

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred sixty-ninth meeting
Tuesday
November 14, 2017

Room 414
State Capitol
Pierre, South Dakota

The three hundred sixty-ninth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair), at 9:59 a.m. CDT, on November 14, 2017, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Craig Kennedy, Lance Russell, and Alan Solano (Vice Chair), and Representatives Julie Bartling, Steven Haugaard, and Jean Hunhoff (Chair). Staff members present were Doug Decker, Code Counsel; Kelly Thompson, Senior Legislative Secretary; Cindy Tryon, Senior Legislative Secretary; and Kris Schneider, Business Manager.

All material distributed at the meeting is attached to the original minutes on file at the Legislative Research Council (LRC). For 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://sdlegislature.gov> under "Interim."

Approval of Minutes

Representative Bartling moved, seconded by Senator Solano, that the minutes of the September 25, 2017 meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Rules Reviewed

Office of the Secretary of State - Adopt rules to update notary public application and change forms.

Ms. Shantel Krebs reviewed the proposed rules.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Office of the Secretary of State is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Office of the Secretary of State: Board of Elections - Amend rules to specify a 30 day deadline date for a voter to return the invalid/incomplete voter registration acknowledgment notice; add another voter designation for the federally required Election Assistance Commission Election Day Survey; create two voter registration list maintenance forms; change the name of a Secondary Election to Runoff Election; add judicial office to the races to be listed in the notice of deadline for filing nominating petitions for the primary election; add to the general election ballot the language "Legislative Research Council's

Prison/Jail Population Cost Estimate and/or Fiscal Note"; update the primary and general election ballot formats to include notations for front and reverse sides, clarify ballot printing notes, add an option for county finance officer, and provide the format for State Representative Districts 26 and 28 A and B; clarify the tax levy opt-out ballot format to be used by counties, municipalities or schools; create a new ballot format for capital outlay elections for school districts; create a new ballot format for school sentinel program elections; create a new ballot format to assist county auditors with tax levy ballots for maintaining, repairing, constructing or reconstructing roads and bridges; clarify that a petition sheet must be printed on a self-contained sheet of paper printed front and reverse side; add the Attorney General's Title of a statewide ballot question to information required from the sponsor(s) on the two affidavits for statewide ballot questions; repeal two petitions for conservation district candidates and amend the third petition to show that candidates for district supervisors must run at large instead of by areas; clarify what type of ballot a resolution board will use to duplicate a ballot that is rejected from the automatic tabulating machine; amend the application for absentee voting to clarify what category of Uniformed Overseas Citizens Absentee Voter the applicant falls under and simplify the application instructions; remove language requiring a stateside Uniformed Overseas Citizens Absentee Voter to provide a photocopy of their identification or have their signature notarized on the absentee ballot application; remove language requiring a Uniformed Overseas Citizens Absentee Voter to provide their voting residence on the ballot return envelope and amend the maximum size of the envelope; and add legislative candidates as those who do not use this petition for recount.

Ms. Shantel Krebs and **Ms. Kea Warne** reviewed the proposed rules.

Senator Kennedy expressed concern over the current rules regarding the forwarding service request on envelopes used for confirmation mailings not being consistent with state law. Ms. Krebs and Ms. Warne confirmed the action mirrors the National Voter Registration Act and statutory changes will need to be made next year. When Representative Hunhoff asked if federal law supersedes state law in this case, **Mr. Doug Decker**, Code Counsel, said he believed the Secretary of State would be required to comply with the federal law.

Representative Bartling moved, seconded by Representative Haugaard, that the review of the rules proposed by the Office of the Secretary of State: Board of Elections is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Members voting aye: Bartling, Haugaard, Hunhoff, Russell, and Solano. Members voting nay: Kennedy.

Department of Health: South Dakota Board of Medical and Osteopathic Examiners - Adopt rules to clarify the timeframe for those individuals renewing their license through the interstate medical licensure compact; establish the different options the Board has when it considers mirroring physician discipline from another state; and establish continuing education as a requirement for physical therapy license renewal.

