



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

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**Two hundred ninety-eighth meeting  
Tuesday  
July 28, 2009**

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

The two hundred ninety-eighth meeting of the Rules Review Committee was called to order by Chair Representative Roger Hunt at 10:17 a.m. CDT, July 28, 2009, via the Dakota Digital Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., LIB 117, Aberdeen, South Dakota; Department of Transportation, 901 Dakota St., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; SD School of Mines and Technology, 501 E. St. Joseph St., Room CB 109, Rapid City, South Dakota; University Center, 2205 Career Ave., Room 282 S, Sioux Falls, South Dakota; and Department of Transportation, 1306 W. 31<sup>st</sup> St., Yankton, South Dakota. The DDN in Room 414 of the State Capitol, Pierre, South Dakota, joined the meeting at 10:25 a.m. due to technical difficulties.

A quorum was determined with the following members answering the roll call: Senators James Hundstad, Jean Hunhoff (Vice-chair), and Mike Vehle; and Representatives Peggy Gibson, Roger Hunt (Chair), and David Lust. All members appeared via the DDN.

Staff members present were Doug Decker, Code Counsel, Lou Adamson, Legislative Information System Coordinator, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

### **Approval of Minutes**

*Representative Gibson moved, seconded by Representative Lust, that the minutes of the June 9, 2009, meeting be approved. Motion prevailed unanimously on a voice vote.*

### **Rules Reviewed**

**Department of Labor: South Dakota Retirement System** – Amend rules to repeal a rule made unnecessary by 2009 legislation related to purchase of nonqualified permissive service credit; to clarify agency procedures related to service calculations and benefit eligibility determinations; to establish agency procedures in regard to retired members who return to employment with the same employer; to conform a rule to a statute regarding credited service during a period of disability; to amend a Board of Trustees election date and election

procedures; to establish agency procedures in regard to member repayment of overpayments; and to specify member participation in the South Dakota Deferred Compensation Plan when the member receives an unforeseeable emergency distribution.

**Mr. Wade Hubbard** reviewed the proposed rules.

*Senator Hundstad moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Labor: South Dakota Retirement System. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Public Safety: Office of Highway Safety** – Amend rules to revise the titles and publication dates of the curriculum used in the Motorcycle Safety Program and delete an obsolete reference.

**Mr. Michael Houdyshell** reviewed the proposed rules.

*Representative Lust moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Public Safety: Office of Highway Safety. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Health: Board of Examiners for Nursing Home Administrators** – Amend rules to assist new applicants to understand the requirements; assist staff in providing explanations for all requirements; and assist licensees in securing more compliant continuing education hours.

**Ms. Joyce Vos**, Sioux Falls, Executive Secretary, Board of Examiners for Nursing Home Administrators, reviewed the proposed rules.

It was suggested that the board make the following changes the next time rules are proposed: 1) clarify the duties of the vice chairman; 2) in ARSD 20:49:04:02 require that a photo id be submitted when making application for a license; and 3) in ARSD 20:49:08:05 include a timeframe for the board to respond.

*Representative Hunt moved, seconded by Representative Lust, to approve the rules proposed by the Department of Health: Board of Examiners for Nursing Home Administrators. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Health: Board of Pharmacy** – Adopt and amend rules to update requirements for internship, for registration of pharmacists by examination, and for registration of pharmacists by reciprocity; and to identify the requirements for exception to the ratio of technicians to pharmacists.

**Mr. Ron Huether**, Sioux Falls, Executive Secretary, Board of Pharmacy, reviewed the proposed rules.

*Senator Hundstad moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Health: Board of Pharmacy. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Health: Health Systems Development and Regulation** - Amend rules to assure the public health and safety requirements are met in the licensed lodging and campground facilities regulated by the department.

This rule package had been sent back to a prior step for additional public hearing at the June 9<sup>th</sup> Interim Rules Review Committee meeting. **Mr. Tom Martinec** and **Mr. Clark Hepper** reviewed the proposed rules. Mr. Martinec stated that the campground rules had been modified; however, now the specialty resort owners (hunting lodges) were unhappy with the minimum size requirements for egress windows and were concerned that there was not a grandfather provision. He explained that the minimum size had been the industry standard since 2005.

### **Public Testimony**

**Mr. Max Hammer**, Custer, representing the Beaver Lake Campground and also as President of the South Dakota Campground Owners' Association, spoke in support of the proposed campground rules. He stated the only issue unresolved had to do with the licensing requirement and that will take legislative action to change.

