



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

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**Two Hundred Sixty-fifth Meeting  
Monday  
January 9, 2006**

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

The two hundred sixty-fifth meeting of the Rules Review Committee was called to order by Chair Representative Jean Hunhoff at 1:05 p.m. CT, January 9, 2006, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jim Hundstad, and Orville Smidt (Vice-Chair); Representatives Jean Hunhoff (Chair), Roger Hunt, and Bill Thompson. Senator Eric Bogue was present following the roll call.

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 Hundstad moved, seconded by Representative Thompson, that the minutes of the December 6, 2005, meeting be approved. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunhoff, Hunt, Smidt, and Thompson. Member excused: Bogue.*

### **Rules Reviewed**

**Department of Revenue and Regulation: Gaming Commission** - Amend Deadwood Gambling Rules to eliminate language in the rules relating to copyrighting, patenting and rights to the game, as well as requirements that the table display the appropriate layout for Hold 'em eighty-eight, Three-card poker, Let it ride and let it ride bonus including three card bonus optional side bet, Caribbean stud poker, Bonus 6 poker, Twisted Pineapple poker, Texas Shootout poker, a variation of Texas Hold 'em poker, Silverado Study poker, Four-Card poker, and Hold 'em 212 poker and adopt a variation of play of the game of poker known as Heads Up Poker Challenge; and amend a rule to recognize that bonus awards may be based on not only a specific wager, but also on a specific event and to clarify the procedures adhered to in slot machine promotional and bonus systems.

**Mr. Mike Shaw**, Pierre, attorney for the Gaming Commission, and **Mr. Craig Sparrow** reviewed the proposed rules.

*Senator Bogue moved, seconded by Representative Hunt, 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: Bogue, Hundstad, Hunhoff, Hunt, Smidt, and Thompson.*

**Department of Health** - Adopt and amend rules to add or clarify definitions, terms, and statements. In addition, rules will more closely comply with federal regulations and define the scope of article 44:03 (Radiation Safety), 44:04 (Medical Facilities), and 44:58 (Drug Control) to improve operator safety on x-ray equipment, improve public safety, clarify the experience of social service designee, amend reporting requirements to reflect current federal requirement, clarify use of chemicals, require safe food service, permit additional laundry processes, permit additional ventilation options for clean storage rooms, permit flexibility in removing putrescible garbage, improve occupant protection, expand qualifications for an assisted living center administrator, clarify personnel education, clarify tuberculin skin testing and history and physical examination requirements, provide a phase-in time period for new dietary guidelines, rename dining assistance program, clarify the purpose of social services in nursing facilities, remove vapor barrier and drain tile requirements, redefine purpose of wall finishes, revise exhaust ventilation requirements for cooking appliances, repeal soil treatment for termite control, introduce requirement for composition of interdisciplinary team for self-administration of drugs, remove the requirement regarding income of adult foster care owners, prohibit the use of portable space heaters and portable halogen lamps in adult foster care homes, update references, reverse distributor registration, and update theft report requirements.

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

With regard to the Radiation Safety rules, Representative Hunt stated that 44:03:01:18 was overly broad, not based on the general authority cited, and dealt with an area that was not the department's area of expertise. Following a brief discussion of the intent of the proposed rule, *Representative Hunt moved, seconded by Senator Hundstad, to approve the Radiation Safety rules proposed by the Department of Health with the exception of 44:03:01:18 which shall revert back to a prior step for further clarification. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Bogue, Hundstad, Hunhoff, Hunt, Smidt, and Thompson.*

### **Public Testimony**

**Mr. Mark Deak**, Sioux Falls, representing the South Dakota Health Care Association, spoke in support of the proposed rules regarding Medical Facilities.

*Senator Smidt moved, seconded by Senator Bogue, to approve the Medical Facilities rules proposed by the Department of Health. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Bogue, Hundstad, Hunhoff, Hunt, Smidt, and Thompson.*

Following a discussion on what would be considered a "significant loss" of a controlled substance and to whom the loss should be reported in 44:58:07:05, *Representative Hunt moved, seconded by Senator Bogue, to approve the Drug Control rules proposed by the Department of Health with the exception of 44:58:07:05 which shall revert back to a prior step for further clarification. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Bogue, Hundstad, Hunhoff, Hunt, Smidt, and Thompson.*

**Department of Health: Board of Examiners in Optometry** - Amend rules to increase by \$50 the annual renewal fee; clarify the code of ethics regarding division of fees by an optometrist; and clarify and implement a more objective standard regarding business relationships of an optometrist.