Mr. Tyler Klatt reviewed the proposed rules.

Senator Kennedy questioned the necessity of making failure to get continuing education an act of unprofessional conduct for physical therapists. Mr. Klatt explained that all groups licensed by the board have adopted a code of ethics in their administrative rules and the consequences of being accused of

unprofessional conduct is up to the board's discretion. Senator Kennedy countered that the board has plenty of recourse options already and doesn't need to go so far as to brand people as being unprofessional for not getting continuing education.

Senator Kennedy moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Health: South Dakota Board of Medical and Osteopathic Examiners is complete and the rules be approved with the exception of the last sentence of ARSD 20:66:03:01 which should be reverted to a prior step according to SDCL § 1-26-4.7 (8). Motion failed on a roll call vote with 3 ayes and 3 nays. Members voting aye: Haugaard, Kennedy, and Russell. Members voting nay: Bartling, Hunhoff, and Solano.

Representative Hunhoff commented, after consulting with Mr. Decker, that a part of a rule cannot be reverted, only the whole rule. Senator Kennedy inquired what the committee's options are if only a part of a rule is wrong. Mr. Decker said he didn't recall that situation ever occurring before and reminded the committee they lack the authority to amend a rule in the Rules Review Committee as they would amend a bill in a legislative committee.

Senator Solano moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Health: South Dakota Board of Medical and Osteopathic Examiners is complete. In a substitute motion, Senator Russell moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Health: South Dakota Board of Medical and Osteopathic Examiners is complete and the rules be approved with the exception of ARSD 20:66:03:01 which should be reverted to a prior step according to SDCL § 1-26-4.7 (8). Motion prevailed on a roll call vote with 4 ayes and 2 nays. Members voting aye: Bartling, Haugaard, Kennedy, and Russell. Members voting nay: Hunhoff and Solano.

Department of Health: Board of Optometry Examiners – Adopt rules to clarify the expiration of contact lens and spectacle prescriptions; revise minimum requirements for a comprehensive optometric examination; and allow an optometrist in certain situations to receive credit for live stream continuing education presentations.

Ms. Naomi Cromwell reviewed the proposed rules.

Public Testimony

Dr. Ryan Hier, Sioux Falls, optometrist and president of the South Dakota Optometric Society, voiced support for the rules changes.

Senator Kennedy moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Health: Board of Optometry Examiners is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Health: Division of Health Systems Development and Regulation - Amend rules to revise ambulance equipment standards and air ambulance operations, and for the purposes of general cleanup.

Mr. Tom Martinec reviewed the proposed rules.

Public Testimony

Mr. Maynard Konechne, Kimball, Emergency Medical Technician and representative of the South Dakota EMS Association, and **Ms. Shawn Fisher**, Sturgis, Sturgis Ambulance Service, voiced support for the rules changes.

Representative Bartling moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Health: Division of Health Systems Development and Regulation is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Social Services: Divisions of Economic Assistance, Child Support, Child Protection, Medical Services, and Child Care Services - Amend rules to reflect annual changes; update terminology and other language to align with current practice and provide clarification; update citations; update the recommended immunization standards to align with the Department of Health; provide clarity of what practitioners can provide and bill for certain services; new rules to distinguish non-emergency medical transportation; repeal duplicative rules; and update certain child support enforcement and child protection provisions to comply with new federal regulations.

Ms. Teresa Schulte and **Mr. Merlin Weyer** reviewed the proposed rules. **Ms. Gail Stoltenburg** responded to Representative Bartling that the \$31,000 one-time cost to update coding for the Child Support Enforcement system would be included in the overall IT request made to the Appropriations Committee.

