



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

Amended 5/13/08

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**Two hundred eighty-sixth meeting  
Tuesday  
April 15, 2008**

**DDN – Pierre Cap A  
State Capitol  
Pierre, South Dakota**

**DDN – South Dakota State University #203  
101 Pugsley Center  
Brookings, South Dakota**

**DDN – Rapid City Regional Hospital, Education Services Dept.  
353 Fairmont Blvd.  
Rapid City, South Dakota**

**DDN – Sioux Falls University Center #282  
2205 Career Avenue  
Sioux Falls, South Dakota**

The two hundred eighty-sixth meeting of the Rules Review Committee was called to order by Chair Senator Orville Smidt at 8:09 a.m. CDT, April 15, 2008, via the Dakota Digital Network (DDN). DDN locations were: Cap A, State Capitol, Pierre, South Dakota; South Dakota State University #203, 101 Pugsley Center, Brookings, South Dakota; South Dakota School of Mines and Technology CB 109, 501 East St. Joseph Street, Rapid City, South Dakota; and Sioux Falls University Center #282, 2205 Career Avenue, Sioux Falls, South Dakota.

A quorum was determined with the following members answering the roll call: Senators James Hundstad, Jean Hunhoff (appearing telephonically), and Orville Smidt (Chair); and Representatives Roger Hunt (Vice-chair) and Bill Thompson. Representative David Lust joined the meeting at 9:15 a.m. CDT.

Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior 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 Hunt, that the minutes of the February 28, 2008, 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: Lust.*

## Rules Reviewed

**Department of Game, Fish and Parks** - Amend a List of Endangered Birds rule to change Peregrine falcon (*Falco peregrinus anatum*) to Peregrine falcon (*Falco peregrinus*) and Interior least tern (*Sterna albifrons athalassos*) to Interior least tern (*Sterna antillarum athalassos*); amend a List of Threatened Birds rule to change American dipper (*Circlus mexicanus*) to American dipper (*Cinclus mexicanus*) and Bald eagle (southern) (*Haliaeetus leucocephalus*) to Bald eagle (*Haliaeetus leucocephalus*); amend a List of Threatened Mammals rule to change Northern swift fox (*Vulpes velox hebes*) to Swift fox (*Vulpes velox*), River otter (*Lutra Canadensis interior*) to River otter (*Lontra Canadensis*), and delist Black Bear (*Ursus americanus*); amend a List of Endangered Fish rule to change Finscale dace (*Phoxinix neogaeus*) to Finescale dace (*Phoxinus neogaeus*); amend a List of Endangered Reptiles rule to change The lined snake (*Tropidoclonion lineatum*) to Lined snake (*Tropidoclonion lineatum*); and amend a List of Threatened Reptiles rule to change Eastern hognose snake (*Heterodon platyrhinus*) to Eastern hognose snake (*Heterodon platirhinus*).

**Department of Game, Fish and Parks** – Amend Hunter Safety Course rules to increase the amount allowed for reimbursement of expenses incurred by hunter safety course instructors from one dollar per student to three dollars per student and clarify that the amount so allowed is considered as being reimbursement of expenses rather than compensation for services; and amend Special Permits and Licenses to create a new chapter entitled Permit to Kill Non-game Birds and include a new administrative rule authorizing the department secretary to issue a special permit which would allow a designated permittee to kill non-game birds which are a threat to the public health, safety and welfare, or are doing damage to property.

**Mr. Tony Leif** reviewed the proposed rules that were finalized at the January commission meeting.

*Senator Hundstad 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 5 ayes, 1 excused. Members voting aye: Hundstad, Hunhoff, Hunt, Smidt, and Thompson. Member excused: Lust.*

**Department of Game, Fish and Parks** – Amend Parks and Public Lands rules to allow limited recreational horse use on Title VI Game Production Areas (GPA) and lakeside use areas (LUA) along the Missouri River. However, in areas where wildlife habitat has been developed, cultural resources or endangered species concerns exist, or where recreational horse use is determined to conflict with primary GPA or LUA purposes (wildlife production, wildlife habitat, public hunting, or other public recreation), recreational horse use may be restricted by posting. The amendments also would allow horses to be used for the hunting and retrieval of deer and elk on the Battle Mountain/Friendshuh Game Production Area; amend Public Water Zoning rules to modify the boundaries of the public swimming zone in American Creek Bay (Brule County); modify the boundaries of three public swimming zones (Stokes Thomas City Park, Memorial Park, and Jackson Park) on Lake Kampeska and change the designation of one of them (Jackson Park) from a public swimming zone to a no wake zone; eliminate two no wake zones on Pactola Reservoir (Pennington County), commonly

