



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

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**Three hundred nineteenth meeting  
Tuesday  
December 20, 2011**

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

The three hundred nineteenth meeting of the Rules Review Committee was called to order by Chair Senator Jean Hunhoff at 8:38 a.m. CST, December 20, 2011, in Room 414 at the State Capitol, Pierre, South Dakota, and via the Digital Dakota Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., Room Lib 117, Aberdeen, South Dakota; Department of Human Services, 2361 Dakota Ave. S., 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, 4801 N. Career Ave., Room FADM 145, Sioux Falls, South Dakota; and Department of Transportation, 1306 W. 31<sup>st</sup> St., Yankton, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Angie Buhl, Jean Hunhoff (Chair), and Mike Vehle; and Representatives Peggy Gibson and Roger Hunt. Representative R. Shawn Tornow (Vice Chair) joined the meeting at 2:00 p.m. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary. All members appeared via DDN.

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 recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

### **Approval of Minutes**

*Representative Hunt moved, seconded by Representative Gibson, that the minutes of the November 15, 2011, meeting be approved. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

### **Rules Reviewed**

**Department of Health: Board of Medical and Osteopathic Examiners** – Adopt rules to establish procedures for applicants and licensees and disciplinary proceedings.

**Mr. William Golden**, Sioux Falls, and **Mr. Ted Huss**, Sioux Falls, representing the board, reviewed and answered questions regarding the proposed rules. Following a discussion on the proposed unprofessional conduct rules for Respiratory Care Practitioners, *Representative*

*Hunt moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Health: Board of Medical and Osteopathic Examiners with the exception of ARSD 20:70:03:01. This rule is to be reverted back to a prior step for additional hearing. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Department of Health: Board of Pharmacy** – Amend rules regarding Registered Pharmacy Technicians to establish requirements for mandatory education, training, and certification of pharmacy technicians.

**Mr. Randy Jones**, Sioux Falls, Executive Director, reviewed the proposed rules. A discussion was held regarding the need for a grandfathering clause.

*Representative Hunt moved to approve the rules proposed by the Department of Health: Board of Pharmacy. Motion died for lack of a second.*

*Representative Gibson moved to suspend the rules proposed by the Department of Health: Board of Pharmacy. Motion died for lack of a second.*

*Representative Gibson moved, seconded by Senator Buhl, to revert the rules proposed by the Department of Health: Board of Pharmacy back to a prior step for additional hearing to reconsider the elements of the grandfathering clause. Motion failed on a roll call vote with 2 ayes, 3 nays, 1 excused. Members voting aye: Buhl and Gibson. Members voting nay: Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

*Representative Hunt moved, seconded by Senator Vehle, to approve the rules without recommendation proposed by the Department of Health: Board of Pharmacy. Motion prevailed on a roll call vote with 3 ayes, 2 nays, 1 excused. Members voting aye: Hunhoff, Hunt, and Vehle. Members voting nay: Buhl and Gibson. Member excused: Tornow.*

**Department of Health: Health Systems Development and Regulation** – Modify, clarify, and update rules pertaining to licensed assisted living centers.

**Mr. Tom Martinec** and **Mr. Bob Stahl** reviewed the proposed rules.

### **Public Testimony**

**Mr. Ken Senger**, Sioux Falls, South Dakota Association of Healthcare Organizations, spoke in support of the proposed rules.

**Mr. Mark Deak**, Sioux Falls, South Dakota Assistive Living Center Association, spoke in support of the proposed rules.

*Representative Gibson moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Health: Health Systems Development and Regulation. Motion prevailed on*

*a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Department of Health: Office of Licensure and Certification** – Amend rules to enable birth centers to become licensed as health care facilities and to allow for the provision of an appropriate level of care and services associated with normal, uncomplicated pregnancies.

**Mr. Martinec** and **Mr. Stahl** reviewed the proposed rules. Mr. Martinec asked that the committee revert ARSD 44:69:05:05 back to a prior step as they have some technical issues that need to be corrected.

Representative Gibson asked that ARSD 44:69:01:10 (posting of license and malpractice insurance information) be eliminated.

### **Public Testimony**

**Ms. Debbie Pease**, Centerville, South Dakota Safe Childbirth Options, spoke in opposition to the rules. She voiced concerns that the consumers and midwives were not consulted during the drafting of the rules. She also voiced concern with ARSD 44:69:05:05 by reading a portion of a letter she had received from Ms. Kitty Ernst, American Association of Birth Centers. Ms. Pease also asked that ARSD 44:69:01:10 and the rules relating to dietetic services (Chapter 44:69:08) be rejected.

