



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Two Hundred Forty-eighth Meeting
Tuesday
May 18, 2004**

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

The two hundred forty-eighth meeting of the Rules Review Committee was called to order by Vice-Chair Representative Jean Hunhoff at 9:00 a.m., May 18, 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 and H. Paul Dennert; and Representatives Jean Hunhoff and Orville Smidt. Excused were Senator Royal "Mac" McCracken and Representative Richard Engels.

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

Senator Dennert moved, seconded by Representative Smidt, that the minutes of the April 20, 2004, meeting be approved. Motion prevailed unanimously on a voice vote.

Staff Report

Mr. Decker distributed additional comments on the Small Business Impact Statement Form to the committee members (**Document #1**).

Rules Reviewed

Department of Revenue and Regulation: Division of Banking - Adopt an examination fee for trust company examinations and a licensing fee for money order businesses, and amend the license fee rates for mortgage brokers, mortgage bankers, and money lending businesses.

Mr. Roger Novotny reviewed the proposed fee increases.

Representative Smidt moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Revenue and Regulation: Division of Banking. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Revenue and Regulation: Division of Insurance - Clarify who is entitled to special enrollment provisions under HIPAA and to incorporate the updated mortality tables for ordinary life insurance.

Mr. Randy Moses reviewed the proposed rules.

Senator Dennert moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Agriculture: Division of Ag Development - Amend rules regarding the farm mediation program.

Mr. Jon Farris reviewed the proposed rules. He stated that the rules clarify when the mediation period begins and certain actions take place.

Representative Smidt moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Agriculture: Division of Ag Development. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Health - Amend rules regarding the Children's Special Health Services (CSHS).

Ms. Laurie Gill and **Ms. Nancy Hoyme** reviewed the proposed rules. Ms. Gill stated that the proposed rules increase CSHS eligibility from age eighteen to age twenty-one and clarify the financial assistance coverage and provider reimbursement for the program. Senator Bogue was concerned that the first-year fiscal impact of \$2,338 seemed low. Ms. Hoyme explained that the department used the most recent fiscal data and estimates that the rule change will benefit fifteen individuals this year. She stated that 57% of the cost incurred would be grant money. The expansion of the CSHS program to age twenty-one is not federally mandated; however, the federal grant does allow states to cover individuals up to age twenty-one. Under this program, Ms. Hoyme stated that the majority of the high cost medical expenses are usually completed at a young age. Other committee members also expressed their concerns about the actual number of eligible individuals and the actual cost associated with the proposed rule changes.

Senator Bogue moved, seconded by Representative Smidt, to send the rules proposed by the Department of Health back to a prior stage for additional revenue estimates. Motion

prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Environment and Natural Resources: Board of Minerals and Environment - Adopt rules regarding risk compensation in compulsory pooling and unitization orders.

Mr. Fred Steece reviewed the proposed rules.

Public Testimony

Mr. Steve Willard, Pierre, lobbyist for American Petroleum Institutes, testified in support of the proposed rules. He stated that they had brought the proposed changes to the Legislature this past session and discovered that the department had the authority to make the changes through administrative rules.

Representative Hunhoff moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Environment and Natural Resources: Board of Minerals and Environment. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Secretary of State - Repeal standard form rules regarding the Uniform Commercial Code and the central filing system; outline county requirements for the central recording of real property liens through Dakota Fast File; update the notary public forms; and amend the voter registration system.

Mr. Chad Heinrich explained the proposed rules.

Representative Smidt moved, seconded by Representative Hunhoff, to approve the rules proposed by the Secretary of State. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Social Services: Office of Medical Services - Amend rules to update and clarify existing rules, adopt form and style changes, correct internal references, expand the categories of individuals eligible for medical services, amend eligibility criteria, specify that an individual's failure to avail himself or herself of all income and resources to which the individual is entitled results in ineligibility, specify that an overpayment constitutes a debt to and is subject to recovery by the department, incorporate the latest federal poverty levels, clarify the long-term care residency requirements, expand the list of income not considered when determining eligibility for long-term care or medical assistance, clarify how the department considers an individual's or couple's income and resources when determining eligibility for long-term care assistance, increase the SSI standard benefit amount, repeal unnecessary rules, and, for the Renal Disease Program, expand the list of entities not

considered to be a third-party payer, amend eligibility criteria, and increase the rate of payment for travel expenses.