referred to as Boarding House Gulch and Musekamp Draw; create three no wake zones on McCook Lake (Union County); and create two no wake zones on Lewis and Clark Lake (Yankton County); amend Refuges to move the western boundary of the Sutton State Waterfowl Refuge from the water's edge to the center of the reservoir; amend Persons with Disabilities to allow the department secretary to issue special crossbow permits to persons who are "temporarily" unable to use a bow and arrow due to the loss of use of one or both arms or who is confined to a wheelchair; amend Endangered and Threatened Species to exempt persons who possess legally acquired or legally taken raptors from the requirement to obtain a state endangered species permit.

**Mr. Leif** reviewed the proposed rules. He noted that the commission voted to not allow limited recreational horse use on Title VI Game Production Areas (GPA) and lakeside use areas (LUA) along the Missouri River as proposed. The commission did support the changes that would allow horses to be used for the hunting and retrieval of deer and elk on the Battle Mountain/Friendshuh Game Production Area.

Senator Hunhoff asked if a rule regarding the use of a crossbow was necessary after the Legislature authorized the use of a crossbow in statute. Mr. Decker stated that the rule should be repealed if it is a duplication of what is in statute. Mr. Leif noted that the changes proposed to ARSD 41:09:12:01 - Special crossbow permit was to make the rule match what is currently in statute. Mr. Decker committed to review the requirements of the statute and the rule to determine if the rule is still necessary.

Senator Hunhoff also noted that the commission minutes did not reflect the action taken by the commission. In the future, all minutes should state the action taken (to adopt, to reject or to withdraw a rule).

Representative Hunt noted that in the last sentence in ARSD 41:03:01:14, "horsed" should probably be corrected to "horses".

*Representative Hunt moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunhoff, Hunt, Smidt, and Thompson. Member excused: Lust.*

**Department of Labor** - Amend Appendix B to the Workers' Compensation Fee Schedule.

**Ms. Heather Covey** reviewed the proposed rule change.

*Representative Thompson moved, seconded by Senator Smidt, to approve the rule proposed by the Department of Labor. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunhoff, Hunt, Smidt, and Thompson. Member excused: Lust.*

**Department of Transportation** - Amend the following: a speed zone in Pennington County on US Highway 16 in the city of Hill City to increase speed limits for traffic east of the east junction with the US 16 truck bypass; a speed zone in Lawrence County on US Highway 14A in the city of Deadwood

to reduce speed limits for traffic east of the junction with US 85; a speed zone in Edmunds County on US Highway 12 in the city of Bowdle to reduce speed limits for traffic along the area of recent commercial development west of town; and repeal a speed zone in Sully County on SD Highway 1804 to raise the speed limit from the current 55 miles per hour to 65 miles per hour.

**Mr. Bill Nevin** reviewed the proposed rules.

Senator Hundstad noted that the commission's minutes state that "bypass" was amended to "route"; however, the rule packet does not reflect that change. Mr. Nevin stated that it was a clerical error and will be corrected prior to filing.

*Senator Smidt moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Transportation. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunhoff, Hunt, Smidt, and Thompson. Member excused: Lust.*

**Department of Revenue and Regulation: Division of Insurance** - Amend rules to update the sources referenced in rule.

**Mr. Wendell Malsam** reviewed the proposed rule changes.

*Senator Smidt moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunhoff, Hunt, Smidt, and Thompson. Member excused: Lust.*

**Department of Revenue and Regulation: Gaming Commission** - Amend a Gaming Rule to allow the Executive Secretary to accept testing results of gaming testing laboratories to assist in determinations for approval of slot machines as long as the testing laboratory has current International Organization of Standardization certification and accreditation.

**Mr. Larry Eliason** reviewed the proposed rules.

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

**Department of Environment and Natural Resources: Water Management Board** – Amend rules regarding Underground Injection Control-Class III Wells to update the requirements an applicant must meet to obtain a state permit. The updates include more comprehensive requirements for the permit application, well construction, well mechanical integrity testing, plugging of wells and drill holes, baseline water equality sampling, remedial action, ground water restoration and postclosure activities.

**Mr. Bill Markley** reviewed the proposed rules.

Representative Lust asked if ARSD 74:55:01:09 would provide enough scrutiny when a permit is transferred. He asked that the board further review the rule and add another subsection regarding the financial ability of the transferee of the permit to meet the requirements of the permit.

Representative Hunt agreed and stated that this section contained many loop holes. He suggested that "may" ought to be "shall".