**Ms. Jeanne Prentice**, Spearfish, Womankind Midwifery, spoke in opposition to the rules. She agreed with Ms. Ernst comments and asked the committee to reject the adoption of ARSD 44:69:01:10.

*Representative Hunt moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Health: Office of Licensure and Certification with the exception of ARSD 44:69:01:10, 44:69:05:05, and 44:69:08:01 to 44:69:08:04, inclusive. These rules are to be reverted to a prior step for additional hearing. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Governor's Office of Economic Development** – Adopt rules that will create an Ethanol Infrastructure Incentive Program to provide incentives to retail motor fuel stations and others to increase the amount of ethanol sold in South Dakota.

**Mr. Hunter Roberts** reviewed the proposed rules.

*Senator Vehle moved, seconded by Representative Hunt, to approve the rules proposed by the Governor's Office of Economic Development. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

The committee recessed for lunch at 12:08 p.m. and reconvened at 12:39 p.m.

**Department of Labor and Regulation: Appraiser Certification Program** – Amend rules to change the Department of Revenue and Regulation to Department of Labor and Regulation; change classroom to class; delete the Office of Thrift Supervision; change Examinations Council to Examination Council; revise scope of practice for state-certified residential and state-licensed appraisers; include property characteristics for determining assignment complexity; require a supervising appraiser to be licensed or certified; revise application certification of competency for supervising appraisers; limit the number of attempts a candidate may have to successfully pass the National Uniform Appraiser Examination; raise the hours of experience requirement for application for the state-licensed appraiser classification; include all appraisal practice assignments must comply with the uniform standards; adopt the 2012-2013 Edition of the Uniform Standards of Professional Appraisal Practice; revise examples of those entities establishing assignment conditions; require appraisers to include the Appraisal Management Company registration number in appraisals as applicable; add certain considerations that may be included for selection of appraisers; provide example of field trips; and specify that an Appraiser Qualifications Board uniform standards instructor must hold a state-certified residential or state-certified general appraiser classification.

**Ms. Sherry Bren** reviewed the proposed rules.

*Representative Gibson moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Labor and Regulation: Appraiser Certification Program. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Department of Labor and Regulation: Division of Insurance** – Amend rules to repeal the provision allowing insurers to obtain approval of credit life and health provisions not otherwise permissible under rule; incorporate the provisions of Chapter 20:06:14 into Chapter 20:06:10; define facilitation for purposes of examinations; and repeal Chapter 20:06:14.

**Mr. Joshua Andersen** and **Ms. Melissa Klemann** reviewed the proposed rules.

*Senator Vehle moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Labor and Regulation: Division of Insurance. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Department of Labor and Regulation: Division of Insurance** – Amend a rule to require adjustments in Medicare supplement coverage dates when a person is enrolling or disenrolling in a Medicare Cost plan.

**Ms. Klemann** reviewed the proposed rule.

*Representative Gibson moved, seconded by Senator Vehle, to approve the rule proposed by the Department of Labor and Regulation: Division of Insurance. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Department of Revenue: Commission on Gaming** – Amend Gaming rules to define tournament prize pools; clarify which tournaments require prior approval of the executive secretary; allow for the play of a variation of blackjack known as Dealer Bust 21; allow for the play of a variation of poker known as Pai Gow poker; and allow for the configuration of slot machines from a secure server.

**Mr. Larry Eliason**, Executive Secretary, **Mr. Mike Shaw**, Pierre, Attorney for the Commission on Gaming, **Mr. Faisal Khan**, Golden, Colorado, representing Gaming Laboratories, and **Mr. Kevin Zacher**, Deadwood, representing Four Aces Casino, reviewed the proposed rules.

*Representative Gibson moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Revenue: Commission on Gaming. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Department of Revenue: Division of Property and Special Taxes** – Amend rules to update manuals to current version and ensure that the language of the rules is consistent.

**Ms. Colleen Skinner** reviewed the proposed rules.

*Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Revenue: Division of Property and Special Taxes. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Department of Revenue: South Dakota Lottery Commission** – Amend a rule that would require lottery retailers to collect \$2.00 for the sale of each Powerball play instead of \$1.00.