Senator Kennedy expressed concern over making a pre-determination by rule that a specific event constitutes an intentional program violation instead of making that determination through the hearing process. Ms. Schulte replied the language is consistent with that used for other Social Services programs. Representative Haugaard said it appears under federal requirements the agency is obligated to go through the hearing process and he wondered if they were gaining anything by making this addition to administrative rule. According to Ms. Schulte, the agency's intent with the rule is to provide fair notice as to how violators will be treated.

Senator Kennedy moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Social Services: Divisions of Economic Assistance, Child Support, Child Protection, Medical Services, and Child Care Services is complete with the exception of 67:47:01:09.01 which is to be reverted to a prior step per SDCL § 1-26-4.7 (2) – the rule needs to be significantly rewritten to accomplish the intent of the agency. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Russell. Members voting nay: Solano.

Department of Human Services: Division of Developmental Disabilities - Amend rules to define and to create standards for a shared living home service; and allow the delivery of statewide family support services to adults who meet certain criteria.

Ms. Carol Boos and **Mr. Darryl Millner** reviewed the proposed rules. Mr. Millner explained the rules changes will have a \$15,000 fiscal impact to cover adults in the statewide family support program; the funds are already available in their existing budget.

Senator Solano moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Human Services: Division of Developmental Disabilities is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Labor and Regulation: South Dakota Athletic Commission - Amend rules to clarify provisions of current rules including general definitions; safety requirements for events; responsibilities of event promoters; requirements for contestants in mixed martial arts contests; penalties for mixed martial artists who fail to make weight for a contracted bout; options for correcting a score entered in error; officials required to be in attendance at an event; the role of a cut man at an event; the authority of a ringside physician during a bout; allowable wraps for a mixed martial artist during a bout; requirements for a ring used for a contest; the process by which a contestant can request a review of a bout; and the adoption of unified rules of mixed martial arts.

Ms. Jennifer Stalley reviewed the proposed rules.

Representative Hunhoff moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Labor and Regulation: South Dakota Athletic Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Bureau of Human Resources - Amend rules to match current practice regarding Family Status Change Forms.

Mr. Aaron Arnold reviewed the proposed rules.

Bureau of Human Resources: Civil Service Commission - Amend rules to allow fathers to take sick leave after the birth of a child; update reasons for using the Family Medical Leave Act (FMLA); and standardize how rates of pay and salary increases are administered.

Mr. Aaron Arnold and **Ms. Ellen Zeller** reviewed the proposed rules.

Representative Haugaard and Senators Kennedy and Solano asked for clarification of market value and midpoint as they relate to the state employee pay structure and the career band pay structure. Ms. Zeller provided a copy of the Fiscal Year 2018 General Pay Structure and Fiscal Year 2018 Nursing Career Band Pay Structure ([Document #1](#)). Representative Hunhoff requested the current vacancy rates by state agency; the information will be compiled and provided to the committee members by Ms. Zeller at a later date.

Representative Bartling moved, seconded by Senator Kennedy, that the review of the rules proposed by the Bureau of Human Resources and the Bureau of Human Resources: Civil Service Commission are complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Agriculture: Division of Agriculture Services - Amend rules regarding shell eggs to be in alignment with USDA guidelines.

Mr. Scott Schelske reviewed the proposed rules.

Representative Bartling moved that the review of the rules proposed by the Department of Agriculture: Division of Agriculture Services is complete. The motion died for lack of a second.

Representative Bartling moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Agriculture: Division of Agriculture Services is complete. Motion prevailed on a roll call vote with 4 ayes, 2 nays. Members voting aye: Bartling, Hunhoff, Russell, and Solano. Members voting nay: Haugaard and Kennedy.