In response to another question regarding financial responsibility, **Ms. Roxanne Giedd** of the Attorney General's office explained that "may" was used because the imposition of financial assurance is not mandated in statute. If there is a surety bond condition in the permit, the new permittee would have to do the same. The permit is renewable every five years. The board is concerned that the five year term is not adequate and is reviewing this requirement.

### **Public Testimony**

**Mr. Mark Hollenbeck**, Edgemont, representing Powertech USA, testified in support of the proposed rules. He stated that South Dakota has extremely good regulations to protect the groundwater quality. In response to a question if any mining companies are looking at a certain parcel of land, Mr. Hollenbeck responded that Powertech USA is looking at an area about fifteen miles northwest of Edgemont along the Wyoming border.

**Mr. Larry Mann**, Rapid City, a registered lobbyist for Powertech USA, spoke in support of the proposed rules. He stated that the approval of the proposed rules would improve what is already on the books.

Representative Hunt asked staff to provide the committee an update on the agency review of the financial responsibility requirements in the rules at the December meeting in case any legislation is necessary to address the accountability issue.

*Representative Lust moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Environment and Natural Resources: Water Management Board. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunt, Lust, Smidt, and Thompson. Member excused: Hunhoff.*

**Department of Health: Health and Medical Services** - Amend a rule to ensure that Children's Special Health Services (CSHS) is using the current poverty guidelines in determining cost share eligibility as a part of financial assistance to eligible clients.

**Ms. Colleen Winter** reviewed the proposed rule change.

*Representative Hunt moved, seconded by Representative Thompson, to approve the rule proposed by the Department of Health: Health and Medical Services. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunt, Lust, Smidt, and Thompson. Member excused: Hunhoff.*

**Department of Education: Board of Education** - Amend Vocational Education rules to assure that current practices for training instructional staff at the post-secondary technical institutes are up-to-

date by changing from "vocational" to "career and technical", change the number of credits required to take in the first two years of teaching, determination of who can receive a two year and five year credential, and change in language for a one year credential; and amend National Board for Professional Teaching Standards Certification rules to add individuals deemed as school services specialists as well as administrators to be compensated for receiving National Board Certification.

**Mr. Mark Wilson** reviewed the proposed rules. It was noted that the rules regarding National Board for Professional Teaching Standards Certification had been withdrawn by the Board of Education.

*Senator Smidt moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Education: Board of Education. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunt, Lust, Smidt, and Thompson. Member excused: Hunhoff.*

**Department of Social Services: Medical Services** – Amend a rule to implement new requirements for reimbursement for prescription drugs under Medicaid. In ARSD 67:16:14:06.11 tamper resistant prescription pads must be used for the State Medicaid program to provide reimbursement. The rule provides standards to identify a tamper resistant prescription pad. (*This rule is adopted under the procedure provided in SDCL 1-36-20.*)

**Ms. Jill Wellhouse** reviewed the federally mandated rule. No committee action was necessary.

**Department of Social Services: Medical Services** - Implement rules to establish the Medicaid Family Support Waiver Services provided through the Division of Developmental Disabilities for the Department of Human Services and covered under the Department of Social Services. These rules will define terms; specify those family support services covered and the requirements for coverage; establish eligibility criteria; establish service restrictions; require a physician's statement indicating the frequency of the service; require the service coordinator to coordinate the development of the individual's service plan; require providers to be certified by the Division of Developmental Disabilities and have a signed provider agreement with the Department of Social Services; specify that the Department of Human Services, Division of Developmental Disabilities will establish the rates of payment for service coordination and respite, personal and companion care services and specify that the remaining covered services will be paid based on the charges billed for the services provided; require that claims submitted for payment contain the applicable procedure codes for the covered services provided; specify the information that must be included on a claim submitted to the Department for reimbursement; establish record retention requirements; specify that a provider must allow state and federal agencies access to information maintained by the provider that relates to the services provided; reference additional program rules that apply; and provide for utilization review of the services and supplies provided.

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

*Senator Smidt moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Social Services: Medical Services. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunt, Lust, Smidt, and Thompson. Member excused: Hunhoff.*

### Meeting Schedule

The next meeting of the Interim Rules Committee will be Tuesday, May 13, 2008, in LCR 1 and 2.

### Adjournment

*Senator Hundstad moved, seconded by Representative Lust, that the meeting be adjourned. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Hundstad, Hunt, Lust, Smidt, and Thompson. Member excused: Hunhoff.*

The chair adjourned the meeting at 10:28 a.m. CDT.