**Mr. Norm Lingle**, Executive Director, reviewed the proposed rule.

*Senator Hunhoff moved, seconded by Representative Hunt, to approve the rule proposed by the Department of Revenue: South Dakota Lottery Commission. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Public Utilities Commission** – Adopt and amend rules to correct statutory citations; revise how refunds and charges are calculated and assessed for gas or electric meters that are running either slow or fast; limit charges for residential customers for meters that do not register properly; revise how refunds and charges are calculated and assessed for other

types of electric or gas meter errors; set timeframes for overcharge or undercharge payments; allow a utility to create a regulatory asset for amounts not otherwise recovered from a residential customer for meter errors; set forth the definitions for a new chapter of rules regarding renewable energy credits and renewable, recycled, and conserved energy; set forth how a retail provider of electricity shall determine the amount of conserved energy achieved through energy efficiency measures; describe how demand response measures are to be measured and verified; and set forth how a provider of electricity shall report renewable energy credits to the Public Utilities Commission.

**Commissioner Chris Nelson and Mr. Brian Rounds** reviewed the proposed rules.

*Representative Gibson moved, seconded by Representative Hunt, to approve the rules proposed by the Public Utilities Commission. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

**Department of Environment and Natural Resources: Board of Minerals and Environment** – Amend rules to replace the existing oil and gas conservation Article 74:10 with Article 74:12 which will give a clearer, simpler format that includes allowing approval of aquifer exemptions under the notice of recommendation process and allowing administrative approval of commingling oil from separate pools, completing producing wells in multiple zones, dissolving abandoned oil and gas fields, and drilling wells without a blowout preventer; expediting regulatory approval under the notice of recommendation process by allowing an operator to set a hearing date for cases that may or may not require a contested case hearing, excluding a duplicative requirement for monthly reporting of water production, an unnecessary requirement for annual submission of pipeline maps, duplicative requirements pertaining to directional wells and pits that are hazardous to birds or other species, an outdated rule pertaining to production of carbon dioxide and steam, and an unnecessary requirement for annual inspections of all oil and gas wells.

**Mr. Bob Townsend and Mr. Brian Walsh** reviewed the proposed rules.

*Senator Vehle moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Minerals and Environment. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member excused: Tornow.*

Representative Tornow joined the meeting at 2:00 p.m.

**Department of Social Services: Division of Adult Services and Aging** – Amend rules to repeal obsolete rules, update definitions, update and clarify eligibility requirements and covered services related to the home and community-based services waiver, update references, remove obsolete and unnecessary provisions, and remove obsolete and unnecessary references.

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

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

**Department of Social Services: Division of Child Support** – Adopt a rule to add the date of hire to the information that employers within the state must furnish to the state directory of new hires.

**Ms. Ringling** and **Mr. Terry Walter** reviewed the proposed rule.

*Senator Hunhoff moved, seconded by Senator Vehle, to approve the rule proposed by the Department of Social Services: Division of Child Support. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member voting nay: Tornow.*

**Department of Labor and Regulation: Board of Technical Professions** – Amend rules to clarify definitions; add education requirements for Land Surveyors by removing experience only licensure; correct mistakes; add NCARB's 12 hours of Health Safety and Welfare (HSW) per calendar year as an alternate method for continuing education for architects; increase the fee for retired status; increase the cost of the L.A.R.E. graphics portion of the exam; increase the late renewal penalties for individuals and business entities; create a comity licensure section for licensees seeking licensure through comity; create a Fire Protection Systems section; remove minimum requirements for shop drawings for sprinkler and fire alarm systems; remove informal hearings from the board's options for informal dispositions of complaints; and remove the 60 day maximum limit for a hearing to be had upon request of an aggrieved party.

**Mr. Mark Humphreys**, Rapid City, Executive Director, **Mr. Aaron Arnold**, and **Mr. Leonard Neugebauer**, Sioux Falls, member of the board, reviewed the proposed rules. It was noted that the proposed fee increase rules had been withdrawn.

*Senator Hunhoff moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Labor and Regulation: Board of Technical Professions. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.*

**Secretary of State** – Adopt rules to establish fees for lobbyists that were previously in statute and to provide for a fee for replacing a lost lobbyist badge.

**Secretary of State Jason Gant** reviewed the proposed rules.

*Senator Vehle moved, seconded by Representative Tornow, to approve the rules proposed by the Office of the Secretary of State. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.*

**Secretary of State: Board of Elections** – Amend rules to create a form for the adult children of overseas residents to register to vote in the state of South Dakota; update and clarify electronic pollbook security; and change the way in which some election related forms are prescribed.