The Board of Examiners in Optometry, represented by **Ms. Naomi Cromwell**, Pierre, attorney, **Dr. Dan Watson**, Sturgis, Secretary, and **Dr. James Olson**, Aberdeen, President, explained the proposed rule changes.

Following a brief discussion on the need for a fee increase, *Senator Bogue moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Health: Board of Examiners in Optometry with the exception of 20:50:02:08 which shall revert back to a prior step for further justification of the necessity for a fee increase and any recommendations from an auditor regarding a need for a reserve balance. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bogue, Hundstad, Hunhoff, Hunt, and Thompson. Member excused: Smidt.*

**Department of Game, Fish and Parks** - Amend a rule to increase the daily electrical charge imposed at all campground sites having electricity.

**Mr. Doug Hofer** explained the proposed rule.

Following a brief discussion of the necessity of the electrical fee increase, Senator Bogue stated that there was some justification for the fee increase; however, with the healthy fund balance that the department has, he would not support the fee increase.

*Senator Hundstad moved, seconded by Representative Thompson, to approve the rule proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 4 ayes, 1 nay, and 1 excused. Members voting aye: Hundstad, Hunhoff, Hunt, and Thompson. Member voting nay: Bogue. Member excused: Smidt.*

**Department of Tourism and State Development: State Historical Society** - Amend a rule to set standard fees for microfilm, photographic shipping, handling and processing, and for staff assistance and record searches.

**Mr. Jay Vogt** explained the proposed fee increase and distributed fiscal information for FY 04 and FY 05 (**Documents 1, 2 and 3**).

Following a brief discussion on the fee increase, Senator Bogue stated that he understands the logic of the user paying for the services; however, as required by statute, the committee had not been served the fiscal information prior to the meeting so he would not be supporting the proposed rule change.

*Representative Thompson moved, seconded by Senator Hundstad, to approve the rule proposed by the Department of Tourism and State Development: State Historical Society. Motion prevailed on a roll call vote with 4 ayes, 1 nay, and 1 excused. Members voting aye: Hundstad, Hunhoff, Hunt, and Thompson. Member voting nay: Bogue. Member excused: Smidt.*

**Department of Revenue and Regulation: Division of Insurance** - Amend rules to modify the requirements when paper copies of life replacement notices must be provided to applicants for life insurance; require disclosure of policy provisions allowing for premium increases in certain advertisements and solicitations; require disclosure of policy provisions allowing for premium increases in certain advertisements for Medicare supplement insurance; require disclosure of policy provisions allowing for premium increases in certain advertisements for health insurance solicitation; and increase the allowable credit for certain continuing education coursework.

**Mr. Randy Moses** reviewed the proposed rules.

*Representative Hunhoff moved, seconded by Representative Thompson, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Hundstad, Hunhoff, Hunt, and Thompson. Members excused: Bogue and Smidt.*

**Bureau of Administration** - Amend rules to increase the maximum fees chargeable for legal publications required by state law.

**Mr. Jeff Holden** reviewed the proposed rules.

### **Public Testimony**

**Mr. David Bordewyk**, Brookings, representing the South Dakota Newspaper Association, testified in support of the rate increase. With the increase cost of newsprint and postal rates, he stated that the rate increase was necessary.

**Ms. Gail Brock**, Huron, representing the South Dakota Association of Towns and Townships, testified in opposition to the proposed rate increase. She asked the committee to consider legislation that would reduce the amount of required published information to help reduce expenses for local governments.

