

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred seventy-fourth meeting
Monday
August 20, 2018

Room 414
State Capitol
Pierre, South Dakota

The three hundred seventy-fourth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair), at 10:01 a.m. CDT, on August 20, 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 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

Representative Bartling moved, seconded by Senator Kennedy, that the minutes of the July 9, 2018 meeting be approved. Motion prevailed on a unanimous voice vote.

Rules Reviewed

Department of Health: South Dakota State Board of Dentistry - Amend rules to remove obsolete provisions, update references, clarify and update requirements regarding licensure and registration, clinical competency examinations, and continuing education to make the rules more uniform; and move administrative rules to better organize rules by designated licensee or registrant categories.

Ms. Brittany Novotny, Executive Secretary, South Dakota State Board of Dentistry, reviewed the proposed rules. **Mr. Vince Jones, Hartford**, retired dentist, was present to answer questions.

Public Testimony

Mr. Paul Knecht, Executive Director, South Dakota Dental Association, stated his organization provided input on the proposed rules and supported them in their current form.

Senator Kennedy questioned whether the proposed rules were clear regarding the need for individuals applying for licensure from out of state to have completed 3,000 hours of training in the past five years. Ms. Novotny replied that the information is noted on the license application.

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

Department of Health: Board of Certified Professional Midwives - Amend rules to address definitions, licensing, scope of practice, fees, and disciplinary procedures for midwives.

Ms. Debbie Pease, President, Board of Certified Professional Midwives, reviewed the proposed rules which are the initial rules being implemented to govern midwives in South Dakota.

Public Testimony

Mr. Justin Bell, South Dakota State Medical Association, spoke in opposition to the proposed rules, saying the organization had voiced their concerns to the Board that they were not following the constraints set in statute and several key terms were not adequately defined, potentially putting mothers and babies at risk. Mr. Bell asked the Committee to revert the rules to a prior step in the process.

In rebuttal, Ms. Pease countered that both statute and the proposed rules allow a midwife to review the mother's medical history and conduct an ongoing assessment to determine whether she needed care beyond that which could be provided by a midwife.

Senator Solano asked what information was being omitted that caused the State Medical Association concern. Mr. Bell replied the rules only required concurrent care with a doctor in the event of a high risk pregnancy, and didn't specify that a doctor approve the use of a midwife in such situations.

In response to Representative Bartling as to whether premature labor was considered high risk, Ms. Pease commented that while she was not a medical professional, that issue was not questioned by anyone during the rules process.

Senator Russell wondered if the Board was comfortable that the provisions under which consultation must be recommended could withstand a challenge from the Medical Association. Ms. Pease stated the state Department of Health had guided the Board through the rules process and had made numerous revisions in an attempt to address any concerns raised.

Representative Hunhoff questioned what educational requirements existed for midwives and the processes for midwives to access diagnostics and medications; she also expressed disappointment that a clinical person had not attended the Rules Review Committee meeting with Ms. Pease to answer technical questions. Ms. Pease explained the training requirements, and noted patients would have access to professionals for lab work, ultrasounds, and other diagnostics. Midwives would have to access the Pharmacy Board and rely on online sources for medications.

In response to questions regarding Board funding, Ms. Pease reported half of the \$20,000 initially raised by Birth Matters has been spent, and the Board would be able to support itself on the fees charged to midwives going forward.

While Representative Bartling expressed concerns with some of the terminology used in the rules, Senators Solano and Russell, and Representative Haugaard, said the rules were a good starting point and advised the Board to look for ways to satisfy the concerns that have been raised.

Senator Russell moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Health: Board of Certified Professional Midwives is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Haugaard, Hunhoff, Kennedy, Russell, and Solano. Voting nay: Bartling.

Department of Health - Amend rules to revise the definition of tattooing to include microblading, and to clarify that municipalities may regulate microblading under the regulations for tattooing.

Mr. Tom Martinec, Department of Health, reviewed the proposed rules.