Ms. Jill Wellhouse distributed a handout (**Document #2**) and reviewed the proposed rule changes.

Representative Hunhoff moved, seconded by Senator Bogue, to approve the rules proposed by the Department of Social Services: Office of Medical Services. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Game, Fish and Parks - Amend rules regarding the Youth Deer Season, the Black Hills Deer Hunting Season, the Fall Wild Turkey Hunting Season, the Nonresident Waterfowl Licenses, the Youth Pheasant Hunting Season, and Aerial Hunting.

Mr. George Vandel and **Mr. Art Smith** explained the proposed rules.

Representative Hunhoff expressed her concerns with increasing the number of nonresident waterfowl licenses in the Springfield area.

Mr. Decker distributed correspondence that he had received from Ms. Nancy Hilding, Rapid City, representing the Prairie Hills Audubon Society, in opposition to the proposed aerial hunting rules (**Documents #3 and #4**) and additional information provided by the Department of Game, Fish and Parks (**Document #5**). Mr. Smith explained that the proposed rules will bring the rules in line with what the department, School and Public Lands, and the Bureau of Land Management have been practicing for two decades. Mr. Vandel stated that the proposed rules will also add some restrictions. Senator Bogue thanked the department for working with the landowners on the aerial hunting issues and stated that allowing the non-restricted access to a large amount of school and public lands located in the northwestern part of the state is a great comprise.

Senator Bogue moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Revenue and Regulation: Property and Special Taxes - Change the capitalization factor used to determine the capitalized income value and provide for yearly updates to the uniform standards used by appraisers.

Mr. Mike Kenyon explained the proposed rules regarding property and special taxes.

Senator Bogue moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Revenue and Regulation: Property and Special Taxes. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Revenue and Regulation - Impose municipal rate changes on sales by catalog companies that are preprinted; provide for two separate methods for sellers to compute tax on gross receipts; clarify definition of receive and receipt; clarify what portion of the delivery charge is taxable; and repeal rules regarding tax on transportation.

Mr. Scott Peterson explained that the proposed rules deal with streamline sales tax rules that were not changed last year.

Representative Smidt moved, seconded by Representative Hunhoff, to approve the rules proposed by the Department of Revenue and Regulation. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Department of Revenue and Regulation - Clarify definition of permanent foundation for manufactured homes and change when the contractors' excise tax applies to manufactured buildings.

Mr. Peterson and **Mr. Jack Magee** explained the proposed rules and distributed a list of statutes regarding sectional homes (**Document #6**). Mr. Peterson stated that sectional home statutes are written broadly and are specific to the regulation of sectional homes. The specific statutes take precedent over the mobile home laws. The proposed rules are the result of a lawsuit in which the court ruled that the contractors' excise tax is due when a manufactured home is installed on a permanent foundation. The purpose of the rules is to define "permanent foundation" and to develop a form that informs county and state officials what is subject to the initial registration fee or contractors' excise tax and gives guidance to dealers and buyers on what and to whom they must report.

Public Testimony

Mr. Jerry Vogeler, Executive Director, South Dakota Manufactured Housing Association, testified in support of the proposed rules. He stated that the proposed rules will clarify how a new manufactured home which is placed on a permanent foundation is taxed.

Mr. R. James Scoular, Sioux Falls, Iseman Homes, testified in support of the proposed rules. He stated that the rules are needed to clarify to whom and what type of tax is paid. The proposed rules will also allow buyers the opportunity to obtain lower interest rates when securing financing.

Mr. Jesse Foster, Pierre, BankWest, testified in support of the proposed rules. He stated that it is a requirement of Fannie Mae and Freddie Mac that the manufacturer's statement of origin (MSO) be surrendered to prevent complications between a title and other ownership documents. In case of loan default, the financing institution needs to have the capability of having a title reissued.

Senator Jerry Apa, Lead, District 31 - Lawrence County, testified in opposition to the proposed rules. He stated that the counties are concerned with the fiscal impact. He distributed a copy of the proposed Foundation and Contractor Disclosure Form (**Document #7**) along with a list of questions/concerns regarding the form. Senator Apa asked that the committee send the proposed rules back for further discussion to bring the treasurers and assessors in on the process.

