



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

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**Three hundred first meeting  
Wednesday  
November 18, 2009**

**Room 414  
State Capitol  
Pierre, South Dakota**

The three hundred first meeting of the Rules Review Committee was called to order by Chair Representative Roger Hunt at 12:21 p.m. CST, November 18, 2009, in Room 414 of the State Capitol, Pierre, South Dakota and via the Dakota Digital Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., Room LIB 117, Aberdeen, South Dakota; Department of Transportation, 901 Dakota St., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; SD School of Mines and Technology, 501 E. St. Joseph St., Room CB 109, Rapid City, South Dakota; and University Center, 2205 Career Ave., Room 282 S, Sioux Falls, South Dakota.

A quorum was determined with the following members answering the roll call: Senators James Hundstad, and Jean Hunhoff (Vice-chair); and Representatives Peggy Gibson, Roger Hunt (Chair), and David Lust. Senator Mike Vehle was present following the roll call. All members except Senator Hunhoff appeared via the DDN.

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. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

### **Approval of Minutes**

*Representative Lust moved, seconded by Representative Gibson that the minutes of the September 29, 2009, meeting be approved. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, and Lust. Member excused: Vehle.*

### **Staff Report/Next Meeting Date**

Mr. Doug Decker proposed that the final meeting of the Interim Rules Review Committee, which had been tentatively scheduled for December 15<sup>th</sup>, be rescheduled to December 21<sup>st</sup> in order to accommodate the proposed rule packages that have been filed with LRC to date. It was noted that there would not be a meeting the day before the first day of session.

Following a brief discussion, Chair Hunt changed the meeting date to Monday, December 21<sup>st</sup>.

### **Rules Reviewed**

**Department of Public Safety: South Dakota 911 Coordination Board** - Adopt rules to establish operational, technical, and procedural standards for public safety answering points (PSAPs), to establish allowable costs associated with the operation of a PSAP, and to establish financial reporting criteria for PSAPs.

**Mr. Ted Ruffledt, Jr.**, Rapid City, Deputy Director of the Pennington County 911 Board and a member of the SD 911 Coordination Board, and **Mr. Michael Houdyshell** reviewed the proposed rules.

### **Public Testimony**

**Mr. Darrin Smith**, Sioux Falls, American Heart Association, spoke in support of the proposed rules.

**Mr. Barry Hillestad**, Webster, Day County Sheriff, provided written testimony in opposition to the two dispatcher rule (**Document 1**).

**Mr. Kelly Serr**, Bison, Perkins County Sheriff, provided written testimony in opposition to some of the proposed rules (**Document 2**).

**Mr. Mike Nehls**, Mobridge, Mobridge Police Chief and also representing North Central E911, spoke in opposition to the proposed two person unfunded mandate.

**Senator Corey Brown**, Gettysburg, District 23, spoke in opposition to adopting rules that include underfunded mandates to other political subdivisions. He also voiced concerns regarding the Bureau of Finance and Management's (BFM) fiscal note responsibility and the lack of BFM's due diligence in providing a copy of their fiscal note to the South Dakota Municipal League, the Associated School Boards of South Dakota and the South Dakota County Commissioners Association as provided in SDCL 1-26-4.2.

**Mr. Jim Fedderson**, Beresford, Mayor, spoke in opposition to the proposed two person unfunded mandate rule. He stated that it will cost the City of Beresford \$229,000 a year to comply. The enhanced system they currently have works well.

**Mr. Larry Christensen**, Beresford, Chief of Police, spoke in opposition to the mandate that they have to have more officers on duty. He stated there are other issues that need to be addressed.

**Mr. Tom Frieberg**, Beresford, City Attorney, spoke in opposition to the proposed rules. He suggested that population base needs should be reviewed. The proposed rules will mean loss of great local service and local control.

**Ms. Marleen Huckabay**, Redfield, representing the Spink County Sheriff's Office, spoke in opposition to the proposed rules. She stated there are still many questions that need to be addressed.

A brief discussion was held regarding the issues addressed during the public testimony.

*Senator Hundstad moved to approve the rules proposed by the Department of Public Safety: South Dakota 911 Coordination Board with the exception of ARSD 50:02:04:02 (2) to be sent back for additional hearing. Motion died for lack of a second.*

*Representative Gibson moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Public Safety: South Dakota 911 Coordination Board. Motion prevailed on a roll call vote with 5 ayes, 1 nay. Members voting aye: Gibson, Hunhoff, Hunt, Lust, and Vehle. Member voting nay: Hundstad.*

**Department of Health: Board of Pharmacy** – Repeal and adopt rules to protect all patients (including the home care patient) regarding safety standards for sterile compounding.

**Mr. Ron Huether**, Sioux Falls, Executive Secretary, Board of Pharmacy, reviewed the proposed rules.

*Senator Hundstad moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Health: Board of Pharmacy. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Health: Health Systems Development and Regulation** - Amend rules to assure the public health and safety requirements are met in the licensed lodging and campground facilities regulated by the department (egress windows).

**Mr. Tom Martinec** and **Mr. Clark Hepper** reviewed the proposed rules.

### **Public Testimony**

**Mr. John Irvine**, Pierre, representing Building Officials of South Dakota, spoke in support of the proposed rules. He also provided an explanation to a question on why there was an egress window exception provided for in ARSD 44:02:05:29.

*Representative Hunt moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Health: Health Systems Development and Regulation. Motion prevailed*

*unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Tourism and State Development: State Historical Society** – Amend, update, and clarify definitions that pertain to historic preservation; set standard fees for archaeological services and eliminate obsolete interlibrary book loaning services; revise the fee structure for state historic property tax moratorium processing fees and increase the existing fees; increase the fee for maps that are included with National Register of Historic Places nomination forms; update the effective date of the referenced regulations and publications; update the name and effective date of the referenced regulations and publications; and change the wording to reflect the current requirements for historic tax certification applications.

