



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

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**Two Hundred Forty-ninth Meeting**  
**Thursday**  
**June 3, 2004**

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

The two hundred forty-ninth meeting of the Rules Review Committee was called to order by Chair Senator Royal "Mac" McCracken at 9:00 a.m., June 3, 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**

*Senator Bogue moved, seconded by Representative Hunhoff, that the minutes of the May 18, 2004, meeting be approved. Motion prevailed unanimously on a voice vote.*

### **Staff Report**

**Mr. Decker** stated that he would defer his report on the Small Business Impact Statement form to later in the meeting.

### **Rules Reviewed**

**Department of Social Services: Economic Assistance** - Amend rules to increase the payment standards for TANF households and reduce the maximum period of ineligibility when an applicant refuses to accept employment or additional hours of employment, terminates employment, or reduces hours of employment without good cause within the 60 days preceding the date of application.

**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: Economic Assistance. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**Department of Revenue and Regulation: Division of Securities** - Adopt and amend rules to comply with the adoption of the new Uniform Securities Act 2002, chapter 47-31B.

**Mr. Gail Sheppick** reviewed the proposed rules. He stated that every chapter needed to be updated because of new federal laws.

*Representative Smidt moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Revenue and Regulation: Division of Securities. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**Department of Agriculture: Division of Agricultural Services** - Update rules to meet the 2003 Pasteurized Milk Ordinance; update manufacturing grade rules pertaining to the production of milk and milk products; update rules regarding the quarantine against Karnal bunt, a wheat disease; and update the noxious weed list.

**Mr. Darwin Kurtenbach** reviewed the proposed rules.

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

**Department of Transportation** - Extend a 30 mph speed zone in Marshall County to reduce speeds along State Highway 27 at the south edge of Britton.

**Ms. Karla Engle** explained the need for the proposed rule change.

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

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

**Ms. Laurie Gill** distributed and explained the revised fiscal note (**Document #1**).

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

**Board of Regents** - Adopt rules to implement the South Dakota Opportunity Scholarship program.

**Dr. Tad Perry** and **Ms. Janelle Toman** reviewed the proposed rules.

### **Public Testimony**

Mr. Decker distributed a memo dated June 1, 2004, from **Mr. James Shekleton** in response to questions raised about the exclusion of home school children in the proposed rules (**Document #2**). Mr. Shekleton stated "*the definition of 'high school' used in the proposed rules embodies no policy judgment whatever. The rule definition correctly applies Legislative language that limits Scholarship eligibility to high school graduates, and does so by adopting the South Dakota Department of Education definitions that apply uniformly to the affairs of public and nonpublic schools throughout the state.*" He also stated "*the proper course of action lies in new legislation that will change the underlying law.*"

**Mr. Mark DeVries**, Belevidere, Alternative Instruction Association, commented that the Board of Regents has done a good job setting up the scholarship program and that he believes the problems with the alternative instruction can be worked out.

**Mr. Gregg Koenis**, Rapid City, South Dakota Christian Home Educators, testified in opposition to the proposed rules. He stated that the definition of "high school" automatically excludes home school children from the scholarship program.

Mr. Decker distributed correspondence received from **Mr. Scott A. Woodruff**, Purcellville, Virginia, Home School Legal Defense Association, in opposition to the proposed rules (**Document #3**). Mr. Woodruff asked that the committee replace 24:40:13:01(7) with the following language: "*'High school' means a program of instruction in grades 9 through 12 whether that instruction is provided through an accredited or nonaccredited school, approved or non-approved school, public or private school, or alternative instruction program.*"

At the request of the committee, Mr. Decker distributed a copy of *Chapter 136 (SB 11) - South Dakota Opportunity Scholarship Program reformed* - and §§ 13-55-30 to 13-55-36, inclusive (**Document #4**).

Following discussion, it was the consensus of the committee that the definition of "high school graduate" and the documentation of coursework taken by alternative educators should be addressed during the next legislative session.

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

**Department of Education: Board of Education** - Amend rules to give the department the authority to grant endorsement level approval, rather than individual universities; allow students with a previous content specific major to take additional coursework in pedagogy to complete their education degrees and pass a content exam to verify their content knowledge; revise the rules so they are content standards based and allow preparing institutions the flexibility to vary their courses to meet the content standards; and allow principals to obtain preschool-12 certification.

**Ms. Melody Schopp** reviewed the proposed rules. She stated that the board deferred action on the teacher preparation program rules until a later date.

*Senator McCracken moved, seconded by Representative Hunhoff, 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: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**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. Scott Peterson** reviewed the changes to the proposed definition and the disclosure form **(Document #5)**.

### **Public Testimony**

**Mr. Jerry Voegler**, Pierre, Executive Director, South Dakota Manufactured Housing Association, testified in support of the proposed rules. He stated that all of the issues had been addressed and that the product is improved and better for all parties concerned.

