



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Two Hundred Forty-fifth Meeting
Monday
January 12, 2004**

**Room 413
State Capitol Building
Pierre, South Dakota**

The two hundred forty-fifth meeting of the Rules Review Committee was called to order by Chair Senator Royal "Mac" McCracken at 9:02 a.m., January 12, 2004, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Eric Bogue, H. Paul Dennert, and Royal "Mac" McCracken; and Representatives Richard Engels, Jean Hunhoff, and Orville Smidt.

Staff members present included Doug Decker, Code Counsel, and Kris Schneider, 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.

Approval of Minutes

Representative Hunhoff moved, seconded by Senator Bogue, that the minutes of the December 2, 2003, meeting be approved. Motion prevailed unanimously on a voice vote.

Rules Reviewed

Department of Agriculture: Division of Agricultural Services - Adopt a rule that will require those who manufacture distiller and corn gluten feed products to provide a maximum sulfur guarantee on the label of these products.

Secretary Larry Gabriel, Department of Agriculture, reviewed the proposed rule change.

Senator Bogue moved, seconded by Representative Smidt, to approve the rule proposed by the Department of Agriculture: Division of Agricultural Services. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Agriculture: State Fair - Amend rules to create a definition of "Fair Week" and conform the rules to recent statutory changes which vested control of the State Fair with the Secretary of Agriculture.

Secretary Gabriel reviewed the proposed rules and apologized for thinking that he could set the fair dates by administrative action. He believes that the state fair should be the last fair of the season. He proposed starting the fair the Saturday prior to Labor Day and ending the Saturday after Labor Day (September 4 - 11, 2004) with a grand finale, a big concert, and possibly fireworks on the last day. He stated that the fair should be a learning experience for children and students should be encouraged to attend. He reported that according to the Department of Revenue's sale tax records, the taxable sales at the state fair in 2003 were \$1,488,000, down from \$2,742,000 in 1999 (**Document #1**).

Public Testimony

Mr. Bill Fuller, Clark, a farmer, testified in opposition to the change in the dates of the fair week. He distributed a handout entitled "Department 200 BEEF - Judging Schedule" (**Document #2**). He stated that having the 4-H and the open class shows held on separate days will not work.

Mr. Robert Fawcett, Ree Heights, Open Class Beef Superintendent, testified in opposition to having the fair dates in September. He stated that school and sport activities are the biggest competition and that by holding the 4-H and the open class shows on different days of the week will wreck the open show. Mr. Fawcett suggested holding the state fair the first full week in August.

Mr. Randy Buchholz, Hitchcock, a hog producer and loan officer, testified in opposition to the September dates. He liked the Saturday to Saturday concept; however, he feels that August would be a better time because there would be less conflict with school activities, both high school and college. He stated that by trying to fit seven days of 4-H activities into three will result in programs being cut. He distributed a handout of an email survey of fifty-eight school superintendents regarding dates for the state fair (**Document #3**). The survey results were: 79% of the schools responding opposed a September date, 10% stated they would work with either date, and 10% did not care. Senator Dennert commented that on the average, education is willing to work with the dates; he feels it is the athletic programs/coaches that are not. Mr. Buchholz stated that Huron is the right location for the fair--it has the facilities needed and is centrally located.

Mr. Alan Vedvei, Lake Preston, a farmer involved with FFA, testified that he agrees with Secretary Gabriel on the educational value of the state fair. He opposes the September dates because of too many conflicts. He stated that Dakotafest was started because nine days were too long for vendors.

Mr. Larry Tidemann, Brookings, Cooperative Extension Service (CES), testified that 4-H did not pick the first four days of the fair week; however, it would reduce the conflict with school and sport activities. He stated that approximately 4,000 4-H members attended the state fair last year. The CES would like to see the dates not conflict with school.

Mr. Wayne Carney, Executive Director of the South Dakota High School Activities Association, testified for information purposes only. He distributed a handout entitled "2004 SDHSAA First Allowable Practice and Contest Dates" (**Document #4**) and explained the process of how the fall schedule is set.

Secretary Gabriel responded that the actual fair schedule has not been set. With all of the complexity of the issue, they will try to work out a schedule that will minimize conflict. He stated that they are looking at having other competitions at the state fair, possibly marching band competitions, stock car racing finals, etc.

Senator Bogue moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Agriculture: State Fair.

Representative Engels stated that changing the dates to September will harm the children, and he also noted that the first week of August corresponds with the Sturgis bike rally.

Representative Engels moved a substitute motion, seconded by Senator Dennert, to send the proposed rules back to the department to have the rules rewritten so that the date remains unchanged. Substitute motion failed on a roll call vote, with 2 ayes and 4 nays. Voting aye: Dennert and Engels. Voting nay: Bogue, Hunhoff, McCracken, and Smidt.

Senator Bogue's motion prevailed on a roll call vote, with 5 ayes and 1 nay. Voting aye: Bogue, Dennert, Hunhoff, McCracken, and Smidt. Voting nay: Engels.

