

MINUTES

Rules Review Committee

Representative Jon Hansen, Chair
Senator Jean Hunhoff, Vice Chair



Four hundred ninth meeting
Tuesday, June 14, 2022

Room 414 – State Capitol
Pierre, South Dakota

The four hundred ninth meeting of the Interim Rules Review Committee (IRRC) was called to order by Representative Jon Hansen, Chair, at 10:00 a.m. (CT) on June 14, 2022, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Jon Hansen, Chair, and Kevin Jensen; and Senators Red Dawn Foster (remote), Jean Hunhoff, Vice Chair, and Timothy Johns (remote). Representative Ryan Cwach was excused. Staff members present were John McCullough, Code Counsel; Kelly Thompson, Supervisor of Text Editing Services; and Hilary Carruthers, IT Support Specialist.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. All referenced documents distributed at the meeting are hyperlinked to the document on the Legislative Research Council website. This meeting was live streamed. The archived live stream is available at sdlegislature.gov.

Approval of Minutes

Senator Johns moved, seconded by Senator Hunhoff, that the May 3, 2022, meeting minutes be approved. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

Staff Report

Mr. John McCullough, Code Counsel, reminded members that the next IRRC meeting is July 19, 2022, during which six packets of proposed rules will be considered. He also announced that the Executive Board has approved the hiring of Michael Loesevitz for the Code Counsel position. Mr. Loesevitz's first IRRC meeting as Code Counsel will be in July.

Rules Reviewed

[State Dakota State Fair \(Department of Agriculture and Natural Resources\):](#) Amend a rule to increase gate admission for the South Dakota State Fair.

Ms. Peggy Besch, Manager, South Dakota State Fair, reviewed the proposed rule which would increase entrance fees for adults and children attending the State Fair.

Mr. Faron Wahl, Chairman, South Dakota State Fair Commission, testified that commission members carefully reviewed the proposed increases before approving them, and that like any business, the event needs to adapt to economic changes and rising costs.

Senator Foster asked how the amount of the increase was calculated and whether it corresponded to the actual increase in operating costs experienced by the Fair. Ms. Besch said the commission considered several proposed options and established a subcommittee to review them. While actual costs and the potential revenue that would

be generated by each of the proposed increases were reviewed and discussed, the approved option was not directly calculated based on those figures.

Senator Hunhoff asked how much cash the State Fair currently has on hand and whether the proposed increase was included in the Department of Agriculture and Natural Resources' budget request to the Joint Committee on Appropriations during the 2022 Legislative Session. Ms. Besch reported the ending cash balance for Fiscal Year 2021 as \$2.8 million and said the increase was not included in the budget request.

Representative Jensen inquired about how the proposed fee increase would impact camping fees and how much more revenue was expected as a result of the increase. Ms. Besch clarified that the camping fees will remain the same for the 2022 State Fair and will become effective for the 2023 event. The increase is expected to generate over \$280,000 annually. Responding to Representative Jensen's comment that the proposed increase would make camping sites at the Fair more expensive than the best sites at state parks, Ms. Besch said the actual camping fees will remain the same and the adjustment actually reflects the admission fee increase as campers receive gate passes as part of their camping package.

Senator Hunhoff requested details regarding the Fair's strategic plan to increase daily attendance at the State Fair by five percent by the year 2025. Ms. Besch replied the commission continually looks for ways to generate additional traffic, including adding new events and activities and networking with fairs nationwide on new ideas and best practices.

Senator Hunhoff asked when it was determined that an increase in gate fees was needed. Ms. Besch said the discussion began prior to the COVID-19 pandemic but action was postponed until the worst of the pandemic was over and life began returning to normal.

Representative Hansen asked if the Fair could still be held and its expenses paid if the increase was not approved. Ms. Besch replied in the affirmative but that it would be more difficult to do so without the additional revenue.

Representative Jensen wondered how many active campsites were available during the State Fair and what percentage of the campers using them were 4-H families. Ms. Besch said about 2,000 campers attend the Fair and there are close to 400 dry campsites; of that number, she speculated the majority of the campers are affiliated with 4-H. Representative Jensen commented that it appeared the brunt of the increase would fall on 4-H families, and he would rather see people pay more to attend concerts or other events than add financial pressure to 4-H participants.

Senator Hunhoff said while she strongly supports the State Fair, there were better ways to calculate the amount of the increase, and if additional revenue was needed, the request should have been presented to the Appropriations Committee during the budget request process. Senator Johns noted that while he understood the concerns, they were not a basis to revert the proposed rule and he would be hesitant to support that action.

Senator Hunhoff moved, seconded by Representative Jensen, that the rule proposed by the South Dakota State Fair (Department of Agriculture and Natural Resources) should be reverted to a step prior under SDCL 1-26-4.7(3). Motion prevailed on a roll call vote with 4 AYES, 1 NAY, and 1 EXCUSED. Voting AYE: Foster, Jensen, Hunhoff, and Hansen. NAY: Johns. EXCUSED: Cwach.

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.

Representative Jensen moved, seconded by Senator Hunhoff, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

Department of Social Services: Amend rules to:

- Establish a cap on the cost of adoptive home studies that the Department of Social Services will now reimburse;
- Replace the language of a specific program with broad topics that must be included in the host family training that adds flexibility yet maintains minimum standards; and
- Update a cross-reference.