Ms. Darlene Piekkola, Deadwood, Lawrence County Director of Equalization, testified in opposition to the proposed rules. She asked what happens when an appraiser discovers that the home was not placed on a perimeter foundation; how does the county recoup the 3% initial registration fee? She also expressed concern that a legal description was not part of the proposed disclosure form.

Mr. Dwight Neuharth, Pierre, South Dakota Association of County Officials, testified in opposition to the proposed rules. He stated that the counties are concerned with the lost revenue (the 3% initial registration fee). He also stated that county treasurers have concerns with the titling process or lack thereof.

Ms. Sheila Enderson, Aberdeen, Brown County Treasurer, testified in opposition to the proposed rules. She stated that the estimation of loss of revenue to the counties of \$720 is low. She cited two examples where a manufactured home recently sold for more than \$100,000 which puts the 3% tax loss to the county at more than \$6,000. She stated that it is very important that a title be created at the beginning when the MSO is available so that the VIN number is also on file. She asked the committee to postpone any action on the rules so that additional issues raised by the counties and taxpayers may be addressed.

Ms. Billie Jo Waara, Sioux Falls, Minnehaha County Treasurer, testified in opposition to the proposed rules. She expressed concerns with the definition of a permanent foundation, how current taxes are paid when a home is being moved, the definition of HUD standards and the lack of the HUD construction code label number, and the lack of an original title. She stated that the current process of converting a manufactured home to real estate works.

Mr. Dick Howard, Pierre, South Dakota Association of County Commissioners, testified that originally the association was not in opposition to the proposed rules because they were told it would affect only 2%-5% of the homes; however, based on additional information received, 95% of the manufactured homes are placed on permanent foundations. This new information creates a lot of questions and he asked that the committee send the rules back for additional review and input from the counties in the negotiations of these proposed rules.

In response to the public testimony, **Mr. Peterson** commented that having the contractor state whether the home was permanently affixed to a permanent foundation or not tells the State what type of tax is owed on that home.

Senator Bogue asked about the issues to be resolved by the court in the lawsuit mentioned earlier in their testimony. **Mr. Magee** stated the court interpreted SDCL 32-5-16.1 and other statutes. In § 32-5-16.1, the second to the last sentence states - *The payment of such*

license fee shall be in full and in lieu of all occupational, sales, excise, privilege, and franchise taxes levied by this state upon the gross receipts from all sales of mobile homes. In §§ 10-45-2.1 and 10-46-5.1 sales of sectional homes are subject to "sales tax" or use tax if placed on a permanent foundation. The lawsuit was an attempt to resolve when the license fee or the sales and use tax would be paid.

Mr. Peterson stated that if a contractor puts a home on a permanent foundation, the excise tax would be imposed on that contractor regardless if the 3% had been paid. In response to earlier questions, **Mr. Magee** stated that the legal description could be added to the proposed form.

As far as titling a manufactured home, **Mr. Magee** stated that if they are not deemed to be a motor vehicle, there is no authority to regulate the home as a mobile home.

In response to a question if the home would be taxed the 3% registration fee if a title needed to be created and who would be responsible, **Ms. Deb Hillmer** responded that it would be taxed the 3% and that either the current owner or the buyer could pay the 3% fee. If the home is never titled, the 3% fee would never be due.

Senator Bogue stated that the revenue issue was created in 1987 with the sectional home statutes; this is an issue that needs to be addressed by legislation.

Senator Bogue moved, seconded by Representative Hunhoff, to send back the rules proposed by the Department of Revenue and Regulation regarding manufactured homes for further clarification of the information that is necessary and the labeling information needed when a manufactured home is placed on a permanent foundation. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.

Committee Discussion

Due to the additional comments received on the Small Business Impact Statement, Vice-chair Hunhoff suggested and *Representative Smidt moved, seconded by Senator Bogue, that LRC staff meet with interested parties and representatives from the South Dakota Retailers Association and come to an agreement on a form prior to the June meeting. Motion prevailed unanimously on a roll call vote, with 4 ayes, 2 excused. Members voting aye: Bogue, Dennert, Hunhoff, and Smidt. Excused: Engels and McCracken.*

The next Rules Review Committee meeting will be held on Thursday, June 3, 2004.

Senator Dennert moved, seconded by Senator Bogue, that the meeting adjourn. Motion prevailed unanimously on a voice vote.

The meeting adjourned at 12:44 p.m.



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