**Mr. Bruce Shaffer**, Gregory, owner of the Grey House Inn and Cocks Unlimited, spoke in opposition to the proposed egress window rules. He read a letter from his attorney, Mr. George Johnson, Gregory, requesting that there be a grandfather clause for "normal sized" bedroom windows included in the proposed rules. Mr. Johnson's letter, dated July 24, 2009, had been previously e-mailed to the committee members along with an Affidavit of Bryan Nelson and pictures (**Documents 1, 2 and 3**).

Mr. Martinec explained that the department had been relying on the Fire Marshal's rules regarding egress window sizes. Because of a ruling of an administrative law judge, the department was now putting the window size requirement into rule. As of July 13, 2009, out of 295 specialty resorts, only five are not in compliance. He stated the key dimension is the net clearing of 5.7 sq. ft. The minimum window size is 24" high and 20" wide.

*Representative Gibson moved to approve the rules proposed by the Department of Health: Health Systems Development and Regulation. Motion died for a lack of a second.*

*Senator Hundstad moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Health: Health Systems Development and Regulation with the exception of*

*the egress window rules which be sent back to a prior step for additional public hearing pursuant to SDCL 1-26-4.7(8). Motion prevailed on a roll call vote with 5 ayes, 1 nay. Members voting aye: Hundstad, Hunhoff, Hunt, Lust, and Vehle. Member voting nay: Gibson.*

**Department of Environment and Natural Resources: Board of Water and Natural Resources** – Adopt rules to redistrict the director areas of seven water development districts.

**Mr. Pete Jahraus** reviewed the proposed rules.

*Representative Lust moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Water and Natural Resources. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Social Services: Economic Assistance** - Amend rules to update the payment schedules for all Temporary Assistance for Needy Families Program (TANF) assistance units.

**Ms. Laura Ringling** reviewed the proposed rules.

*Representative Hunt moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Social Services: Economic Assistance. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Social Services: Medical Services** – Repeal and adopt rules to reflect the transfer of the Catastrophic County Poor Relief Program from the Department of Social Services to the South Dakota Association of County Commissioners. Changes will be made to update definitions; replace references; clarify that notices must be given in writing; and remove obsolete provisions.

**Ms. Ringling** reviewed the proposed rules.

Representative Hunt noted that the committee had received a letter dated July 21, 2009, from Mr. Bob Wilcox, Executive Director, South Dakota Association of County Commissioners, in support of the proposed rules.

*Senator Vehle moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Social Services: Medical Services. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Revenue and Regulation: Gaming Commission** – Amend a Racing rule to substitute the generic name for the brand name of authorized drugs; amend Gaming rules to create a modification for three-card poker allowing a progressive wager and progressive

payout; adopt a variation of poker known as Mississippi Stud; adopt a variation of poker known as Ultimate Texas Hold'em; accommodate new nomenclature for receipts, vouchers and coupons as utilized in slot machines; accommodate new nomenclature for vouchers; eliminate the requirement for hard meters and to define the time required for meter preservation after power is removed from a slot machine and to utilize industry standards of nomenclature relating to vouchers, receipts and coupons; update current game recall standards to accommodate a greater level of game recall; utilize new nomenclature for vouchers, coupons and receipts; update error messages to more clearly display situations when the stacker is full; clarify that if hoppers are utilized, that they must meet the specification requirements; utilize new nomenclature for vouchers, receipts and coupons; repeal slot machine specifications for bill hoppers; accommodate slight variances in progressive odds for software with different maximum bet amounts on the same link; utilize new nomenclature for vouchers, receipts, coupons and off-line vouchers; define cashless systems for slot machines; create phases of certification for cashless systems; provide for the regulation and requirements of cashless slot machine environments; create standards regarding configuration of cashless features; provide audit trails for cashless transactions; provide for meter requirements and standards in cashless slot machines; provide for confirmation of all cashless transactions; identify error conditions that apply in cashless slot machine systems; provide standards for notifying patrons when transactions would exceed game configured limits; provide for identification of cashless compatible machines; provide for rules relating to changing of associated parameters in a cashless system or accessing patron accounts; provide for requirements in the modification of patron information; provide for requirements regarding adjustments to account balances; set forth security levels relating to user roles; create minimal controls to prevent unauthorized transactions; provide that any testing or test accounts must be logged by the system; allow for smart card technology; set forth procedures when communication between cashless accounting systems and slot machines are lost; require that the communication relating to cashless operations must utilize encryption; create requirements for logs on pending and completing cashless transactions; require systems to produce various financial and player reports; set forth requirements for monetary transactions between a supporting gaming machine and a cashless host; set forth standards for adding money to a player's account; provide for standards for removal of money from a player's account; provide for the option of moving money from a player's system credits to slot machines and moving money from slot machines into players' accounts; set forth standards for issuing personal identification numbers to patrons; set forth standards for account balance information; create requirements and standards for independent integrity checks of all components within a cashless system; recognize that associated equipment includes monitoring and control systems for promotional, bonusing and cashless systems; and require slot machines utilized in promotional systems to display information relating to the nature of the transaction.

