



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

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**Three hundred twenty-second meeting  
Tuesday  
May 29, 2012**

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

The three hundred twenty-second meeting of the Rules Review Committee was called to order by Chair Senator Jean Hunhoff at 9:08 a.m. CDT, May 29, 2012, in Room 413 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jean Hunhoff (Chair), and Mike Vehle; and Representatives Peggy Gibson and Roger Hunt. Senator Angie Buhl joined the meeting following roll call. Representative R. Shawn Tornow (Vice Chair) was absent. 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 recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

### **Approval of Minutes**

*Representative Gibson moved, seconded by Representative Hunt, that the minutes of the April 3, 2012 meeting be approved. Motion prevailed on a voice vote.*

### **Rules Reviewed**

**Department of Human Services: Division of Rehabilitation Services** – Amend rules to update the definition section to include a reference to the Division of Rehabilitation Services; update language; clarify and add timelines to the administrative review, fair hearing, and mediation process; provide options for the applicant or consumer of vocational rehabilitation services; update and clarify the attendant services application process and hours of attendant services to reflect current practices; and to remove reference to the application process in current rule.

**Mr. Grady Kickul** reviewed the proposed rules.

*Representative Hunt moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Human Services: Division of Rehabilitation Services. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Agriculture: Division of Agricultural Services** – Amend rules to require maintaining interstate shipment of milk and milk products as determine by FDA Milk Safety Branch.

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

*Representative Gibson moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Agriculture: Division of Agricultural Services. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Agriculture: SD Animal Industry Board** – Amend rules to relax bovine tuberculosis and brucellosis testing requirements for captive cervids moving between permitted premises within the state; change the surveillance program for Chronic Wasting Disease (CWD) in captive cervid herds from a mandatory program to a voluntary program, and to reduce the amount of surveillance required to maintain recognition of herds which have voluntarily conducted CWD surveillance for at least five years.

**Dr. Dustin Oedekoven** reviewed the proposed rules.

*Representative Gibson moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Agriculture: SD Animal Industry Board. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Agriculture: SD Weed and Pest Control Commission** – Amend a rule to add oxeye daisy to the local noxious weed and declared pest list.

**Mr. Kurtenbach** reviewed the proposed rule.

*Senator Hunhoff moved, seconded by Representative Gibson, to approve the rule proposed by the Department of Agriculture: SD Weed and Pest Control Commission. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Game, Fish and Parks** – Amend a Park License rule to increase the daily fee for not displaying a valid park entrance license from \$10 to \$15 in Custer State Park (fee remains \$10 per day in all other state parks) and allow the operator or registered owner of a vehicle to apply the entire amount of the cost assessed for not displaying a valid park entrance license toward the purchase of an annual park entrance license; amend a Black Hills Elk Hunting Season rule to adjust the number of licenses available for "any elk" and "antlerless elk" licenses and adjust the boundary of Unit 7 to include the area located within a line beginning at I-90 and Pleasant Valley Road, then east and south on Pleasant Valley Road to Tilford Road, then west on Tilford Road to I-90; amend a Custer State Park Elk Hunting Season (Any Elk) rule to adjust the number of licenses available; amend Custer

State Park Deer Hunting Season rules to eliminate the 35 one-tag "muzzleloader antlerless whitetail deer licenses" in Unit CUD-CU3, and remove the language in existing rule which establishes a 300 foot no hunting zone along paved public access roadways in Custer State Park; amend an Archery Elk Hunting Season rule to adjust the number of licenses available for "any elk" and "antlerless elk" licenses, and adjust the boundary of Unit 7 to include the area located within a line beginning at I-90 and Pleasant Valley Road, then east and south on Pleasant Valley Road to Tilford Road, then west on Tilford Road to I-90, and eliminate the archery season for Unit 30A; amend a Custer State Park Late Archery Elk Hunting Season rule to reduce the number of "any elk" licenses which will close the Custer State Park late archery elk hunting season; amend a Black Hills Bighorn Sheep Hunting Season rule to reduce the number of licenses available in Unit 1; and amend a Prairie Elk Hunting Season rule to adjust the total number of licenses available for "any elk" and "antlerless elk" licenses, add Unit 27 (Fall River County) to include that portion of Fall River County south of the Cheyenne River and west of Highway 385 (Season dates: September 1-October 31), adjust the season dates for Unit 09A (portions of Butte and Lawrence Counties) from September 1-October 31 to provide for a split season of September 15-October 31 and December 1-5, and adjust the season dates for Unit 30A (portions of Gregory County and portions of Boyd County, NE) for the 2012 season to September 29-October 28 and December 1-21, which will make the season dates coincide with the dates established by Nebraska for this shared elk hunting unit.

