

# MINUTES

## Rules Review Committee



Representative Jean Hunhoff, Chair  
Senator Alan Solano, Vice Chair

**Three hundred seventy-fifth meeting**  
**Monday**  
**September 17, 2018**

**Room 414**  
**State Capitol**  
**Pierre, South Dakota**

The three hundred seventy-fifth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair), at 10:02 a.m. CDT, on September 17, 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). 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**

***Senator Solano moved, seconded by Representative Haugaard, that the minutes of the August 20, 2018 meeting be approved. Motion prevailed on a unanimous voice vote.***

### **Rules Reviewed**

**Department of Labor and Regulation: Appraiser Certification Program** - Amend rules to define AMC National Registry, appraiser panel, covered transaction, federally regulated appraisal management company, federally related transaction regulations, and secondary mortgage market participant; require new application for change of ownership; correct typographical errors; clarify requirements for quality control system; specify requirements for Standard 3 reviews and compliance with uniform standards; require appraisal fee to be paid within 45 days; require services comply with specific sections of TILA; clarify certain grounds for disciplinary action; add grounds for disciplinary action to include if an owner has had certain disciplinary action taken, investigation of a controlling person or designated officer, failing to comply with a final order, failure of a controlling person or designated officer to demonstrate good moral character or failing to register as required; and provide for collection and remittance of AMC National Registry fees.

**Ms. Sherry Bren, Executive Director, Appraiser Certification Program,** reviewed the proposed rules.

Representative Haugaard suggested that wording regarding investigations be clarified, and asked what parameters determine whether an individual is of good moral character. Ms. Bren replied currently

criminal background investigations are conducted on applicants and they are questioned as to whether they have convictions or issues in other jurisdictions. In the future, her program will watch what parameters other states are using and could adopt successful practices for use in South Dakota.

Representative Hunhoff asked how often an appraisal management company would review a representative sample of each utilized appraiser's reports to determine if they are complying with uniform standards, and who receives a copy of the review. Ms. Bren stated because the size of such companies varies, how often to conduct reviews is left up to the management company; the review report is sent to the company's client and the appropriate jurisdiction.

Responding to Senator Solano's inquiry about the number of violations and how they are handled, Ms. Bren noted this process is just being implemented. If a company's review reveals deficiencies, the client is notified, and a complaint or referral will be filed with the jurisdiction. The jurisdiction will conduct an investigation and take appropriate disciplinary action against the appraiser, if warranted.

***Senator Solano moved, seconded by Representative Hunhoff, 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 ORSA Manual referenced in rule; change the term "qualification" to "line of authority"; update rating standards for health issuers; and update standards for the sale of individual health insurance and update references to preventive services.

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

Representative Hunhoff noted some of the impacted rules go back 4 to 5 years and wondered if they had not changed on the federal level until now. Ms. Barnett reported some of the state's rules had been outdated for some time and were being changed to make them consistent with federal standards.

**Ms. Melissa Klemann, Department of Labor and Regulation, Division of Insurance**, confirmed that insurance carriers had been complying with federal standards all along and the agency's proposed rules, if approved, would now be in line with federal regulations.

Representative Haugaard and Senator Russell questioned the agency's fiscal note and Small Business Impact Statement which indicated the rules changes would have no fiscal impact. Ms. Klemann said nothing would change in terms of how businesses would be impacted; the impact would be felt by individuals.

Senator Kennedy detailed certain incorrect general authority references in the proposed rules. Ms. Barnett responded those errors, as well as other typos she had noted previously, would be corrected before the final rules are filed with the Secretary of State.

***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 4 ayes and 1 nay. Voting aye: Haugaard, Hunhoff, Kennedy, and Solano. Voting nay: Russell.***

**Department of Labor and Regulation: South Dakota Real Estate Commission** - Amend rules to specify the education hour requirements for residential rental agents; increase the number of continuing education hours for property manager's initial licensing cycle from 24 hours to 30 hours; and specify the education hours in a property manager's initial licensing cycle to be all required subject area continuing education.

**Ms. Melissa Miller, Executive Director, South Dakota Real Estate Commission**, reviewed the proposed rules.

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

**Department of Health** - Amend rules to clarify the authority and processes that administer the J-1 Visa Program.

**Mr. Tom Martinec, Department of Health**, reviewed the proposed rules, which were brought before the Committee initially at their July meeting and subsequently reverted to a prior step in the rules process.

In July, committee members were concerned about the discount fee program, and the authorization process for medical professionals hired from outside of the United States. Mr. Martinec stated the revised rules reinstate the sliding fee scale for the discount fee program and allow hospitals to provide deeper discounts if they choose to do so. A requirement was also added specifying that employment contracts must contain a statement noting the position must meet the provisions of the Federal Immigration and Nationality Act.

### **Public Testimony**

**Mr. Brian Bruner, Immigration Attorney, Avera Health**, told the Committee there is a lack of applicants to fill necessary positions. The J-1 Visa Program serves as a gateway to recruit doctors to come to South Dakota; once they have fulfilled the three-year commitment, the focus then turns to retention. The system's retention rate is 67%. Avera Health currently has 93 openings in 15 South Dakota cities in 35 different specialty areas.

**Ms. Sandi Haeuszer, Associate Corporate Counsel, and Ms. Mary Jo Burkman, Physician Recruitment, Sanford Health**, testified the number of candidates needing the J-1 Visa waivers will continue to increase, and that some medical specialties tend to have more foreign candidates. Many U.S.-trained doctors tend to leave South Dakota for opportunities elsewhere.

Senator Russell wondered if medical professionals were leaving the state for economic reasons. Ms. Burkman responded there is no difference between what South Dakota can pay or offer as opposed to other states; geographically, the state is smaller, and they leave to work in larger areas.