**Mr. Jay Vogt** reviewed the proposed rules.

*Representative Hunt moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Tourism and State Development: State Historical Society. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Social Services: Economic Assistance** - Amend Supplemental Nutrition Assistance Program (SNAP) rules to update definitions and references; conform with new simplified reporting requirements; repeal obsolete provisions that are inapplicable under new reporting requirements; and remove references and policies related to retrospective budgeting; amend Low Income Energy Assistance Program (LIEAP) rules to update definitions; allow categorically income eligible households automatic eligibility; update a reference; and exempt children under age 19 from duplicate payment provisions in certain situations.

**Ms. Laura Ringling** reviewed the proposed rules.

*Representative Lust moved, seconded by Senator Hundstad, 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: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Social Services: Economic Assistance** - Amend Temporary Assistance for Needy Families (TANF) Program rules to update definitions and references; clarify existing procedures; clarify policy related to the protection and release of confidential information; conform with new simplified reporting requirements; repeal obsolete provisions that are inapplicable under new reporting requirements; remove references and policies related to retrospective budgeting; and update work activity provisions.

**Ms. Ringling** reviewed the proposed rules.

*Senator Hundstad moved, seconded by Representative Hunt, 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: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Agriculture: Agricultural Services** - Amend rules to define milk buyer and to charge the assessment fee as allowed in SDCL 40-32-25.

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

*Senator Hunhoff moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Agriculture: Agricultural Services. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Revenue and Regulation: Banking Commission and Division of Banking** - Repeal Article 20:02, Savings and Loans, in its entirety; amend the application fee amounts paid by state chartered banks to move a main office or branch, to change control of a bank and adds a new fee for the establishment of a mobile branch bank; increase the annual supervision fee paid by trust companies chartered in South Dakota and to require the Division to provide a fee calculator on its website for use by the trust companies; add an original license fee and renewal license fee for a mortgage brokerage license; implement a fee structure to pay the costs associated with the nationwide mortgage licensing system and registry; implement pre-licensing education and testing, amend current continuing education for mortgage loan originators and to create a challenge process for information entered onto the nationwide mortgage licensing system and registry by the Division; and increase the annual renewal fee for entities licensed to transmit money in South Dakota pursuant to chapter 51A-17.

**Mr. Bret Afdahl** reviewed the proposed rules.

*Representative Hunt moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Revenue and Regulation: Banking Commission and Division of Banking. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Revenue and Regulation: Division of Insurance** – Adopt rules to include contracted Centers of Excellence in access plans filings and require health carriers to utilize registered Centers of Excellence; define medically necessary leaves of absence for pendent students enrolled on individual health benefit plans and the coverage rights of those students during that leave of absence; and define medically necessary leaves of absence for dependent students enrolled on group health benefit plans and the coverage rights of those students during that leave of absence.

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

*Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Education: Board of Education** - Amend Special Education rules to add the new supplemental regulation from IDEA and update language regarding FERPA; amend a Financial Matters rule to provide an equitable method for reimbursing providers for their driving time to a location where services will be delivered; amend a Developmental Delay rule to clarify eligibility; amend Accreditation and School Improvement rules to eliminate the option of a basic or standard high school program to comply with SB 187; and amend an Approval Process for Teacher Education Programs rule to allow elementary teachers to participate in the certification only program.

**Ms. Deb Barnett, Ms. Ann Larsen, Ms. Susan Sheppick, and Mr. Mark Wilson** reviewed the proposed rules.

*Senator Hundstad moved, seconded by Senator 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: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Public Utilities Commission: One-Call Notification Board** - Amend rules to identify and classify those facilities that have the potential to cause significant environmental or safety hazards such as those transporting petroleum products and hazardous materials separate from all other underground facilities; clarify the organizational structure of the Board; require all underground facilities to be maintained in a database separate from all other facilities; allow the excavator to request notification when the facility operator identifies, prior to field dispatch, that they do not have any underground facilities in the excavation area; require the Center, at the close of the locate request, to notify the excavator making a locate request when there may be high profile facilities in the area where they have identified an intent to excavate; and provide a detailed process for identifying and excavating in proximity to a high profile underground facility and reducing the possibility of damage to this type of facility.

**Mr. Larry Englerth and Mr. Larry Janes**, past and present Executive Directors for the One-Call Notification Board, reviewed the proposed rules.

### **Public Testimony**

**Mr. Jeff Carmon**, Sioux Falls, Qwest Communications, expressed concern with the mandate that high profile facilities would have to be identified in a database that will be available to the public.

Following a brief discussion on ARSD 20:25:01:01(f) as it was written and the intention of the board, Representative Lust suggested that ARSD 20:25:01:01(f) be rewritten in the future to state that it is discretionary not mandatory.

*Representative Hunt moved, seconded by Senator Hundstad, to approve the rules proposed by the Public Utilities Commission: One-Call Notification Board. Motion prevailed on a roll call vote with 5 ayes, 1 nay. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, and Lust. Member voting nay: Vehle.*

### **Committee Discussion/Staff Directive**

Senator Hunhoff questioned whether there is a "better way" for agencies to notice their public hearings as the word does not seem to reach interested parties until the proposed rules are before this committee. Following a brief discussion, staff was directed to research NCSL and CSG to see what other states require for notice of hearings.

### **Adjournment**

*Representative Gibson moved, seconded by Senator Hunhoff, that the meeting be adjourned. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

Chair Hunt adjourned the meeting at 4:11 p.m.