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

Department of Game, Fish and Parks - Amend rules to prohibit people from bringing firewood that has been in an emerald ash borer quarantined area or out of South Dakota into state parks unless it has a label certifying it has been treated for emerald ash borer; eliminate no boating zones on East Oakwood Lake, the Windgate Arm portion of Waubay Lake, Silver Lake, Crow Lake, Whitewood Lake Waterfowl Refuge, and the portions of Island Lake north of McCook County Road 6 and north of Minnehaha County Road 110; eliminate a no boating zone and restrict the type of boats and motors used on Putney Slough Game Production Area, Long Lake, Mckilligan Lake, Horseshoe Lake, Spirit Lake, Lehrman Game Production Area, Clear Lake, and Cottonwood Lake Waterfowl Refuge; restrict the type of boats and motors used on Swan Lake; eliminate the no motorized zone on the meandered portion of Milwaukee Lake; change Bear Butte Lake from a "no motor over 25 horse power" to a "no wake zone"; eliminate the East Oakwood Lake State Waterfowl Refuge, Sand Lake State Game Bird Refuge, and Whitewood Lake State Waterfowl Refuge; modify the size of the Waubay State Game Refuge; exclude from the refuge the area owned by Game, Fish and Parks on the southern portion of Cottonwood Lake; eliminate a number of archery restrictions; eliminate language regarding hunting elk with a certain mechanical broadhead or a bow or a certain fixed blade broadhead or a bow; eliminate Sand Lake National Wildlife Refuge from Unit 2 and create a new unit, Unit 3, to include Sand Lake National Wildlife Refuge and establish hunting seasons; reduce one-tag turkey resident licenses for the Black Hills from 400 to 200, the one-tag any turkey resident license from 1,230 to 925, and the two-tag resident license from 50 to 0; eliminate Lawrence, Meade, and Pennington Counties from Unit PFT-BH1; close units PFT-08A, PFT-12A, PFT-13A, PFT-37A, PFT 53A, and PFT 62A; expand unit PFT-48A to include all of Roberts County; create a new unit PFT-39A in Jackson County; and change fish harvest regulations for Reetz Lake in Day County.

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

Representative Hunhoff asked how the Department was monitoring firewood for emerald ash borer.

Ms. Ceroll explained that entrance station staff are questioning anyone bringing in firewood, and social media, signage, emails, and pamphlets are being used to advise the public of the restriction prior to their arrival at a state park.

Senator Kennedy inquired whether the Department would be stocking Reetz Lake in the future and why the catch limit was different for the family that owns the land than for the general public. Mr. Leif stated there are no current plans for stocking the lake, and users felt the difference in limits was a good compromise. Senator Kennedy said it was a dangerous precedent for the Department to set different rules for a private entity than they do for public waters.

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 and 1 nay. Voting aye: Bartling, Haugaard, Hunhoff, Russell, and Solano. Voting nay: Kennedy.

Department of Agriculture - Amend rules to remove unnecessary definitions; add a definition for small or beginning farmer; repeal "building our South Dakota rural communities" (BOSDRC) grant rules; update language regarding conservation tillage equipment loans; combine rules for participation loan programs; allow direct loans to be provided; enhance the way the Secretary of Agriculture sets interest rates; repeal livestock loan rules; and repeal rules regarding the Beginning Farmer Down Payment Guaranty Program.

Ms. Terri Labrie and Mr. Bryan Sanderson, Department of Agriculture, reviewed the proposed rules.

Representative Hunhoff asked how many people participate in the loan program; Ms. Labrie estimated hundreds. She said the rules changes were needed to clarify what's being done with the program such as flexibility with loan rates, and help available for beginning farmers.

Senator Solano wondered if there was a risk that an individual would go to a commercial bank to try and negotiate the same interest rate offered by the loan program. Ms. Labrie clarified the Department frequently works with banks, and it is not the program's intent to be in competition with them.

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

Department of Education: South Dakota Board of Education Standards - Repeal certain rules regarding postsecondary technical education to permit the Board of Technical Education to assume authority over the postsecondary technical institutes; amend rules to allow educators an additional year to complete the required coursework for CTE educator certification; create a new educator certification endorsement for the Government and Public Administration Career Cluster; and amend high school graduation requirements for South Dakota schools.

Ms. Holly Farris, Department of Education, reviewed the proposed rules. She noted that proposed changes to Article 24:05 had been removed from the packet, and there had been many groups involved in the discussion regarding the proposed rules on high school graduation requirements.

Public Testimony

Mr. Terry Nebelsick, Superintendent, Huron School District, testified via telephone in support of the proposed rules. He said the Department of Education had been diligent in including all players in the discussion, and curriculums should not be one size fits all but rather give students the opportunity to prepare for further education or entry into the workforce, whichever they choose to pursue.

Senator Kennedy asked whether the basic diploma qualified a student for a technical school but not a regental school, and what would happen if 3 to 5 years after graduation, the student decided they wanted to try college after all. **Ms. Laura Scheibe, Department of Education**, said she couldn't speak to what the Board of Regents would require in those cases but Mr. Nebelsick speculated that a combination of the individual's education and experience may be taken into consideration during the application process.

Senator Solano inquired if a student was on the basic diploma track and nearing graduation then realized they needed more education, would they be prohibited from staying in school longer to get it. Mr. Nebelsick confirmed there were no such prohibitions and students can audit courses beyond their 21st birthday if there is no extra cost to the taxpayers.

In response to how much local control the changes would give to school districts, Mr. Nebelsick and Ms. Scheibe replied that what districts are required to offer hasn't changed, but they will have more local control and flexibility to decide what additional requirements work best for their communities.