*Representative Hunhoff moved, seconded by Representative Thompson, to approve the rules proposed by the Bureau of Administration. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Hundstad, Hunhoff, Hunt, and Thompson. Members excused: Bogue and Smidt.*

**Department of Social Services: Office of Medical Services** - Amend rules to the Medicaid prescription drug program to require prior approval from the department for certain prescription drugs; based on recommendations from the department's Pharmaceutical and Therapeutics (P&T) committee, allow the department to establish a list of drugs that are subject to prior approval; require a provider to obtain approval from the department before supplying a drug subject to prior approval; when recommending drugs considered appropriate for placement on the prior approval list, require the P&T committee to include a preferred list of covered prescription drugs within the appropriate therapeutic class for a particular disease or condition and the criteria for prior authorization; before placing a drug on the prior authorization list, provide notice to interested parties offering an opportunity to present data, opinions, and arguments concerning placement of the drug on the list; provide a 30 day written notice to providers informing them of the intended placement of a drug on the prior authorization list, the implementation date, and therapeutically equivalent drugs that do not require prior authorization which may be substituted; deny payment if prior authorization is not obtained or a therapeutically equivalent drug is not substituted; in emergency situations, allow a provider to dispense an emergency supply of a drug that requires prior authorization if a prior authorization request cannot be submitted and a response received within 24 hours; establish an appeal process for denied requests; and repeal rules that allowed a physician to override the multiple-source drug payment limit if "brand necessary" or "brand medically necessary" was written on the prescription.

**Ms. Jill Wellhouse, Mr. Larry Iversen, and Mr. Mark Petersen** explained the proposed rules.

### **Public Testimony**

**Mr. Denny Duncan**, Parker, representing the Pharmaceutical Research and Manufacturers of America, testified in opposition to proposed rules 67:16:14:19 and 67:16:14:20. Mr. Duncan asked that in addition to "clinical efficacy, safety, and cost-effectiveness of the product" in 67:16:14:19 (3) that "not result in adverse medical conditions" be added. With regard to 67:16:14:20, Mr. Duncan asked that the definition of "an interested party" be expanded. He suggested the department notice the interested parties through the *South*

*Dakota Register.* Another suggestion was the development of a mechanism for an appeal process for interested parties if a drug is placed on the prior authorization list.

In response to Mr. Duncan's testimony, the department stated that an annual review was addressed in 67:16:14:19 and that there is an opportunity for public comments during the P&T meeting. The department believes that clinical efficacy and safety covers "adverse medical conditions" and the list of interested parties are sufficient. In response to noticing the P&T meeting through the *South Dakota Register*, the department is willing to work that out with LRC, if determined it is necessary. As to an appeals process, the department feels there does not need to be an additional appeals process. The department is capable of rejecting the P&T's recommendations and because of the federal funding, only certain drugs can be paid by Medicaid.

*Senator Hunt moved to approve the rules proposed by the Department of Social Services: Office of Medical Services.*

*Representative Hunhoff moved a substitute motion, seconded by Senator Hundstad, to approve the rules proposed by the Department of Social Services: Office of Medical Services with the exception of 67:16:14:20 which shall be reverted back to a prior step for reconsideration of an appeals process for when a drug is placed on the prior authorization list. Substitute motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Hundstad, Hunhoff, Hunt, and Thompson. Members excused: Bogue and Smidt.*

**Department of Social Services: Office of Economic Assistance** - Amend rules to the Food Stamp Program to increase the standard telephone allowance, the standard utility allowance, the limited utility allowance, and the one-utility allowance used by the department when computing the household's shelter expenses; and incorporate the latest changes to the monthly gross and net income eligibility standards, the household's maximum food stamp allotment, and the thrifty food plan as required by the United States Department of Agriculture, Food and Nutrition Service and used by the department when determining a household's eligibility for the Food Stamp Program and computing the amount of benefits a household is entitled to receive.

**Ms. Wellhouse** reviewed the proposed rules.

*Representative Hunt moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Social Services: Office of Economic Assistance. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Hundstad, Hunhoff, Hunt, and Thompson. Members excused: Bogue and Smidt.*

**Department of Environment and Natural Resources: Water Management Board** - Amend a rule that will designate the beneficial use of warmwater semipermanent and marginal fish life propagation waters and limited contact recreation waters to a segment of Long Creek, a tributary of the Vermillion River in Lincoln and Turner Counties.

**Mr. Patrick Snyder** explained the proposed rule change.

*Senator Hundstad moved, seconded by Representative Hunt, to approve the rule proposed by the Department of Environment and Natural Resources: Water Management Board. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Hundstad, Hunhoff, Hunt, and Thompson. Members excused: Bogue and Smidt.*

### **Next Meeting Date**

Mr. Decker stated that there will be an informal meeting scheduled prior to the end of session to tentatively set the schedule for the 2006 Interim.

### **Adjournment**

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

The chair adjourned the meeting at 5:17 p.m.