Department of Transportation - Amend speed limit rules for State Trunk Highway 38 in Minnehaha County, State Trunk Highway 44 in Pennington County, U.S. Highway 281 in Brown County, U.S. Highway 85 in Lawrence County, Interstate Highway 90 Business Loop in Brule County, State Trunk Highway 46 in Charles Mix County, U.S. Highway 12 in Day County, State Trunk Highway 22 in Deuel County, U.S. Highway 18 in Fall River County, U.S. Highway 14 in Hand County, State Trunk Highway 25 in Kingsbury County, State Trunk Highway 25 in Marshall County, State Trunk Highway 20 in Perkins County, State Trunk Highway 19 in Turner County, and U.S. Highway 18 and State Trunk Highway 407 in Oglala Lakota County; in Bennett County, add a 45 mile per hour speed zone to State Trunk Highway 73 immediately south of the 35 mile per hour speed zone in Martin extending for 0.45 miles; in Butte County, extend a 25 mile per hour speed zone on U.S. Highway 85 to include the stretch of highway between Indian Street and Lawrence Street in Belle Fourche; change the speed limit to 35 miles per hour on U.S. Highway 85 between Lawrence Street and State Trunk Highway 34 in Belle Fourche; and in Clay County, reduce the speed limit on State Trunk Highway 50 through Vermillion from 55 miles per hour to 50 miles per hour.

Mr. Bill Nevin reviewed the proposed rules.

Senator Kennedy moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Agriculture: South Dakota State Fair - Amend rules to repeal duplicative, outdated and unnecessary rules applying to the State Fair Park; and raise camping and parking fees during the annual State Fair.

Ms. Peggy Besch reviewed the proposed rules.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Agriculture: South Dakota State Fair is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Game, Fish and Parks - Amend rules to eliminate the ability to pay for individual park entrances and instead charge by vehicle only; alter the definitions of "preferred" and "prime" campgrounds and eliminate "primitive" campgrounds from the definitions; remove Fort Sisseton, Union Grove, Pease Creek and Buryanek campsites from the "modern campground" category; increase camping cabin fees for all State Parks from \$40 to \$45 except at Custer State Park where the cabin fee would remain \$50; add Fisher Grove and Buryanek campsites to the "preferred campground" category; remove from the "preferred campground" category Oakwood Lakes, Angostura including Sheps Canyon, Lake Vermillion, Lewis and Clark, Newton Hills, Snake Creek, Palisades, Roy Lake, Lake Herman, Lake Poinsett, Walker's Point, Pickerel, Shadehill Ketterlings Point, Sandy Shore, Lake Cochrane, Farm Island, Lake Louise, Lake Thompson, Mina Lake, Chief White Crane, Pierson Ranch, North Point, Big Sioux, Hartford Beach, Richmond, Rocky Point, and South Pelican campsites and add them to the "prime campground" category; add to the "prime campground" category Union Grove and Pease Creek; remove Fort Sisseton from the "primitive lodging campsite" category and add it to the "prime campsite" category except for during the Fort Sisseton Festival; increase the group lodging fee at Mina Lake and Shadehill from \$185 to \$205 per night; increase the group lodging fee at Lake Thompson, Palisades, Sheps Canyon, and Newton Hills from \$240 to \$280 per night; increase the fee at French Creek Horse Camp from \$26 to \$31 per night; increase the use of Fort Sisseton's south barracks from \$300 to \$500 for a weekend; increase the catamaran dry slip storage at Lewis and Clark from \$300 to \$325 per seasonal occupancy period; increase the catamaran dry slip storage at Angostura from \$150 to \$175 per seasonal occupancy period; establish standards for marking closed areas of nonmeandered waters by landowners; require mandatory submission of elk harvested in Custer State Park to be tested for chronic waste disease; increase the number of antlerless elk licenses from no more than 20 to no more than 60 and establish four separate hunting seasons in four separate hunting units; allow for no more than five bighorn sheep licenses to be issued for the Black Hills bighorn sheep hunting season; allow one bighorn sheep license to be issued for sale by auction; eliminate the identification of the license type and number of license from each of the bighorn sheep hunting units; allow for the continued pursuit of a mountain lion that originated on private land onto public land; remove the 15 inch minimum restriction for walleye on Lake Poinsett; allow nonresidents to obtain an aerial hunting permit; require all bait dealers to list employees/agents on their application that will engage in trapping, transporting, delivering, raising, or seining bait and allow the Department to refuse the issuance of a license to a bait dealer with an employee/agent who has received a suspension or revocation of their bait dealer license; update the scientific name of the Interior Least Tern (*Sterna antillarum athalassos*) to Least Tern (*Sternula antillarum*); update the scientific name of the Finescale dace (*Phoxinus neogaeus*) to Finscale dace (*Chrosomus neogaeus*); update the scientific name of Northern redbelly dace (*Phoxinus eos*) to Northern redbelly dace (*Chrosomus eos*); and update the scientific name of Pearl dace (*Margariscus margarita*) to Northern pearl dace (*Margariscus nachtriebi*).

