

# MINUTES

## Rules Review



Representative Jon Hansen, Chair  
Senator Jean Hunhoff, Vice Chair

Three hundred ninety-eighth meeting  
Monday, June 7, 2021

Room 414 – State Capitol  
Pierre, South Dakota

The three hundred ninety-eighth meeting of the Rules Review Committee was called to order by Representative Jon Hansen, Chair, at 10:00 a.m. (CT) on June 7, 2021, via electronic conference and in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Ryan Cwach, Jon Hansen, Chair, and Kevin Jensen; and Senators Jean Hunhoff, Vice Chair, Troy Heinert, and Timothy Johns. Staff members present were Justin Goetz, acting Chief Research and Legal Analyst/Code Counsel, Kelly Thompson, Administrative Specialist, and Hilary Carruthers, IT Support Specialist.

*All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For continuity, these minutes are not necessarily in chronological order.*

### Approval of Minutes

***Senator Hunhoff moved, seconded by Representative Jensen, that the May 10, 2021, meeting minutes be approved. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

### Staff Report

**Mr. Justin Goetz, acting Chief Research and Legal Analyst/Code Counsel,** reported that a training session on the administrative rules process was held for LRC fiscal staff on May 28, 2021. Staff is currently reviewing and updating the Bill Drafting Manual. When a new code counsel is in place, the Administrative Rules Drafting Manual will be reviewed.

### Proposed Form 16, Housing Cost Impact Statement

Public testimony was opened; no one spoke in support or opposition. Mr. Goetz noted a few revisions had been made to the version of the form provided at the May 10, 2021, meeting, to reflect the need to capture all model codes developed for building or remodeling a residential structure, not just those specific to electrical, plumbing, or mechanical systems, energy conservation, or fire prevention. The edits reflect discussions with the Bureau of Finance and Management.

***Senator Hunhoff moved, seconded by Representative Jensen, that Form 16, Housing Cost Impact Statement, in its current draft form be adopted as the final form. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

## Rules Reviewed

**Department of Social Services:** Amend rules to update the Temporary Assistance to Needy Families (TANF) payment standard amounts and update federal medical services eligibility standards that are reflected in rule.

**Mr. Jeremy Lippert, Department of Social Services,** reviewed the proposed rules.

***Senator Hunhoff moved, seconded by Representative Jensen, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Department of Health:** Amend rules to add Spinal Muscular Atrophy to South Dakota's newborn screening panel.

**Mr. Justin Williams and Ms. Beth Dokken, Department of Health,** reviewed the proposed rules.

## Public Testimony

**Mr. Maynard Friesz, Cure SMA,** expressed his organization's support for the proposed rules. Mr. Friesz said Spinal Muscular Atrophy (SMA) impacts a baby's ability to eat, walk, and breathe, and the early diagnosis possible through newborn screening will ensure that all South Dakota babies born with SMA will have the best opportunity for growth and survival. Currently about 85 percent of all newborns in the United States are screened for SMA.

Representative Jensen asked about the accuracy rate of the SMA test. Ms. Dokken clarified that the SMA screening is a two-part process involving an initial test and a confirmatory test, for added accuracy.

***Representative Hansen moved, seconded by Representative Jensen, that the review of the rules proposed by the Department of Health is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Department of Human Services:** Amend rules to clarify and administer ombudsman services.

**Ms. Beverly Katz and Ms. Yvette Thomas, Department of Human Services,** reviewed the proposed rules.

Senator Hunhoff asked about the timeframe for a response when a complaint is submitted to an ombudsman. Ms. Thomas replied that staff is available during regular business hours, with weekend and immediate access depending on the circumstances. If the complaint involves personal harm to the resident, response is immediate. Ombudsmen also conduct regular monthly visits.

Senator Hunhoff inquired if a hotline number exists for complaints to be received. Ms. Thomas confirmed that a hotline number is available for complaint calls.

***Representative Jensen moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Human Services is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**South Dakota Board of Education Standards (Department of Education):** Adopt rules to establish the general and discretionary provisions for schools to allow students to have access to medical cannabis on school property and at school-sponsored activities.

**Ms. Tiffany Sanderson, Secretary, Department of Education, and Ms. Diane Roy and Ms. Amanda LaCroix, Department of Education,** reviewed the proposed rules. Ms. Roy noted that the department's rule-making authority is limited only to [SDCL 34-20G-95](#) as it relates to administering medical cannabis in schools to students who have the required credentials to receive it. The proposed rules mimic Colorado statute but were prepared with input from other stakeholders including the Associated School Boards of South Dakota, School Administrators of South Dakota, South Dakota High School Activities Association, Department of Health, and the Office of the Governor, as well as the public.