**Mr. Larry Eliason, Mr. Craig Sparrow, and Mr. Michael Shaw**, Legal Counsel, reviewed the proposed rules. It was noted that the commission had withdrawn the proposed changes regarding slot machine meters.

*Senator Hunhoff moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Revenue and Regulation: Gaming Commission. Motion prevailed*

*unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Transportation** – Amend a speed zone in Beadle County on State Trunk Highway 28 in the City of Hitchcock to reduce the speed limits on a segment of highway near the east edge of the city; amend a speed zone in Buffalo County in the City of Fort Thompson to provide for a reduced speed limit along South Dakota Highway 47 southwest of the junction with South Dakota Highway 249; amend a speed zone in Buffalo County in the City of Fort Thompson to correct the highway number and to clarify the rule; amend a speed zone in Buffalo County at the City of Fort Thompson to provide for a reduced speed limit along South Dakota Highway 34 north of the junction with State Highway 47; amend a speed zone in Buffalo County in the City of Fort Thompson to provide for a reduced speed limit along South Dakota Highway 249 northeast of the junction with South Dakota Highway 47; amend a speed zone in Walworth County on US Highway 12 in the City of Mobridge to reduce the speed limits on a segment of highway near the business section of town; and amend a speed zone in Todd County on US Highway 18 and US Highway 83 in the City of Mission to reduce the speed limits on a segment of highway at the west edge of town.

**Department of Transportation** – Amend a speed zone in Minnehaha County on SD Highway 38 in the City of Hartford to extend the length of reduced speed limits to the east; amend a speed zone in Tripp County on US Highways 18/183 in the City of Winner to extend the length of reduced speed limits to the southeast; amend a speed zone in Tripp County on State Trunk Highway 44 in the City of Winner to extend the length of reduced speed limits to the east; adopt a speed zone in Tripp County on the service road adjacent to US Highways 18/183 and SD 44 in the western part of the City of Winner to establish a speed limit of 30 miles per hour; and adopt a speed zone in Tripp County on the service road adjacent to US Highways 18/183 in the southern part of the City of Winner to establish a speed limit of 20 miles per hour.

**Mr. Bill Nevin** reviewed both packages of the Department of Transportation's proposed rules.

*Representative Hunt moved, seconded by Representative Gibson, to approve both sets of rules proposed by the Department of Transportation. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**State Treasurer: South Dakota Investment Council** – Amend rules to remove the requirement that the investment council establish at a specific council meeting the date and time for setting the rate for the certificate of deposit program.

**Ms. Tammy Otten** reviewed the proposed rules.

*Senator Hunhoff moved, seconded by Senator Vehle, to approve the rules proposed by the State Treasurer: South Dakota Investment Council. Motion prevailed unanimously on a roll*

*call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Education: Board of Education** – Amend a Special Education rule to clarify student due process procedures; amend a Funding rule to comply with federal mandates for the American Recovery and Reinvestment Act and Individuals with Disabilities Act (IDEA) in transferring of special education funds to another fund to carry out activities authorized under the Elementary and Secondary Education Act of 1965; amend Certification rules to allow teachers or special education paraprofessionals with one year of teaching experience to be granted the special education endorsement; and allow individuals with the National School Counselor Certification to receive stipends, as do Nationally Board Certified teachers, if money is appropriated; and amend General State Aid rules to clarify what a full course load for a secondary student consists of and what constitutes a full-time student.

**Ms. Deb Barnett** reviewed the proposed rules. It was noted that the Board of Education had withdrawn the proposed changes to ARSD 24:05:33:07.03 regarding special education funding and ARSD 24:17:01:01 regarding a definition for a full course load for a secondary student.