Both Senator Solano and Representative Haugaard wondered if the proposed changes were in response to workforce issues in the state. Mr. Nebelsick replied yes but they also served to challenge students, including those students whose parents may have downplayed the importance of taking tougher courses as seniors. Ms. Scheibe noted that college may not be the right path for every student, and the flexibility in curriculum could help students find the path they should be on.

Representative Haugaard noted most of the comments received at the Department of Education's public hearing were negative; he wondered if it was fair to ask freshmen to make a decision at the beginning of their high school career about what they want to do at the end of that career. Ms. Scheibe said all comments were taken into consideration, and students were not being required to make those decisions until their junior year.

Senator Kennedy said the primary responsibility isn't to the businesses and industries in South Dakota that can't fill jobs, but to the students to help them make wise decisions about their future. He said Mr. Nebelsick's testimony offered some reassurance in that regard. Senator Russell commented that it would have been helpful for a representative from the Governor's office to have attended to assist in presenting the rules although he commended the Department of Education on their presentation. Representative Hunhoff related that in the early 2000's, the South Dakota Legislature had tried making changes in the graduation requirements to counter low college graduation rates. She said different options needed to be created for students. Representative Bartling agreed that schools need the flexibility to work with and guide EACH student towards the best path for them.

Representative Haugaard expressed concern that the proposed plan doesn't meet what the South Dakota Constitution requires in terms of education curriculum, and that now with a new administration starting soon, this may not be the right time to implement this process.

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 with the exception of those specifically addressing the graduation requirements, is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Education: South Dakota Board of Education Standards specifically addressing graduation requirements is complete. Motion prevailed on a roll call vote with 4 ayes and 2 nays. Voting aye: Bartling, Hunhoff, Kennedy, and Solano. Voting nay: Haugaard and Russell.

Department of Labor and Regulation: SD Cosmetology Commission - Amend rules to eliminate two-tier instructor licensing; allow for substitute instructors; reduce cosmetology and apprentice education hours; set minimum curriculum hours; clarify school reporting requirements; change the instructor to student ratio; allow students to take their licensure State Board exams prior to finishing their education so that they can immediately join the work force upon completion of their education; and eliminate salon licensure requirements for certain assisted living facilities.

Ms. Kate Boyd, Executive Director, SD Cosmetology Commission, reviewed the proposed rules.

Public Testimony

Ms. Diane Stiles, Lake Area Technical Institute, testified in opposition to the curriculum education hours for cosmetology schools.

In rebuttal to Ms. Stiles' comments, Ms. Boyd said the Commission thought it was important to get the core subjects taught first, and the changes were aimed at students who may be transferring to another school and may have to take more hours to meet the requirements at their new school.

Representative Hunhoff asked Ms. Stiles to clarify how her school's program differs from other cosmetology courses in the state. Ms. Stiles responded their course teaches the same curriculum as other programs but in 2,100 hours as opposed to 1,500 hours. Ms. Boyd noted that of the four schools in South Dakota, Lake Area Technical Institute has the highest number of hours, and studies indicate that higher hour programs don't guarantee greater success in passing licensing exams.

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

Department of Public Safety: Amend rules to adopt the 2018 edition of the Commercial Vehicle Safety Alliance handbook; establish requirements for certified nonprofit bus inspectors; revise the harvesting season and radius for hours of service exemption; establish driver license suspension periods for points

accumulation; revise the documents required to obtain a driver's license; update references to federal adoptions; and create a declaratory petition process.

Ms. Jenna Howell, Department of Public Safety, reviewed the proposed rules.

Representative Hunhoff wondered what constituted an "acceptable level of care" in performing non-profit bus inspections. **Captain John Broers, Department of Public Safety, Division of Highway Patrol,** explained that inspectors use an itemized checklist, and the Highway Patrol conducts spot checks to ensure inspectors are utilizing the checklist and performing complete inspections.

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

Committee Discussion and Closing Comments

Representative Hunhoff thanked the agencies for their presentations, and announced the Committee's next meeting is September 17, 2018.

She noted that several legislators had recently told her they were having difficulty finding information on proposed administrative rules and the Rules Review Committee process. In an effort to make the process more transparent to legislative colleagues and citizens, Representative Hunhoff inquired if an educational piece could be issued to the media detailing how easy it is to access the rules and the weekly Register which contains rules filings and hearing information. **Mr. Doug Decker, Code Counsel,** advised the Committee that a change had recently been made to the front page of the Register highlighting the rules website, and that anyone can register at My LRC on the Legislative Research Council website to receive the weekly Register email. Representative Hunhoff requested that additional means of spreading the information be considered.

Adjournment

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

Chair Hunhoff adjourned the meeting at 2:23 p.m.