Mr. Tony Leif, Ms. Katie Cerroll, and Mr. Chris Peterson reviewed the proposed rules. Mr. Peterson provided a Parks and Recreation Revolving Fund Condition Statement ([Document #2](#)) showing receipts and disbursements for Fiscal Years 2016 and 2017 and projections for Fiscal Year 2018. The rule

regarding bait dealer licensing was removed by the Department to be revised and refiled at a later date.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano. Members voting nay: Russell.

Department of Health: State Board of Dentistry - Amend rules to update the registration process for dental entities to bring it into compliance with SB 47 and repeal obsolete provisions.

Ms. Brittany Novotny reviewed the proposed rules.

Senator Kennedy moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Health: State Board of Dentistry is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Environment and Natural Resources: Water Management Board - Adopt rules to update South Dakota's existing surface water discharge and concentrated animal feeding operation permitting rules by incorporating the latest federal regulations by reference and clarifying current rule language.

Mr. Kent Woodmansey and **Ms. Tina McFarling** reviewed the proposed rules.

Senator Solano moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Environment and Natural Resources: Water Management Board is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Environment and Natural Resources: Division of Environmental Services - Amend rules to increase the air fees assessed to businesses that are applicable to the Title V air quality permitting program.

Mr. Kyrik Rombough reviewed the proposed rules.

Senator Solano moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Environment and Natural Resources: Division of Environmental Services is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Education: South Dakota Board of Education Standards - Adopt rules to set forth the public school accountability system, performance goals, school classifications, and school support process as required by South Dakota law and the Every Student Succeeds Act of 2015.

Ms. Holly Farris and **Ms. Laura Scheibe** reviewed the proposed rules.

Senator Kennedy moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Education: South Dakota Board of Education Standards is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano. Members voting nay: Russell.

Department of Labor and Regulation: Appraiser Certification Program - Amend a rule to adopt the 2018-2019 Edition of the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation's Appraisal Standards Board effective January 1, 2018.

Ms. Sherry Bren reviewed the proposed rules.

Representative Haugaard moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Labor and Regulation: Appraiser Certification Program is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Labor and Regulation: Division of Insurance - Amend rules to fix outdated references to the Division of Securities and the Department of Revenue and Regulation; and establish a notice filing requirement for Regulation A – Tier 2 offerings and crowdfunding offerings.

Ms. Mallori Barnett and **Mr. Travis Jordan** reviewed the proposed rules.

Representative Bartling moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Labor and Regulation: Division of Insurance is complete. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Revenue: South Dakota Lottery Commission - Amend a rule to allow the Winner Take All Promotion for the Powerball lotto game.

Mr. Norm Lingle reviewed the proposed rules.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Revenue: South Dakota Lottery Commission is complete. Motion prevailed on a roll call vote with 5 ayes, 1 nay. Members voting aye: Bartling, Hunhoff, Kennedy, Russell, and Solano. Members voting nay: Haugaard.

Final Comments

Representative Hunhoff thanked the presenters, staff, and committee members for their efforts in getting through the long agenda.

Adjournment

Senator Kennedy moved, seconded by Representative Bartling, that the meeting be adjourned. Motion prevailed on a voice vote.

Chair Hunhoff adjourned the meeting at 4:52 p.m.