

MINUTES

Rules Review Committee



Representative Jon Hansen, Chair
Senator Jean Hunhoff, Vice Chair

Four hundredth meeting
Monday, August 2, 2021

Room 414 – State Capitol
Pierre, South Dakota

The four hundredth meeting of the Rules Review Committee was called to order by Representative Jon Hansen, Chair, at 10:00 a.m. (CT) on August 2, 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, Supervisor of Text Editing Services, 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 Cwach, that the July 19, 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 no technical corrections had been made by LRC to administrative rules since the July 19, 2021, meeting.

Rules Reviewed

Department of Social Services: Amend rules to:

- Add a definition for telehealth;
- Update rules to continue telemedicine and audio-only flexibilities beyond the pandemic; and
- Update billable units.

Mr. Jeremy Lippert, Department of Social Services, reviewed the proposed rules, several of which were prompted by the passage of [Senate Bill 96](#) by the 2021 Legislature.

Public Testimony

Mr. Terry Dosch, South Dakota Council of Community Behavioral Health, expressed his organization's support for the proposed rules regarding telemedicine and audio-only options. He said clients prefer not to travel for treatment and some people are easier to engage using technology; telemedicine has the

flexibility needed to provide those services. Mr. Dosch stated retaining audio-only capabilities is especially important because access to the Internet can be a problem in rural and remote areas of the state, making video-based telemedicine services difficult.

Mr. Jason Lillich, Three Rivers Mental Health and Chemical Dependency Center, spoke in support of the continuation of telemedicine and audio-only treatment options. His facility serves a 10,000 square-mile area, which includes rural and frontier sectors as well as two reservations. Mr. Lillich said Internet service can be inconsistent in that part of the state and is often connected to the schools, meaning limited access. Audio-only telemedicine services are a good option for providing treatment to those who need it.

Senator Hunhoff asked whether telehealth services have been included previously in billable options.

Ms. Tiffany Wolfgang, Department of Social Services, confirmed that telehealth has been supported as such previously and the proposed rules change would include audio-only services.

Representative Jensen inquired if the 15-minute rule on billable time was being eliminated. Ms. Wolfgang replied that the 15-minute unit will remain as a billable option but removing the exact language from rule will address concerns from agencies about timing flexibility.

Responding to Representative Jensen's questions about security measures for online group sessions, Ms. Wolfgang noted that telehealth group meetings have been held since 2015 through a criminal justice initiative and that Health Insurance Portability and Accountability Act (HIPAA) compliant technology platforms must be adhered to in providing those services.

Senator Hunhoff asked whether increased access to telemedicine services has resulted in a higher number of patients using them. Ms. Wolfgang responded that the pandemic elevated the need for its use for the safety of staff and clients, and she expects to see telehealth continue to be a viable option even though face-to-face treatment requests are increasing with the relaxation of pandemic guidelines. Senator Hunhoff said related data in this area will be requested of the department going forward.

Senator Hunhoff moved, seconded by Senator Johns, 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.

[South Dakota Electrical Commission \(Department of Labor and Regulation\)](#): Repeal unnecessary rules and adopt rules to increase revenues to match current expenses and update the installation process for residential heating plants and residential houses moved to a new location.

Mr. JJ Linn, South Dakota Electrical Commission, reviewed the proposed rules.

Representative Cwach asked for an explanation of the financial condition statement submitted with the rules packet, noting the negative ending cash balances. Mr. Linn responded that the losses generally represent deferred revenue in which fees have been collected but the inspections associated with those fees have yet to be performed. He noted that two open inspector positions have contributed to the delay.

Representative Cwach referenced a fee increase implemented by the commission several years ago and asked how the current proposed increase relates to the previous one. Mr. Linn said the increases are in two different areas - inspecting and permitting, and licensing - and that the commission had made mention during their presentation on the previous increase that they would be bringing a proposed fee increase on the licensing side in the future.

Representative Hansen said he supports the fee schedule as presented and appreciates the commission's efforts to get their financial status "out of the red." Senator Johns added there was no opposition from members of the profession to the proposed increases.

Representative Hansen moved, seconded by Senator Johns, that the review of the rules proposed by the South Dakota Electrical Commission (Department of Labor and Regulation) is complete. 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 Public Safety: Amend rules to:

- Adopt the 2020 edition of the National Institute of Standards and Technology;
- Make revisions for testing liquid petroleum gas meters;
- Adopt the 2020 edition of the Annual Book of the American Society for Testing and Materials Standards;
- Adopt the 2021 edition of the Commercial Vehicle Safety Alliance handbook;
- Update the adoption date to parts of 49 C.F.R.;
- Establish entry-level driver training requirements to obtain a commercial driver's license; and
- Address certain circumstances for compensation for victims of crime.

Mr. Dan Lusk, Department of Public Safety, reviewed the proposed rules which impact four programs: Weights and Measures, Motor Carrier Services, Driver Licensing, and Victims' Services.