**Mr. Dick Howard**, Pierre, Executive Director, South Dakota Association of County Commissioners, testified in opposition of the proposed rules. He distributed copies of his recent correspondence with the department regarding the proposed changes **(Document #6)**. Mr. Howard stated that the counties have opposition to the funding and the titling/taxation issues. He stated that in 1989 changes were made to SDCL 32-3-1 and 32-3-3.1 that require all mobile homes and all manufactured homes to be initially registered and titled and that the 3% initial registration fee be paid. Mr. Howard stated that the proposed rules raise issues with what is already in statute regarding manufactured homes and sectional homes.

Following discussion, members of the committee agreed that the issues need to be addressed during the next legislative session.

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

**Department of Health: Board of Funeral Services** - Amend rules regarding contested cases concerning license suspension or revocation matters; clarify certain definitions; broaden the prohibition against false listing and false advertising by limiting the use of the advertising phrase "locally owned and operated"; clarifying all funeral services contract requirements; adding circumstances under which an unembalmed body may be kept for a period greater than 24 hours; updating the traineeship procedures and requirements; updating the license application and examination process; impose costs and fees associated with certain inspections; insert a requirement as to when all crematories shall be opened for inspection; clarify refrigeration requirements; and delete redundant and outdated rules and statutory citations.

**Mr. Mike Wheeler**, Rapid City, and **Mr. Scott Isburg**, Pierre, reviewed the proposed rules.

Representative Hunhoff suggested that the board address the issue of how many times an exam can be retaken before requiring a refresher course.

*Senator McCracken moved, seconded by Representative Smidt, to approve the rules proposed by the Department of Health: Board of Funeral Services. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**Department of Labor: Board of Technical Professions** - Amend rules that will make it possible to use applications interactive over the Internet, update references, change definitions, allow test vendors, permit students with five semesters of engineering to take the FE exam, provide for licensees to reactivate and reinstate, retake land surveying exam, add rules for fire alarm systems, and clarify expectations from licensees on exempt projects.

**Ms. Ann Whipple**, Rapid City, and **Mr. Wallace Larsen**, Pierre, reviewed the proposed rules.

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

**Secretary of State: Board of Finance** - Amend rules to make the reimbursement rate for motor vehicle transportation the same for an automobile, motorcycle, pick-up truck, cargo or passenger van, or sport utility vehicle and to increase the reimbursement rates allowed for State of South Dakota employee and officer use of privately-owned motor vehicles while on official business outside the city limits of the person's designated post of duty.

**Mr. Rodger Leonard** reviewed the proposed rules. He stated that the mileage reimbursement rates were last updated five years ago.

*Senator McCracken moved, seconded by Representative Smidt, to approve the rules proposed by the Secretary of State: Board of Finance. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**Department of Corrections** - Amend rules to modernize the Parole Service's procedures and the release date calculation operational procedures.

**Mr. Ed Ligtenberg**, Sioux Falls, reviewed the proposed rules and distributed a summary of the changes (**Document #7**).

*Senator Bogue moved, seconded by Senator Dennert, to approve the rules proposed by the Department of Corrections. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**Department of Corrections: Board of Pardons and Paroles** - Amend rules to modernize the Parole Board's operational procedures.

**Mr. Ligtenberg** reviewed the proposed rules.

*Representative Engels moved, seconded by Senator McCracken, to approve the rules proposed by the Department of Corrections: Board of Pardons and Paroles. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**Department of Labor: Division of Labor and Management** - Update the Workers' Compensation fee schedule.

*Representative Engels moved, seconded by Representative Smidt, to add the Department of Labor: Division of Labor and Management to the agenda that was revised 6-1-04 (Department of Labor was on the original agenda). Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

**Mr. James Marsh** apologized for his failure to have the proposed rule served on the committee in a timely manner.

Senator Bogue asked the department to incorporate by reference a date certain to the reference manual.

*Senator Bogue moved, seconded by Representative Smidt, to send back the rules proposed by the Department of Labor: Division of Labor and Management for further clarification and timely service. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

### **Small Business Impact Statement Form**

Mr. Decker distributed a proposed Small Business Impact Statement form (SBIS) that was the result of meeting with various interested parties (**Document #8**). Mr. Decker stated that Ms. Wellhouse inquired after the meeting if an additional box should be added to (1) if there was no impact on a small business. **Mr. Bob Riter, Jr.**, Pierre, representing the National Federation of Independent Business, stated that he did not believe it was necessary to add another box because the law states you only have to provide a SBIS if there is an impact. Senator Bogue stated that it could be like a fiscal note, agencies could always include them.

*Representative Smidt moved, seconded by Senator Dennert, that the proposed Small Business Impact Statement Form be adopted as presented. Motion prevailed unanimously on a roll call vote, with 6 ayes. Members voting aye: Bogue, Dennert, Engels, Hunhoff, McCracken, and Smidt.*

The next Rules Review Committee meeting will be held on Tuesday, August 3, 2004.

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

The meeting adjourned at 1:02 p.m.



All Legislative Research Council committee minutes and agendas are available on the South Dakota Legislature's Homepage (<http://legis.state.sd.us>). Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at MyLRC (<http://legis.state.sd.us/mylrc/index.cfm>).