*Senator Hundstad moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Education: Board of Education. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Game, Fish and Parks** – Amend License Forms and Fees to add language to the existing rule to specify that a license or tag that has been replaced by reason of having been lost or destroyed becomes invalid once a replacement license or tag has been issued; amend Fall Wild Turkey Hunting Season rules to establish season dates, shooting hours, open units, requirements and restrictions; establish the number and types of licenses available which will include an increase of 1,000 resident and 80 nonresident one-tag "any turkey" licenses in the Black Hills Unit; offer 190 fewer resident one-tag and 3,520 fewer resident two-tag "any turkey" licenses, and 8 fewer nonresident one-tag and 274 fewer nonresident two-tag licenses in the Prairie Units; create a new unit in western South Dakota that consolidates all west river prairie units except Stanley County into one unit where an unlimited number of two-tag licenses are available to residents and nonresidents; and restrict turkey hunters to no more than a total of five (5) fall turkey licenses; amend Black Hills Deer Hunting Season rules to establish season dates, shooting hours, open units, and requirements and restrictions; establish the number and types of resident and nonresident licenses available which will include offering residents 500 fewer and nonresidents 40 fewer "any whitetail deer" licenses, and offer residents 750 fewer and nonresidents 60 fewer "antlerless whitetail deer" licenses; and amend West River Prairie Deer Season rules to establish season dates, shooting hours, open units, requirements and restrictions; establish the number and types of resident and nonresident licenses/tags available which will include adjusting resident license numbers by decreasing resident one-tag licenses by 2,050, resident two-tag licenses by 11,330, and increasing resident three-tag licenses by 12,740, adjusting nonresident license numbers by decreasing nonresident one-tag licenses by 164,

nonresident two-tag licenses by 907, and increasing nonresident three-tag licenses by 1,020, create and establish the cost for four new resident and nonresident license types that would be valid for (a) one "any deer" and two (2) "any antlerless deer," (b) three (3) "any antlerless deer," (c) one "any whitetail deer" and two (2) "antlerless whitetail deer," and (d) three (3) "antlerless whitetail deer;" modify the season starting date to begin two Saturdays before Thanksgiving; eliminate the 7-day antlerless extension following the 16-day regular season, and adjust the 9-day antlerless extension to begin the Saturday after Christmas; and combine Tripp County Units 60A and 60B into one Unit 60A.

**Mr. Tony Leif** reviewed the proposed rules.

*Senator Hundstad moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Game, Fish and Parks** – Amend a Public Water Zoning rule to establish a 100 foot wide "no wake zone" extending from the existing no wake zone on the southwest arm of McCook Lake (Union County) to the extreme southeast corner of the lake; amend East River Deer Hunting Season rules to establish season dates, requirements and restrictions, open areas, shooting hours, and number of licenses/tags available; modify the season starting date to begin the Saturday before Thanksgiving; eliminate the 7-day antlerless extension following the 16-day regular season, and adjust the 9-day antlerless extension to begin the Saturday after Christmas; and eliminate the "Super Unit" (McPherson, Edmunds, Faulk and Spink counties) where unfilled tags are valid for all four units; amend an Antelope Hunting Season rule to establish season dates, requirements and restrictions, open areas, shooting hours, and number of resident and nonresident licenses/tags available; and adjust the boundary for Butte County Units 15A and 15B; amend Custer State Park Antelope Hunting Season and License Forms and Fees rules to reopen the season, establish requirements and restrictions, open areas, and shooting hours; establish season dates to begin the Tuesday following Native American Day in October and running for 9 consecutive days (October 13-21, 2009); establish the number of licenses at 3 "any antelope" and 10 "doe/kid" licenses available only to state residents through the drawing system, and establish the fee for the licenses; remove the "archery only" restriction and allow use of any legal weapon with rifle restrictions to follow the guidelines established in the state antelope hunting season regulations; and not allow hunting within 1320 feet (440 yards) of any numbered Custer State Park road; amend a National Wildlife Refuge Deer Hunting Season rule to establish season dates, requirements and restrictions, open areas, shooting hours, and establish the number of resident and nonresident licenses/tags available on Sand Lake National Wildlife Refuge; amend an Early Fall Canada Goose Hunting Season rule to establish season dates, requirements and restrictions, shooting hours, open area, bag and possession limits; and modify the season ending date from the Friday prior to the last Saturday of September to September 30; and amend a Mountain Lion Hunting Season rule to establish season dates, open area, requirements and restrictions, number of resident licenses available; and increase the total mountain lion harvest limit from 35 to 40 and increase the female harvest limit from 15 to 25.

Due to a time restriction of the availability of the DDN, the chair continued the second set of the Department of Game, Fish and Parks rules to the September 1<sup>st</sup> meeting. Public testimony was taken on the department's rules for those in attendance at the DDN sites.

### **Public Testimony**

**Dr. Tom Huhnerkoch**, Lead, testified in opposition to the proposed increase in the mountain lion harvest limit. He asked that there be no increase.

**Mr. Leif** explained the department's recommendation and the commission's action on the proposed changes to the mountain lion harvest limit.

### **Meeting Schedule**

The next meeting of the Interim Rules Committee will be Tuesday, September 1, 2009, in Room 413 of the State Capitol in Pierre.

### **Adjournment**

*Senator Hundstad moved, seconded by Senator Vehle, that the meeting be adjourned. Motion prevailed on a voice vote.*

The meeting adjourned at 2:00 p.m.