Senator Hunhoff asked why 25 gallons was chosen as the minimum quantity for testing liquid petroleum gas meters. **Mr. Tyler Steen, Department of Public Safety, Weights and Measures,** replied that 25 gallons is the lowest manufacturing standard.

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

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

- Exempt the newly created special antelope unit from the landowner application preference;
- Create a special resident and nonresident any antelope license and establish a fee associated with purchasing these licenses;
- Modify the number of antelope licenses available for the antelope season;
- Put certain requirements on applications for the antelope season;
- Combine the west river units and the east river units into one rule known as "open units";
- Create a unit for which the special any antelope license would be valid;
- Repeal [ARSD 41:06:23:03](#);

- Modify the beaver trapping and hunting season dates in counties east of the Missouri River to be open year-round;
- Increase the harvest limit for river otter; and
- Allow the use of body-grip and killer trap sets to be used for beaver in areas where the beaver season is open.

Mr. Tom Kirschenmann, Department of Game, Fish and Parks, reviewed the proposed rules, which mainly involve antelope hunting and the trapping of furbearing animals.

Public Testimony

Ms. Nancy Hilding, Prairie Hills Audubon Society, voiced opposition to those rules impacting beaver trapping and hunting, and increasing the harvest limit for river otters. She said more data is needed on river otter populations to determine if there has been adequate growth in numbers to justify increasing the harvest limit, especially as the otters were just delisted from the endangered species list in the past few years. Ms. Hilding also raised procedural objections concerning how rules are publicly noticed by the department, and the time restrictions placed on public testifiers during Game, Fish and Parks Commission meetings.

In rebuttal, **Mr. Jon Kotilnek, Department of Game, Fish and Parks,** explained the three-meeting process used by the department to present proposed administrative rules to the commission for review and action. At the first meeting, the rules are introduced, and the public has the opportunity to comment during an open forum. The proposals are brought back to the commission at its next meeting for amendments or adjustments, at which time, the public again may offer comment. The commission takes final action on the proposed rules at a third meeting. Mr. Kotilnek noted that the commission Chair has limited public testimony to three minutes per speaker in recent months to allow everyone who wishes to offer comment the chance to do so. He said Ms. Hilding has regularly provided both in-person testimony and written comments detailing her opposition to the department and the commission.

Representative Cwach asked how many river otters currently live in South Dakota and why it would be difficult to reach an accurate count. Mr. Kirschenmann replied that the department does not have a population estimate as river otters can be a challenging species to track and count. The department is working on other means of data collection to determine population trends for the river otter. Representative Cwach commented that as they were an endangered species until recently, an estimate is necessary and should be easy to obtain, given the speed at which the first season harvest limit was met. Mr. Kirschenmann said based on information received from the public and Department of Game, Fish and Parks staff, river otter populations in the state are growing.

Representative Cwach inquired if the LRC had suggested the harvest limit be set at a flat number of 20 as opposed to the original language of the rule which said five more animals would be added to the limit if a certain number were trapped by a specific date. Mr. Kirschenmann said that was an accurate statement. Mr. Kotilnek added that the rules notice would have indicated that there would be an increase in the number of river otters taken, thereby meeting the notification requirement for proposed rules.

Senator Heinert asked if river otters were causing damage, which might have prompted an increase in the harvest limit. Mr. Kirschenmann responded that river otters are a valued species and as populations increase, that provides an opportunity for trappers that may not have existed previously. The animals can negatively impact fisheries in private ponds and areas on the Big Sioux River by eating the fish, which is their primary food source.

Senator Hunhoff asked if the fifteen river otters harvested last year were taken by seasoned trappers or new trappers. Mr. Kirschenmann confirmed the majority were seasoned trappers.

Senator Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Game, Fish and Parks is complete.

Senator Heinert said he opposed the motion, and that while the practice has been to allow the Department of Game, Fish and Parks to address hunting and trapping issues through the rules process, as these issues may be highly debated, they may be better addressed through the legislative process.

Representative Hansen commented that the department takes more public testimony on its proposed administrative rules than any other entity that comes before the Interim Rules Review Committee (IRRC) and takes it into consideration in their policy-making decisions. He said the department has complete authority to promulgate the rules they are presenting for consideration.

Representative Cwach said the department is ambiguous as to their authority and he was inclined to oppose Senator Hunhoff's motion, as firm data is needed before the river otter limit should be raised given that they were recently on the endangered species list.

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.

[South Dakota Banking Commission \(Department of Labor and Regulation\)](#): Amend rules to abate the examination fee assessed to state-chartered banks for the June 2021 semiannual examination fee assessment period.

Mr. Bret Afdahl, Division of Banking (Department of Labor and Regulation), reviewed the proposed rules, and told committee members that bank assets and license numbers are at an all-time high while the division's expenses are less than what was budgeted.