**Secretary of State Gant** reviewed the proposed rule.

*Senator Hunhoff moved, seconded by Representative Gibson, to approve the rule proposed by the Secretary of State: Board of Elections. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.*

**Department of Agriculture: Division of Ag Development** – Amend South Dakota Certified Beef Program rules by changing the definition of verifiable address, updating beef quality assurance (BQA) references, and changing enrollment criteria.

**Mr. Lucas Lentsch** reviewed the proposed rules.

*Representative Hunt moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Agriculture: Division of Ag Development. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, Tornow, and Vehle.*

**Department of Game, Fish and Parks** – Amend General Provisions rules that would (a) add definitions for "legal spear," "line," and modify the definition of "liberalized fishing" to remove the reference to methods of take; (b) replace all references to "spear" in the rule chapter with the term "legal spear"; (c) add a new rule which creates a permit allowing fish legally possessed by licensed anglers to be gifted to charitable/nonprofit organizations under certain conditions; (d) remove Allen Dam and Little Moreau No. 2 from the prohibition on baitfish use; (e) remove Lake Poinsett Rearing Pond, Platte Creek Rearing Pond, and American Creek Fish Spawning Station from the list of "no fishing zones"; (f) add "hook and line" to the list of authorized methods of take in liberalized fishing waters; (g) modify the rule prohibiting introduction of nonnative fish into state waters and prohibiting possession and transportation of snakehead fish; and (h) modify the rule prohibiting high grading of fish to remove the prohibition of high grading of bluegills on Enemy Swim/Campbell Slough; amend a Fishing Seasons rule pertaining to waters open to the taking of bait that would no longer allow legal anglers to transfer bait collected from that portion of the Missouri River below Gavins Point Dam for use during the same day in the Missouri River below Gavins Point dam; amend Snagging of Paddlefish rules that would (a) allow applicants for paddlefish snagging permits to apply for a preference point only with no opportunity for issuance of a permit as is allowed with most big game licenses and (b) add a limited paddlefish snagging season on Lake Francis Case which would run from May 1 through May 31; amend Fish Limits rules that would (a) remove the current length restrictions placed on black bass (smallmouth and

largemouth bass) on Lake Sharpe and (b) change the word "catch" to "harvest" in the rule which establishes daily and possession limits for nonresident family fishing licenses; amend Spearing rules that would (a) replace all references to "spears" with the term "legal spear"; (b) add Mud Lake and Cottonwood Lake in Roberts County to the list of waters where game fish spearing is allowed; and (c) allow applicants for archery paddlefish permits to apply for a preference point only with no opportunity for issuance of a permit as is allowed with most big game licenses; amend Bait rules that would (a) raise fees for all bait dealer licenses; (b) change "flathead shiners" to "flathead chub" under species that may be taken as bait for noncommercial use; and (c) close the James, Big Sioux, and Vermillion Rivers as well as the Missouri River below Gavins Point Dam to both the commercial and noncommercial taking of bait year round; amend Private Fish Hatcheries rules that would (a) increase private hatchery license fees and (b) modify the rule pertaining to license approval criteria to allow for bullheads and green sunfish to be present when approving private hatchery ponds; adopt a new chapter to Article 41:10 - Special Management Categories, which deals with regulation of aquatic nuisance species.

**Mr. Emmett Keyser** and **Mr. John Lott** reviewed the proposed rules.

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

**Department of Game, Fish and Parks** – Amend a Spring Wild Turkey Hunting Season rule to establish the number of licenses/tags available for the Prairie Units and amend a Waterfowl Hunting Season rule to change the daily bag limit for the Spring Light Goose Conservation Order from 20 light geese to unlimited.

**Mr. Keyser** reviewed the proposed rules.

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

**Department of Transportation** – Amend a speed limit on two segments of SD Highway 42 in Minnehaha County from 65 miles per hour to 55 miles per hour. (This is an informational only item – no committee action will be taken at this time.)

**Mr. Bill Nevin** reviewed the proposed rules as an informational item. The public hearing will be held in January. No committee action was taken.

### **Committee Discussion**

Senator Hunhoff commented that it would be helpful if the agencies included a statement as to what, if anything, was changed in the final draft of the rules.

Senator Vehle commented that the agenda says what the agencies are doing. It would be helpful to know why they are making changes.

### **Next Meeting Schedule**

The next meeting of the Interim Rules Review Committee will be an informal meeting at the end of the Legislative Session to set the tentative meeting schedule for the 2012 interim.

### **Adjournment**

*Representative Hunt moved, seconded by Representative Tornow, that the meeting be adjourned. Motion prevailed on a voice vote.*

Chair Hunhoff adjourned the meeting at 3:52 p.m.