**Mr. Doug Hofer** and **Mr. Tony Leif** reviewed the proposed rules.

*Representative Gibson 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 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Attorney General: Law Enforcement Officers Standards and Training Commission** – Amend Police Canine Team Certification rules to permit canine teams to be trained and certified by other agencies such as the Bureau of Alcohol, Tobacco and Firearms, the International Police Bloodhound Training Institute, the International Congress of Police Service Dogs and the United States Police Canine Association; recognize standards established by other agencies for the training of canines; and eliminate any application fees for canine teams and eliminate the requirement to maintain the South Dakota Police Canine Association, Inc.

**Mr. Paul Bachand**, Pierre, Attorney representing the Commission, and **Mr. Jon Bierne** reviewed the proposed rules.

*Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Attorney General: Law Enforcement Officers Standards and Training Commission. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Labor and Regulation: Appraiser Certification Program** – Amend rules to define written examination; change supervising to supervisory appraiser; allow only state-certified residential and state-certified general appraisers to supervise state-registered appraisers; allow state-registered appraisers to assist only state-certified residential and state-certified general appraisers in the preparation of appraisals; eliminate state-licensed appraisers from the supervisory role; require supervisory appraisers to be in good standing and have three years of experience; allow a supervisory appraiser to renew the supervisory certificate within six months of expiration and pay a late renewal fee; require supervisory appraisers to sign the state-registered appraiser's appraisal log; require appraisers to complete the education and experience required prior to completing the appraiser examination; establish time limit by requiring state-registered appraisers to complete education five years prior to application; distinguish appraisal education from college education requirements for the state-licensed appraiser; require college level courses for the state-licensed appraiser classification; renumber rules; require a Bachelor's degree for state-certified residential appraiser classification applicants; eliminate college level courses in lieu of degrees for the state-certified residential and state-certified general appraiser classifications; allow credit toward qualifying education requirements if an applicant holds a real estate degree; establish mandatory disciplinary actions for certain reasons; prohibit duplication of continuing education courses during the continuing education reporting period; add acceptable continuing education course topics; require instructors of the uniform standards courses to be in good standing; and require equivalent uniform standards courses to be approved by the Appraiser Qualifications Board.

**Ms. Sherry Bren** reviewed the proposed rules.

Following a discussion regarding a proposed rule on mandatory disciplinary actions, *Senator Hunhoff moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Labor and Regulation: Appraiser Certification Program, with the exception of ARSD § 20:14:11:04. This rule is reverted back to a prior step for additional clarification. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Labor and Regulation: Division of Insurance** – Amend rules to update sources referenced in rule; incorporate the new 2012 Medicare deductibles and update the rules in accordance with federal regulations; allow for insurers to utilize persons other than insurance agents to complete applications for insurance; and modify the number of continuing education hours that crop insurance agents may obtain from a single source.

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

Committee members expressed their concerns with allowing a third party to contact elderly clients and ask confidential health questions on behalf of insurance companies. It was expressed that some type of oversight regarding who the contacts are needs to be addressed.

*Representative Gibson moved to approve the rules proposed by the Department of Labor and Regulation: Division of Insurance. Motion died for lack of a second.*

*Representative Hunt moved, seconded by Senator Vehle, to revert the rules proposed by the Department of Labor and Regulation: Division of Insurance back to a prior step for additional hearing. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

Following a brief discussion of the intent of Representative Hunt's motion, Senator Vehle withdrew the second and Representative Hunt withdrew his motion.