Representative Jensen asked if the rules apply only to public schools. Ms. Roy clarified they apply to all accredited public and private schools in South Dakota under the general supervision authority cited in [SDCL 13-3-1.4](#).

Representative Jensen said for youth involved in sports, a person who is under the influence of cannabis who has a sports injury may present like someone who has suffered a concussion. He inquired as to who would make the decision as to whether the student could continue to play. He also inquired about students working with industrial arts equipment that may potentially be under the influence of marijuana. Ms. Roy responded it will be up to local school districts to address those specific situations. Ms. LaCroix added that a template for that purpose is being developed with assistance from the Associated School Boards of South Dakota and the South Dakota High School Activities Association. Representative Jensen expressed concerns about putting these rules in place without the underlying standards referenced, including the Associated School Boards and Activities Association standards referenced.

Representative Hansen said despite the general authority provided in SDCL 13-3-1.4, confusion still exists as to whether this particular set of rules applies to non-public schools; he asked if it was the Board of Education Standards' position that they apply to all accredited public and non-public schools. Ms. Roy said the Colorado statute they were tasked with emulating mandated the policy for all schools, and it is her supposition that the Department of Education and the Department of Health are mandated to make any necessary policy that is not made explicit under their general supervision authority.

Representative Hansen commented that while the Colorado statute that was in effect January 1, 2019, seemed to apply to charter schools and school districts, it was not clear that it applied to non-public schools. He noted that a recent amendment to that law clarified that it did not apply to such schools. Ms. Roy responded that South Dakota's proposed rules comply with the Initiated Measure 26 (IM 26) mandate that it mirror the Colorado law in effect January 1, 2019, and additional rules changes may be needed after a year of practical use. Ms. LaCroix said as the term "schools" was not defined beyond the general use of the term, during the drafting of the rules, it was interpreted to mean accredited public and non-public schools.

Representative Hansen expressed concern that the proposed rules would be forcing a private school to handle and dispense a substance that is illegal under federal law. Ms. Roy replied that rules need to be in place for the upcoming school year and anything that is ambiguous at this point could be amended in the future.

Representative Cwach asked if the Department of Health had contacted Colorado regarding administration of their law and whether that state required private schools to administer medical cannabis to students. Ms. LaCroix responded that she could not speak as to whether that department had been in contact with Colorado officials but the Department of Education had worked with Colorado on their policy, which is more broad and expansive than South Dakota's proposed rules. Ms. LaCroix indicated that with the recent change to their statute, Colorado does not require private schools to administer medical cannabis to students, but that it was unclear whether the statute previous to the amendment required private schools to offer medical cannabis.

Senator Hunhoff asked if an older sibling could be designated as a caregiver for the purposes of administering medical cannabis to a student. Ms. LaCroix said the Department of Health sets the parameters on caregivers but a caregiver must be over the age of 21. Responding to Senator Hunhoff as to whether school personnel could opt-out of administering medical cannabis if they did not want to, Ms. LaCroix replied they are not required to administer it, regardless of what policy the school may set.

Representative Jensen inquired whether South Dakota schools must accept non-resident cards identifying that a student has been authorized to receive medical cannabis. Ms. LaCroix said yes, and schools will be meeting in the next few months to have a policy in place regarding non-resident cards.

Representative Cwach asked why the proposed South Dakota rules did not allow for self-administration by the individual as does the Colorado law. Ms. LaCroix and Ms. Roy stated the Colorado law was not clear on the issue and the intent with the proposed rules was to make it clear that in South Dakota, self-administration is not allowed.

Senator Hunhoff noted IM 26 specified that in promulgating its rules, South Dakota had to follow what Colorado had in place effective January 1, 2019. She asked Mr. Goetz if the Department of Education had to use Colorado's initial law as the only basis for its rules or if the department could also imitate the amended law that will soon go into effect. Mr. Goetz advised that SDCL 34-20G-95 specifies substantively identical provisions to Colorado but excludes stylistic and terminology differences.

Representative Jensen said he was uncomfortable moving forward with the rules in their current form. Senator Johns agreed, adding he would like further analysis on whether the proposed rules capture all accredited schools.

Representative Hansen said regardless of whether an individual supports IM 26, the proposed rules stemming from its passage must be as clear as possible, and more clarification is needed on the scope and intent of the rules presented by the Department of Education today.