Department of Revenue and Regulation: Commission on Gaming - Adopt a variation of play for STREAK blackjack; add to definitions of slot machine testing, approval, and modifications "on-line monitoring and control system" and "redemption kiosks"; prohibit the sale of slot machines by Deadwood casinos unless purchaser is regulated by gaming agency that has agreement with the South Dakota Commission regarding exchange of information on licensees and/or applicants; clarify that certain parts and associated equipment can effect and trigger revenue reporting; adding to the definition of associated equipment to include "redemption kiosks" and "on-line monitoring and control systems"; redefine gross revenue to include hand pay credit lockups and vouchers; recognize situations where vouchers are not redeemed; require accounting of the liability associated with vouchers and paper tickets; repeal provisions dealing with unclaimed jackpots and unredeemed vouchers; add cage count provisions to the gaming revenue collection and count schedule audit requirements; and eliminate the requirement that engagement slips be signed by both the owner or trainer and the jockey or jockey's agent.

Mr. Mike Shaw, attorney for the commission, reviewed the proposed rules.

Senator McCracken moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Revenue and Regulation: Commission on Gaming. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Education: Board of Education - Amend a rule to require that the Office of Career and Technical Education convene a meeting of the technical directors and an Office of Economic Development staff member to review applications for new or expanded programs prior to their presentation to the State Board of Education.

Ms. Gloria Smith-Rockhold reviewed the proposed rule.

Representative Smidt moved, seconded by Representative Engels, to approve the rule proposed by the Department of Education: Board of Education. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Senator Bogue moved, seconded by Representative Smidt, to move the Department of Tourism and State Development: State Historical Society and the Department of Social Services' rules to the bottom of the agenda. Motion prevailed unanimously on a voice vote.

Department of Human Services: Board of Counselor Examiners - Amend rules regarding continuing education; clarify the intent of an inactive status of a license; adopt an application fee for the continuing education program and increase the examination fee; clarify the intent of SDCL 36-33-9(4); and clarify the supervision requirements.

Mr. Tom Weber, lay member of the Board, reviewed the proposed rules.

Senator Dennert moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Human Services: Board of Counselor Examiners. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Representative Engels moved, seconded by Representative Smidt, to take up the Department of Tourism and State Development: State Historical Society's rules next. Motion prevailed unanimously on a voice vote.

Department of Tourism and State Development: State Historical Society - Adopt and amend rules to set standard fees for photographic shipping and handling and processing and clarify non-governmental use of the Cultural Heritage Center.

Ms. Marvene Riis explained that it had been brought to the department's attention that the proposed rules do not list a maximum charge, only a minimum charge, so the department would like to revise the rules.

Senator McCracken moved, seconded by Representative Smidt, to send back the rules proposed by the Department of Tourism and State Development: State Historical Society for further clarification. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Labor: Board of Accountancy - Adopt rules that will carry out the functions of the new computerized "uniform CPA examination" which is to be implemented April 5, 2004.

Ms. Bobbi Barnhill reviewed the proposed rules. In response to Senator Bogue's inquiry about a fiscal note, Ms. Barnhill stated that there was no fiscal note because it would have been zero. Senator Bogue stated that technically a fiscal note must be served on LRC and the Bureau of Finance and Management (BFM). Ms. Barnhill stated that she would file a fiscal note with LRC and BFM prior to filing the final rules with the Secretary of State.

Representative Smidt moved, seconded by Representative Hunhoff, to approve the rules proposed by the Department of Labor: Board of Accountancy. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Senator Bogue moved, seconded by Senator McCracken, to move the Department of Revenue and Regulation: Real Estate Appraisers' rules to the bottom of the agenda. Motion prevailed unanimously on a voice vote.

Department of Game, Fish and Parks - Amend rules to prohibit possession of uncased firearms at Kelly's Cove Fishing Access Area located along the James River east of Yankton and change the designation of the Mission Hill Game Production Area to a Fishing Access area, and prohibit the taking of more than 1 walleye, sauger, or walley-sauger hybrid 20 inches or greater in length daily from Campbell Slough.

Mr. Doug Hansen reviewed the proposed rules. He also distributed an example addendum (**Document #5**) that the department would prepare for the Rules Review Committee when changes are made to proposed rules after the public hearing.

Senator McCracken moved, seconded by Representative Engels, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Public Safety: Office of Emergency Medical Services - Adopt and amend rules to define terms and update licensing, personnel, and equipment requirements for ambulance services.

Mr. Bob Graff reviewed the proposed rules. Representative Hunhoff questioned 44:05:01:02 (1) and (11), definitions for unprofessional conduct. Representative Hunhoff stated that these were more of an employee/employer issue and should not be part of the administrative rules.

Senator McCracken moved, seconded by Representative Engels, to approve the rules proposed by the Department of Public Safety: Office of Emergency Medical Services. Motion prevailed on a roll call vote, with 5 ayes and 1 nay. Voting aye: Bogue, Dennert, Engels, McCracken, and Smidt. Voting nay: Hunhoff.

Department of Social Services: Food Stamps - Adopt rules that specify that those households that receive Low Income Energy Assistance are eligible for the food stamp standard utility allowance, and establish two new types of utility allowances for food stamp households: (1) a limited utility allowance, and (2) a one-utility allowance.

