Social Services, Division of Medical Services**, noted the rules changes don't expand the number of people who are eligible for Medicaid but rather the number of Medicaid recipients who are eligible for substance use disorder treatment.

Senator Kennedy questioned how room and board is paid for for those individuals who can't afford to live in residential treatment facilities. Ms. Boetel explained that such expenses can't be funded by Medicaid and are paid for through block grants and general funds.

SDCL 28-6-1 provides the statutory authority for the changes and has not been updated since 2004. Wondering if the federal statutes have been significantly changed in 14 years, Representative Haugaard questioned whether the authority existed to make the proposed rules changes. Ms. Schulte said in reviewing the authority, the department determined the statute didn't need to be updated. Representative Haugaard responded he wasn't comfortable that was the case and the increased appropriation approved by the Legislature wasn't intended to be a stamp of approval on the expansion of Medicaid. Representative Hunhoff stated when the debate was held in the Appropriations Committee, it was a matter of semantics: increased access to providers as opposed to creating a new population eligible for Medicaid. Senator Solano agreed.

Senator Kennedy moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 3 ayes and 2 nays. Voting aye: Hunhoff, Kennedy, and Solano. Voting nay: Haugaard and Russell. Representative Hunhoff asked the Department of Social Services to follow up on Representative Haugaard's concerns about the validity of the statutory authority at the Rules Review Committee's next meeting on July 9, 2018.

Department of Education: South Dakota Board of Education Standards - Amend rules to authorize the Department to equalize the distribution of accreditation reviews across a five-year time frame; and align language related to the state accountability system, performance goals, school classifications, and school support process with the State's approved plan pursuant to the Every Student Succeeds Act of 2015 and state law.

Ms. Holly Farris, Department of Education, reviewed the proposed rules.

Representative Haugaard asked if the federal regulations outlined in the Every Student Succeeds Act would be changing in the near future. **Ms. Abby Javurek, Department of Education, Division of Assessment and Accountability**, replied no upcoming changes are anticipated but language has been included allowing states to continue reviewing and updating provisions going forward to do what's best for the individual states.

Senator Russell referenced statistics he had seen showing South Dakota had lower test scores in some areas than other states and wondered if the rules changes would improve the state's scores and eliminate the need to fund remedial coursework at its colleges and universities. While Ms. Javurek responded she was unsure of what statistics he was referencing, South Dakota was doing a better job of evaluating the progress of all students beyond standardized test scores, looking at placement opportunities and engagement at the high school level.

Representative Hunhoff moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Education: South Dakota Board of Education Standards is complete. Motion prevailed on a roll call vote with 3 ayes and 2 nays. Voting aye: Hunhoff, Kennedy, and Solano. Voting nay: Haugaard and Russell.

Department of Labor and Regulation: Appraiser Certification Program - Amend rules to lower the number of months and hours of experience for the State-Licensed and State-Certified Residential appraiser; lower the percentage of required residential appraisal experience hours for the State-Certified Residential appraiser; lower the number of months of experience for the State-Certified General appraiser; correct certain terminology for consistency; add general education options for the State-Certified Residential appraiser; repeal the general education requirements for State-Licensed appraiser; provide an alternative to general education requirements for the State-Licensed appraiser to upgrade to State-Certified Residential appraiser; clearly state the late renewal application deadline; establish the late fee for late completion of the update course; and clearly affirm the deadline for completion of the update course.

Ms. Sherry Bren, Department of Labor and Regulation, Appraiser Certification Program, reviewed the proposed rules.

Representative Hunhoff inquired as to whether the reduction in hours was similar to other states and where South Dakota stands in terms of its need for appraisers. Ms. Bren stated South Dakota was actively seeking relief from the federal regulations because the state has a shortage of appraisers to meet the needs of rural communities, and the proposed changes may encourage more people to enter the profession.

Representative Hunhoff moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Labor and Regulation: Appraiser Certification Program is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Labor and Regulation: Division of Insurance - Amend rules to update the Division's Medicare Supplement rules; update long-term care insurance rules; revise rating standards for health insurers offering health benefit plans; and update the definition of "qualified custodian" in regard to investment adviser client assets.

Ms. Mallori Barnett, Department of Labor and Regulation, Division of Insurance, reviewed the proposed rules.

Senator Kennedy asked if the change in Medicare Supplement rules only impacts those who are newly qualified and whether current plans can remain in place under the new rules. Ms. Barnett responded in the affirmative. In response to his question about the benefits to the consumer of changing the inflation protection rate from 3% to 1%, **Ms. Melissa Klemann, Department of Labor and Regulation, Division of Insurance**, confirmed it would help reduce the cost of long-term care insurance.

Representative Hunhoff moved, seconded by Senator Solano, 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 5 ayes. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Labor and Regulation: Division of Labor and Management - Amend rules to revise the workers compensation fee schedule.

Mr. Tom Hart, Deputy Secretary, Department of Labor and Regulation, reviewed the proposed rules.

Representative Haugaard moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Labor and Regulation: Division of Labor and Management is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Committee Discussion and Closing Comments

Representative Hunhoff thanked the presenters, staff, and committee members for the good discussion. She also suggested that agencies send the rules materials they'll be presenting to committee members in a more timely manner to avoid having to use Federal Express to meet the deadlines.

Senator Solano thanked the chair and committee members for allowing him to participate in the meeting telephonically.

Mr. Decker informed the committee that there are already eight rules packets for the July 9, 2018 meeting and more are expected.

Adjournment

Senator Russell moved, seconded by Representative Haugaard, that the meeting be adjourned. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Chair Hunhoff adjourned the meeting at 2:08 p.m.