***Representative Hansen moved, seconded by Representative Jensen, that the rules proposed by the South Dakota Board of Education Standards (Department of Education) be reverted to a step prior under***

***SDCL 1-26-4.7(3) to address the recommendations of the Committee. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Civil Service Commission (Bureau of Human Resources):** Amend rules to remove the requirement that an employee's rate of pay must be adjusted to at least five percent above the minimum after six months of service in a pay grade.

**Ms. Mallori Barnett and Ms. Ellen Zeller, Bureau of Human Resources,** reviewed the proposed rules.

Representative Jensen asked how many groups within state government were currently making 75 percent of market value. Ms. Zeller said the minimums for all groups have been moved to 78 percent of market value, making many of the pay grades much higher than they were.

Representative Cwach inquired whether the proposed rules removed the provision that a state employee receive a 5 percent increase in pay after six months of employment. Ms. Zeller responded that the rule says an employee must be at 5 percent above minimum after six months. He followed up by asking how many employees this was going to impact. Ms. Zeller responded that it is difficult to know, as shown in the fiscal note, because the Bureau cannot account for the past practice, and they do not know how many employees will get higher than the minimum, or how many will get an increase regardless.

Representatives Cwach and Hansen disagreed with the fiscal note provided by the Bureau of Human Resources (BHR), which indicated no specific increase in fiscal impact should the rules be implemented. Ms. Zeller said BHR had already budgeted for the move to the higher percentage of market value and any fiscal impact would not be more than has occurred in the past. She noted it is difficult to calculate how many employees will be impacted and at what cost because the number of employees hired and at what level is difficult to predict.

Representative Hansen asked if the fiscal impact of the proposed rules was something other than zero, regardless of whether or not increases have been budgeted for. Ms. Barnett stated BHR cannot predict what that number may or may not be. Ms. Zeller said that answer would need to come from the Bureau of Finance and Management.

Senator Hunhoff said the amount needed to be clarified and that clarification will take place at a future meeting of the Committee on Appropriations.

***Representative Hunhoff moved, seconded by Representative Jensen, that the review of the rules proposed by the Bureau of Human Resources is complete.***

Representative Cwach asked committee members to resist the motion due to the lack of information about the fiscal impact. He said during his tenure on the Interim Rules Review Committee, the Department of Game, Fish and Parks is the only agency that consistently does the work on determining fiscal impacts, and as a committee, members need to be clear that fiscal notes have value and need to be completed correctly.

Representative Johns commented that there could be a fiscal impact, and that the Rules Committee could possibly require a range or estimate for the impact, but a precise dollar amount may be impossible to forecast.

Representative Hansen noted the degree of uncertainty that can exist with fiscal notes, citing Game, Fish and Parks rules on hunting licenses and the estimates that go into those numbers. He stated that perfect certainty is not expected, but those estimates should be provided on the fiscal note. He further indicated that this issue may be a particularly difficult one to forecast where the giving of raises is up to agency discretion.

***Motion prevailed on a roll call vote with 4 ayes and 2 nays. Voting aye: Hansen, Hunhoff, Jensen, and Johns. Voting nay: Cwach and Heinert.***

**Department of Game, Fish and Parks:** Amend rules to:

- Remove the age eligibility requirement for a combination license;
- Update youth licenses to include anyone who is under the age of 18 and reflect that anyone over the age of 18 will have to purchase an adult license;
- Update an erroneous cross reference in rules regarding nonresident waterfowl licenses;
- Remove the requirement for a youth hunter under the age of 16 to be accompanied by an adult;
- Remove the nonresident family fishing license fee and the nonresident youth fishing license fee;
- Remove the daily and possession limits for nonresident family fishing licenses;
- Increase the age from 16 to 18 for youth residents participating in a youth paddlefish season;
- Expand the dates that are available for a special pheasant hunt for disabled veterans and Purple Heart recipients;
- Restore three subsections regarding public water safety zones in Charles Mix County that were erroneously deleted from rule;
- Modify the number of tags available for the Custer State Park deer hunting season, the Black Hills deer hunting season, the West River deer hunting season, and the East River deer hunting season;
- Modify the open units available for the West River deer season and the East River deer season;
- Modify the number of licenses available during the Sand Lake deer hunting season, the Lacreek deer hunting season, and the Waubay deer hunting season;
- Modify the number of licenses available and units open during the archery deer hunting season;
- Adjust where and when a nonresident archery license is valid;
- Modify the number of licenses available for the general muzzleloading deer hunting season;
- Modify open areas available for hunting;
- Remove the requirement for an apprentice hunter to be accompanied by an adult and remove the eligibility for hunters less than 18 years of age;
- Establish, in a new chapter, a deer hunting season for youth;
- Specify the number and types of licenses available for the youth deer hunting season;
- Specify the areas that are open and closed to youth deer hunting;
- Create the age eligibility requirements and specify other license eligibility requirements;
- Clarify when certain areas are open to aerial hunting;
- Allow nonresident parents or guardians to obtain a mentor license and specify that youth under 16 years of age cannot obtain a license if they already hold a youth license;