Senator Kennedy asked how services are being provided to medically underserved areas if doctors are only hired in facilities in large cities like Sioux Falls. Ms. Haeuszer explained specialists need to be housed in larger communities because that is where the most patients are located. Patients in rural locations travel to urban areas for their services. Responding to Senator Kennedy as to what clinical outreach options are being utilized for underserved areas, Mr. Martinec clarified that of the 30 slots South Dakota receives through the waiver program, federal regulations allow 10 to be used as special waiver slots in locations that serve underserved areas. Of the 30 slots available, the most South Dakota has ever used is 13 due to a lack of applicants to fill them.

Representative Haugaard noted statistics show South Dakota pays \$50,000 less per year for salary than a state like California; he wondered if recruitment difficulties were due at least in part to disparities in salary.

**Ms. Christa Henderson, Human Resources and Physician Recruitment, Avera Health,** said legally, facilities must pay fair market value and offer the same compensation to U.S.-trained and foreign-born physicians. As for how the system serves underserved areas, with a presence in over 100 South Dakota communities, Avera utilizes telehealth and clinical outreach.

Representative Hunhoff inquired about retention rates for specialists located initially in rural areas who move to urban areas after 3 years. Ms. Haeuszer replied those in Aberdeen (which is an underserved area) stay longer than their 3 years under the program and while not all applicants are polled, those who are indicate they leave South Dakota to be closer to family in other states or for religious reasons (wanting to be closer to populations with similar beliefs). Ms. Henderson said Avera has a 67% retention rate for physicians hired through the J-1 Visa program.

Committee members commended the Department of Health for the corrections and clarifications to the proposed rules since July. Representative Hunhoff suggested in the future, more specific data be presented to the Committee to assist them in making their decisions. Senator Kennedy said while he respected the large health systems and the work they do, the state and the Department of Health should remember the delivery of healthcare in South Dakota also depends on smaller practicing providers who would benefit from this program but may not be aware of its existence.

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

**Department of Veterans Affairs** - Amend rules to clarify the duties of county veterans' service officers and simplify the application process.

**Mr. Aaron Pollard, Department of Veterans Affairs,** reviewed the proposed rules.

Representative Hunhoff asked how surviving spouse is defined if the veteran has had multiple spouses. Mr. Pollard responded it would be the most recent surviving spouse; both Representative Hunhoff and Representative Haugaard suggested the definition be clarified in statute or rule.

Responding to Representative Hunhoff as to whether a veteran must be a South Dakota resident to receive services from the Department of Veterans Affairs, Mr. Pollard said the agency recognizes all veterans and offers assistance regardless of where they're from; the expectation is that county veterans' service offices would offer the same assistance.

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

**Department of Game, Fish and Parks** - Amend rules to create a new definition for a safety zone called "no discharge of a firearm from a boat zone"; apply the aforementioned new safety zone from October 10 to December 31 on certain waters on Indian Springs; and limit fishing from a boat on certain waters of Indian Springs from October 10 to December 31.

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

Senator Kennedy asked if the property owners would be charging people to hunt in that area. Mr. Leif replied it was not mentioned during discussions on the issue and he believed they would not.

Representative Hunhoff inquired if the waters referenced in the proposed rules were meandered waters. Mr. Leif responded yes and no. The area in question involves two connected basins – Antelope Lake, which is meandered, and Indian Springs, which is not. Because they are connected, under state law, the public has use of all of those 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 3 ayes and 2 nays. Voting aye: Haugaard, Hunhoff, and Solano. Voting nay: Kennedy and Russell.***

**Office of the Secretary of State** - Amend rules to update the notary public application form and revise the fees for statewide voter registration files by adding fees for new parties or parties with alternative political status for just their party voters.

**Ms. Teresa Bray, Office of the Secretary of State, General Services Division,** reviewed the proposed rules.

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

**South Dakota Retirement System** - Amend rules to clarify the independent status of the surviving spouse benefit for generational members as it relates to qualified domestic relations orders; remove an elected official's ability to discontinue active membership while holding an elected position; clarify repayment options for members and others receiving an overpayment; prohibit the disclosure of election results for the Board of Trustees before the results have been certified by the board; remove an outdated amount relating to maximum benefits; and clarify procedures for the new auto enrollment feature for members not currently contributing to the deferred compensation plan.

**Ms. Jacque Storm, South Dakota Retirement System**, reviewed the proposed rules.

Senator Solano asked how often overpayments resulting in repayments occur. Ms. Storm answered it is an infrequent occurrence, generally happening when the System does not receive notice of death and payments continue to be made. If repayments are not possible, the cost may be absorbed by the plan although other options would be reviewed and considered.

Senator Kennedy inquired whether the agency had consulted with legal counsel on the proposed rule removing the option for an elected official to discontinue participation in the South Dakota Retirement System after being reelected. Ms. Storm responded that outside counsel was consulted, and the rule was fixing a technical violation that is contrary to federal law.

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

#### **Staff Report**

**Mr. Doug Decker, Code Counsel**, provided an update on LRC's efforts to educate the public and legislators about the rules process and how to find rules information, per Representative Hunhoff's request from the August meeting. Notices are being prominently displayed in the weekly [Register](#) and monthly Legislator Update, the [Rules Drafting Manual](#) has been updated and provided to all agency rules contacts, and an [Issue Memo](#) is awaiting approval by the Executive Board at their November meeting.

Mr. Decker presented a press release and Facebook post for the Committee's review and approval.

***Senator Kennedy moved, seconded by Senator Russell, that the press release and social media post be approved. Motion prevailed on a unanimous voice vote.***

#### **Closing Comments**

Representative Hunhoff announced the November meeting would be moved from November 13 to November 20. This will be the last scheduled meeting for the 2018 Interim.

#### **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 12:53 p.m.