Senator Hunhoff asked when the division last waived fees for similar financial reasons. Mr. Afdahl said that occurred in 2015 and confirmed that the action can be taken now without jeopardizing the fund's status. The waiver will impact 42 state-chartered banks but have no effect on the 15 federally chartered banks which are not supervised or assessed fees by the division.

Senator Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Banking Commission (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): Adopt and amend rules to:

- Set forth the various system requirements for the implementation of cashless gaming in Deadwood for all authorized games;
- Provide for external bonusing systems for all authorized games in Deadwood;
- Provide for the requirements and regulation of sports wagering operations within licensed gaming premises in the City of Deadwood;
- Provide for the testing, approval, and changes to sports wagering systems in licensed gaming premises in Deadwood;
- Provide for the areas where sports wagering may occur and the regulation thereof;
- Implement and regulate the conduct of advanced deposit wagering for all types of authorized games within licensed gaming premises in Deadwood; and
- Provide for the definition of a sports wagering manager and to require internal audits by licensed accounting personnel in Deadwood.

Mr. Craig Sparrow and Mr. Mike Shaw, South Dakota Commission on Gaming (Department of Revenue), reviewed the proposed rules.

Mr. Shaw recounted that the initial set of rules on sports wagering were presented to the IRRC at the May 10, 2021, meeting, and the proposed rules being discussed today represent the technological operation of the sports wagering program. Gaming Labs International (GLI) assisted the Commission on Gaming in the drafting of the rules which are based on those implemented for sports wagering in other gaming jurisdictions. Mr. Shaw said the gaming industry has requested that the sports wagering program in South Dakota be operational by September 9, 2021, which is the start date for the 2021 NFL regular season. He acknowledged that there are LRC-suggested edits still to be made to the proposed rules and as none of them impact sports wagering, the Commission on Gaming will review them at its September 8, 2021, meeting.

Public Testimony

Mr. Mike Rodman, Deadwood Gaming Association, said his organization fully supports the proposed rules.

Mr. Brendan Bussmann, Global Market Advisors, told committee members he has been working in conjunction with the Deadwood Gaming Association and the Commission on Gaming on putting the proposed rules together, and he encouraged them to approve the rules for implementation.

Mr. Kevin Mulally, Gaming Labs International, acknowledged the Commission on Gaming for their hard work in drafting the proposed rules and said it was a pleasure to assist them in that effort. His company serves 475 gaming clients worldwide and has worked with many other jurisdictions in developing their sports wagering programs.

Senator Hunhoff asked why cashless wagering rules were being proposed and how such wagering works. Mr. Sparrow said the rules are the result of an industry request. With cashless wagering, the customer sets up an account with the casino by providing a specific amount of cash, and receives a card that can be inserted into a machine to make wagers instead of having to insert money directly into the machine.

Senator Hunhoff inquired whether the sports wagering rules represent the best practices being utilized in other states with South Dakota making any necessary changes to make the rules applicable in this state. Mr. Sparrow replied that the rules are based on documents from GLI representing the best practices for the industry and they are similar to those already implemented in other gaming jurisdictions.

Responding to Senator Hunhoff's question regarding where sports wagering could take place, Mr. Sparrow said sports wagering can only occur in a licensed gaming casino that has contracted with a sports wagering services provider.

Representative Hansen asked if a player could utilize cashless wagering to place a sports bet without the individual physically being in Deadwood. Mr. Sparrow clarified the person would need to physically be in the casino to place the wager.

Representative Hansen asked if the Commission on Gaming was appealing the LRC edits that had not yet been made to the proposed rules. Mr. Shaw said he had discussed with Code Counsel Goetz the suggested edits and how they would be made, and did not consider the situation to be an appeal upon which the IRRRC needed to take action.

The IRRRC recessed from 12:27 p.m. to 12:43 p.m. for an internal discussion on the appeals process.

Representative Hansen said the question for the committee is whether despite not having made all of the recommended changes to the proposed rules, the agency is concurring with the edits or appealing them. He stated that all of the rules presented to the committee today are still within the authority granted to the Commission on Gaming.

Senator Johns asked if the rules could be adopted today subject to the changes being made at the September meeting. Mr. Goetz said he was not aware of that practice being instituted in the past but the statute governing the IRRRC does not appear to contain any language specifically prohibiting members from taking that action.

Senator Hunhoff asked if the edits in question impact the implementation of sports wagering and would delay the start of the program in South Dakota. Mr. Shaw said sports wagering could still be implemented, even if those rules were removed from consideration, and that he concurred with all of the recommended changes proposed by the Code Counsel and LRC.

Representative Hansen said any reasonable person reading the rules, as presented, between now and September 8 will understand how sports wagering should operate, and the rules should be adopted as written, allowing for these minor tweaks to be made when the Commission on Gaming meets next month.

Representative Cwach moved, seconded by Representative Hansen, that the review of the rules proposed by the South Dakota Commission on Gaming (Department of Revenue) 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

Senator Hunhoff moved, seconded by Senator Johns, 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 12:57 p.m.