- Modify the rule that defines during which seasons free antlerless deer licenses can be used;
- Include youth hunting licenses in the rule regarding access permits for specific deer hunting units and public lands;
- Specify the license types that are available to landowners in South Dakota;
- Create a new rule for resident disabled veterans to deer hunt and specify eligibility requirements and processes to obtain a license;
- Specify the number and types of licenses available and define the areas open to the disabled veteran deer hunting season;
- Modify the pheasant hunting season dates in certain areas;
- Modify the dates that the grouse hunting season is open;
- Repeal existing rule regarding the Chronic Wasting Disease endemic area;
- Modify the disposition requirements of hunter-harvested cervid carcasses;
- Repeal existing rule regarding intrastate cervid carcass transportation restrictions;
- Modify the disposition requirements of hunter harvested cervid carcasses and parts that are processed by wildlife processing facilities and taxidermists; and
- Modify the license types available for the apprentice deer hunting season.

**Mr. Jon Kotilnek** and **Mr. Tom Kirschenmann**, **Department of Game, Fish and Parks**, reviewed the proposed rules. Mr. Kotilnek advised members that due to an issue with the agency's public notice, proposed rule ARSD 41:06:64:03 was not covered by the Game, Fish and Parks Commission at its meeting. He requested that the rule be reverted.

#### **Public Testimony**

**Ms. Nancy Hilding**, **Prairie Hills Audubon Society**, voiced opposition to deer hunting rules information as it was presented in the Game, Fish and Parks Commission meeting minutes and the department's press releases. Ms. Hilding also expressed concern over proposed changes to the grouse hunting season, saying populations and habitats are getting smaller, and birders will still want to view the birds in South Dakota.

In rebuttal, Mr. Kirschenmann explained the process used by the department in allocating the number of licenses for deer hunting seasons and stated the commission approves them based on what the laws and rules allow them to allocate for numbers. He noted that all proposed rules information is put out for public comment prior to the commission's action, and the meeting minutes accurately reflect the body's decisions.

Representative Hansen asked what language regarding the grouse hunting season was presented to the Game, Fish and Parks Commission. Mr. Kotilnek clarified that proposed changes to ARSD 41:06:09:01 came before the commission in the proposal phase but during the finalization phase, it was decided not to adopt the proposed language.

Representative Jensen asked whether youth hunters under the age of 16 have to be accompanied by an adult and if so, why that requirement was being removed from administrative rule. Mr. Kotilnek replied that as part of [House Bill 1034](#), which was approved by the 2021 Legislature, the requirement is now in statute and the department determined it did not need to be duplicated in rule. Representative Jensen also inquired about the reference to concealed carry in § 41:06:55:04 as proposed. Mr. Kotilnek clarified that this language accounted for all concealed carry rights under state law.

***Representative Hansen moved, seconded by Senator Hunhoff, that ARSD 41:06:64:03 as proposed by the Department of Game, Fish and Parks be reverted to a step prior under SDCL 1-26-4.7. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

***Senator Hunhoff moved, seconded by Representative Hansen, that the review of the remaining rules is complete with the understanding that ARSD 41:06:09:01 be referred to Code Counsel for style and form changes as described, prior to implementation. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**Department of Transportation:** Amend rules to:

- Replace the current 55 miles per hour speed limit on State Trunk Highway 153 in Yankton County, from the intersection with State Trunk Highway 52 near Gavin's Point Dam then north for 0.9 mile, with a 45 miles per hour speed limit;
- Eliminate an obsolete reference to the upper and lower decks of the U.S. Highway 81 bridge over the Missouri River in Yankton; and
- Replace references to "reimbursable" expenses with "eligible" expenses for bridge improvement grants.