Ms. Jill Wellhouse reviewed the proposed rules.

Representative Engels moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Social Services: Food Stamps. Motion prevailed on a roll call vote, with 5 ayes, 1 excused. Voting aye: Bogue, Dennert, Engels, Hunhoff, and Smidt. Excused: McCracken.

Department of Social Services: Office of Medical Services - Amend rules that reflect changes in Federal Authority from a waiver to a State Plan amendment; remove SSI disabled children and Title V children from the Case Management program; amend the eligibility requirements for a primary care provider; amend the individual's choice of PCP time measured by the date of notice; to allow changes in PCP to be conveyed verbally or in writing by the recipient, and no longer has to establish good cause; changes made to reflect disenrollment effective date request initiated by the provider will be the first day of the month following approval, and that good cause reasons must be non-discriminatory, generally applied to the provider's entire patient base; clarifies the language that a referral must be made by the PCP before the other medical provider provides service; changes exempt from managed care rehabilitation hospital services, chemical dependency treatment, and prescription drug services and states organ transplants, FQHC/RHC, and diabetic education programs are now covered services under managed care; amend the definition source for mental health services for those diagnosed as seriously emotionally disturbed and exempts prescription drug services and clarifies that case management services are not exempt services; repeals the requirement of case management for services provided at community mental health centers; amend the billing requirements for case management; repeal rules that state pharmacy claims must have a managed care referral; and require that claim requirements for ambulatory surgical center services must follow certain requirements and for organ transplant services, mental health services, diabetes education services, FQHC and RHC services must follow certain claim requirements.

Ms. Wellhouse reviewed the proposed rules.

Representative Smidt moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Social Services: Office of Medical Services.

Representative Hunhoff moved a substitute motion, seconded by Senator Bogue, to revert 67:16:39:07 back to the Department of Social Services: Office of Medical Services for more definite criteria when a recipient wants to change to a different primary care provider. Substitute motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Representative Smidt moved, seconded by Representative Engels, to approve the rules, except 67:16:39:07, proposed by the Department of Social Services: Office of Medical Services. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Social Services: Crime Victims' Compensation Commission - Amend rules to update and clarify existing rules; implement form and style changes; repeal rules that are not necessary or that duplicate existing statutory provisions; define terms; establish eligibility criteria, limits on covered services, payment methodology, and payment rates; specify those circumstances when compensation is not allowed; limit the length of time records are kept; establish good cause criteria; require Commission approval for payment of certain services; in certain circumstances, allow the payment of witness fees; allow the Commission to approve amounts in excess of established limits; allow the Department or the Commission to reduce payments under certain circumstances; require substantiation of claims; specify that the Department will make payments directly to the service provider and consider the Department's payment to be payment in full unless certain additional circumstances exist; and establish the procedure to be followed when a claimant requests a hearing by the Commission for purposes of reviewing a claim for compensation, including service of the Notice of Hearing, the issuing of subpoenas, the process to be followed if a claimant fails or is unable to attend the hearing, and the final decision and notice.

Ms. Wellhouse reviewed the proposed rules.

Representative Engels moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Social Services: Crime Victims' Compensation Commission. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Department of Social Services: Office of Medical Services - Amend rules regarding eligibility of a provider agency; the qualifications of a case manager; covered services required by case management and personal attendant; qualifications and duties of consumer preparation specialist; requires private nurses to be under the direction of the consumer's physician; adopts uniform national codes for procedures and eliminates the set payment rates; allow provider agency to terminate services; clarifies the procedures for notice of adverse action; clarify time frames for conference with staff from the Department of Human Services or Department of Social Services; and change the term "client" to "consumer."

Ms. Wellhouse stated that these rules were not ready to be presented to the committee at this time.

Department of Revenue and Regulation: Real Estate Appraisers - Amend rules to describe the appropriate use of titles in advertising, remove the varying requirements for return to active status, update references to the Uniform Standards of Professional Appraisal Practice, and defer continuing education requirements for reciprocal appraisers if they are duly licensed or certified in their state of domicile.

Ms. Sherry Bren reviewed the proposed rules.

Senator Dennert moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Revenue and Regulation: Real Estate Appraisers. Motion prevailed

unanimously on a roll call vote, with 6 ayes. Voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.

Proposed Legislation

Senator McCracken reported that SB 12 - *An Act to revise certain provisions concerning when an administrative rule adoption or amendment is complete* had been prefiled.

Following discussion of Mr. Decker's January 2, 2004, memorandum, *Senator Bogue moved, seconded by Representative Engels, that draft #3 entitled "An Act to provide additional criteria to send a promulgated rule back for further public hearing by the agency" be introduced as a committee bill (Document #6)*. Motion prevailed unanimously on a roll call vote, with 6 ayes. Voting aye: *Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt*.

Staff Report

Mr. Decker distributed a handout entitled "Directions for Submitting the Final Draft" (**Document #7**) to the members. He explained that this is sent to the agencies with their edited rules.

Committee Discussion

Staff was asked to send fiscal notes to the committee.

The next Rules Review Committee meeting will be following the Seventy-ninth Legislative Session.

The chair adjourned the meeting at 1:16 p.m.