*Representative Hunt moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Labor and Regulation: Division of Insurance, with the exception of Chapter 20:06:18 – Medicare Supplement Insurance rules which shall be reverted back to a prior step for additional hearing. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Revenue: Commission on Gaming** – Amend Gaming rules to identify the definition of Pit Boss to provide enhanced security at table games following the bet limit increase; enhance security in light of the Legislature's increase of bet limits to \$1,000; allow the Executive Secretary to approve transfer of license stamps between licensed operators; permit the Executive Secretary to approve license renewals, approval of additional retail license, and approve assignment of location of retail licenses subject to the approval of the Commission; increase the minimum bankroll requirements that must be maintained by the licensee; require pit boss supervision at blackjack or house banked poker games with bet limits in excess of \$100; require tips to be placed in a secure location and provide measures for the coloring up, or exchange of chips to a higher denomination; add Pai Gow and Casino War as authorized variations of poker; clarify that the bonus bet is an optional bet and clarify when the three card option should be utilized; include radio frequency identification chips as associated equipment in slot machines; create a fifty-cent chip, a one-thousand dollar chip and a five-thousand dollar chip, as well as denote their colors; require fixed cameras for blackjack or house banked poker games with bets in excess of \$100; increase the period of time that a licensee must retain recorded video images from seven to 14 days; and require daily inspections of recording equipment and a review of all recorded images weekly.

**Mr. Larry Eliason, Mr. Craig Sparrow, Mr. Mike Shaw**, Pierre, Attorney representing the Commission, and **Mr. Leonard Faircloth**, Las Vegas, Nevada, representing Shuffle Master, Inc., reviewed the proposed rules.

*Representative Gibson moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Revenue: Commission on Gaming. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Revenue: Division of Business Tax and Division of Property and Special Taxes** – Amend Business Tax rules to simplify the filing process for a seller that is registered

under the Streamline agreement; comply with the Streamline agreement; correct a typo; and further define the application process for a professional employers' organization; amend Property and Special Taxes rules to update the rules based on a statutory change; define the term "retail establishment" as used in SDCL 10-50-105; provide a mechanism to take a deduction for certain taxes paid; update an outdated provision; and raise the allowable refund rate.

**Ms. Jan Talley and Mr. Jason Evans** reviewed the proposed rules.

*Senator Vehle moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Revenue: Division of Business Tax and Division of Property and Special Taxes. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Social Services: Division of Economic Assistance** – Repeal obsolete provisions regarding the Sales Tax on Food Refund Program.

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

*Senator Buhl moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Social Services: Division of Economic Assistance. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Department of Social Services: Division of Medical Services** – Amend rules to clarify the payment rate for inpatient services provided at out-of-state hospitals; specify that the daily rates for perinatal units, rehabilitation units, children's care hospitals, and swing-bed hospitals are located on the department's website; outline new reimbursement guidelines for in-state acute care hospitals submitting cost outlier claims containing charges for implantable devices; specify that coverage of non-emergency dental services for adults will be limited to \$1,000 per state fiscal year; maintain the dispensing fees for certain items dispensed by a pharmacy or public health service provider; and update the cost share amount for brand name drugs and propose a cost share amount for generic name drugs.

**Ms. Ringling and Ms. Brenda Tidball-Zeltinger** reviewed the proposed rules.

*Senator Hunhoff moved, seconded by Senator Buhl, to approve the rules proposed by the Department of Social Services: Division of Medical Services. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Bureau of Personnel** – Amend rules concerning state employee health and life benefits into conformity with the legislature's adoption of House Bill 1028, SDCL 3-6E.

**Mr. Kevin Forsch and Mr. Larry Kucker** reviewed the proposed rules.

*Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Bureau of Personnel. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

**Secretary of State: Board of Finance** – Amend a rule to change the per diem rate for official, in-state travel.

**Mr. Tony Venhuizen** and **Mr. Andrew Pietrus** reviewed the proposed rule which will increase the in-state lodging rate from \$46.50 to \$50 effective July 1, 2012.

### **Public Testimony**

**Ms. Michele Brich**, Pierre, representing the South Dakota Innkeepers Association, spoke in support of the proposed rule.

Following a brief discussion regarding the appropriations process on the timing of this change, Chair Hunhoff stated that she will send a letter concerning this increase to the Interim Appropriations Committee.

*Senator Vehle moved, seconded by Representative Hunhoff, to approve the rule proposed by the Secretary of State: Board of Finance. Motion prevailed on a roll call vote with 5 ayes, 1 absent. Members voting aye: Buhl, Gibson, Hunhoff, Hunt, and Vehle. Member absent: Tornow.*

### **Next Meeting Schedule**

The next meeting of the Interim Rules Review Committee will be held on Tuesday, July 10, 2012.

### **Adjournment**

*Representative Gibson moved, seconded by Senator Buhl, that the meeting be adjourned. Motion prevailed on a voice vote.*

Chair Hunhoff adjourned the meeting at 2:21 p.m.