**Ms. Karla Engle, Department of Transportation,** reviewed the proposed rules.

Senator Hunhoff asked about the proposed change in terminology from "reimbursable" expenses to "eligible" expenses. Ms. Engle said the department is seeking flexibility in how grant funds are disbursed and clarified that the Transportation Commission would review disbursements before they were made. While currently there is no plan to offer advance disbursements, should that change in the future, the department wanted to be ready to process them.

***Representative Hansen moved, seconded by Senator Hunhoff, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**South Dakota Division of Insurance (Department of Labor and Regulation):** Amend rules to update the sources referenced in rule and incorporate 2021 Medicare Supplement coverage amounts set by the federal government.

**Ms. Lisa Harmon, South Dakota Division of Insurance (Department of Labor and Regulation),** reviewed the proposed rules.

***Representative Jensen moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Division of Insurance (Department of Labor and Regulation) is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

**South Dakota Commission on Gaming (Department of Revenue):** Amend rules to:

- Provide for an application fee for a sports wagering services provider;
- Add associated equipment licensees and sports wagering services providers to the list of entities



that must provide access to their premises and production of records;

- Prohibit associated equipment licensees and sports wagering services providers or licensees employed by sports wagering services providers from wagering on sporting events;
- Add wagering on sporting events to the authorized games in Deadwood;
- Implement cleanup to irregularities in blackjack;
- Clarify the posting of rules of blackjack and house banked poker games;
- Clarify that bad beat pots must be maintained in segregated bank accounts;
- Clarify that rules must be posted at each poker table;
- Add electronic bonusing systems to the list of associated equipment of slot machines;
- Include sports wagering in adjusted gross revenue computations;
- Clarify closed-circuit surveillance system requirements;
- Add sports wagering to areas that are required to be monitored by surveillance;
- Repeal § [20:18:29:09](#) regarding the labeling of video tapes; and
- Clarify one-on-one recordings for all surveillance camera recorders.

**Mr. Craig Sparrow and Mr. Mike Shaw, South Dakota Commission on Gaming (Department of Revenue)**, reviewed the proposed rules. Mr. Shaw advised members that written comment had been received from the Deadwood Gaming Association on proposed changes to [ARSD 20:18:22:12](#) and that an issue had arisen as to whether the commission had the authority to make the changes as the rule is related to federal excise taxes. Following discussions with the Code Counsel and the Deadwood Gaming Association, Mr. Shaw reviewed the commission's authority in this area. He asked that the Interim Rules Review Committee revert that particular rule at this time so the Commission on Gaming could make any necessary adjustments and resubmit it for consideration at a later date.

### Public Testimony

**Mr. Roger Tellinghuisen, Deadwood Gaming Association**, said although the federal excise tax is a small amount, he is in agreement with Mr. Shaw and Code Counsel Goetz as to the commission not having the authority to approve the amendment. Mr. Tellinghuisen indicated that the tax is a small amount, one quarter of one percent, but it amounts to a tax on a tax. He articulated his plan to possibly go before the Legislature at the next session to get statutory authority to make the change.

Senator Hunhoff asked what constituted a sports wagering services provider. Mr. Sparrow clarified that sports wagering service providers license individuals who are setting the line, handle advance deposit wagering, and provide geolocation services to identify where customers are located when placing their wagers.

Senator Hunhoff requested clarification of the definition of adjusted gross revenue and how free play is utilized in sports wagering. Mr. Sparrow said adjusted gross revenue is the total of all tickets wagered minus the total amount paid out. Free play is defined as free wagers given to a player by a casino. In sports wagering, free play is most often redeemed electronically, and its use is tracked by the player's name and the amount wagered.

Representative Hansen asked how the commission arrived at \$5,000 as the application fee for a sports wagering services provider. Mr. Sparrow noted it is the same amount charged to slot machine manufacturers and distributors.

***Representative Hansen moved, seconded by Representative Jensen, that ARSD 20:18:22:12 as proposed by the South Dakota Commission on Gaming (Department of Revenue) be reverted to a step prior under SDCL 1-26-4.7(7). Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

***Representative Hansen moved, seconded by Senator Hunhoff, that the review of the remaining rules proposed by the Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

#### **Public Testimony: General Purposes**

No public testimony was provided.

#### **Adjournment**

***Representative Jensen moved, seconded by Senator Hunhoff, that the meeting be adjourned. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Cwach, Hansen, Heinert, Hunhoff, Jensen, and Johns.***

Chair Hansen adjourned the meeting at 2:00 p.m.