Mr. Jeremy Lippert, Department of Social Services, reviewed the proposed rules which were prompted by the passage of [House Bill 1133](#) by the 2022 South Dakota Legislature.

Public Testimony

Ms. Amy Witt, Lutheran Social Services of South Dakota, expressed the organization's support for the proposed changes, saying the rule regarding reimbursement for home studies removes a common barrier for families wanting to adopt.

Senator Hunhoff asked about the Department of Social Service's response to a letter from **Mr. Chuck Jespersen, Lifeline Children's Services,** which was submitted during the agency's public comment period on the proposed rules. Mr. Lippert responded that Mr. Jespersen had expressed concern about the current limited training opportunities for host families and that he was supportive of the department's efforts to expand those opportunities to include other training programs.

Senator Johns moved, seconded by Senator Hunhoff, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

South Dakota Board of Nursing (Department of Health): Amend rules to:

- Remove an outdated rule on LPN dialysis training;
- Update rules on training requirements and delegation of nursing tasks to dialysis technicians;
- Add rules to allow a registered nurse to delegate central line dialysis tasks to a dialysis technician, including training and supervision requirements; and
- Remove registration requirements for dialysis technicians by the board.

Ms. Linda Young, Executive Director, South Dakota Board of Nursing, reviewed the proposed rules.

Senator Hunhoff asked how dialysis technicians and offsite dialysis units will be evaluated for competency and accountability. Ms. Young explained that technicians will be registered by a national association and complete a 200-hour course; a registered nurse must be onsite with the technician to ensure patient safety. The facilities are licensed by the Department of Health and are surveyed and evaluated by the department.

Senator Johns moved, seconded by Representative Jensen, that the review of the rules proposed by the South Dakota Board of Nursing (Department of Health) is complete. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

South Dakota Board of Education Standards (Department of Education): Amend rules to restructure travel, special instruction, and family training reimbursement rates; and clarify and update language.

Ms. Amanda LaCroix, Counsel, and Ms. Sarah Carter, Office of Early Childhood Services, Department of Education, reviewed the proposed rules and provided a Powerpoint presentation on the rate increases ([Document 1](#)).

Senator Hunhoff asked how often the rates are evaluated. Ms. Carter said the Medicaid rates are received annually and reviewed to determine whether the department can absorb the cost. Travel rates had been under review for several years and could be covered during the COVID-19 pandemic without any increases. According to Ms. Carter, the number of children needing services is now rebounding post-pandemic and the costs cannot be absorbed, necessitating the proposed increases.

Senator Hunhoff moved, seconded by Senator Johns, that the review of the rules proposed by the South Dakota Board of Education Standards (Department of Education) is complete. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

South Dakota Board of Education Standards (Department of Education): Amend rules to:

- Expand the age range for developmental delay;
- Revise criteria and title for emotional behavioral disability;
- Clarify graduation provisions; and
- Update language.

Ms. Amanda LaCroix, Counsel, and Ms. Linda Turner, Department of Education, reviewed the proposed rules.

Representative Hansen asked if the department intended to appeal a determination by Code Counsel that the proposed rules should not utilize the term Local Education Agency (LEA) as the agency is authorized to promulgate rules only for school districts. Ms. LaCroix confirmed the appeal, saying the term already appears in three chapters of South Dakota law ([Title 13](#)) and was included in the proposed rules to be consistent with federal regulations.

Mr. McCullough noted nearly every recommendation made by LRC was incorporated by the Board of Education Standards, with the exception of those regarding this term. Although LEA is primarily a federal term used sparingly in state law, he said the board's general authority does not cover its use and the term "school district" should be used instead.

Senator Johns agreed, saying he was reluctant to engage in legislation that would allow the use of the term. Senator Hunhoff asked whether a legislative change was necessary if the IRRC denied the appeal. Mr. McCullough said yes.

Ms. LaCroix said the distinction with the term school district that is in statute is that it only applies to public schools; the term LEA covers both public and private schools. She stated the size of the proposed packet being considered was due to all of the changes involving the use of the term.

Representative Hansen commented that if the appeal were denied today and the proposed rules reverted, the board could remove the LEA references, bring the revised rules back for consideration by the IRRC at its July meeting, and propose legislation during the 2023 Legislative Session to provide general authority for the use of the term in rule. Senator Johns agreed.

Senator Johns moved, seconded by Representative Jensen, that the appeal by the Board of Education Standards to allow the use of the term Local Education Agency (LEA) in the rules be denied. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

Senator Johns moved, seconded by Senator Hunhoff, that the rules proposed by the South Dakota Board of Education Standards (Department of Education) be reverted under SDCL 1-26-4.7(4). Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

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

- Modify the no discharge of a firearm from a boat zone in Clark County;
- Remove unlimited access permits to hunt certain deer hunting units and public lands;
- Modify license fees for temporary nonresident waterfowl, nonresident spring snow goose, early fall Canada goose nonresident, and nonresident youth waterfowl licenses;
- Modify the daily bag limit and possession limit of mergansers;
- Eliminate rule language that transfers unsold licenses to different units;
- Limit the number of any deer access permits;
- Eliminate the prohibition of nonresident early Canada goose hunting in certain counties; and
- Modify the prohibition for fishing from a boat in Clark County.

Mr. Tom Kirschenmann, Wildlife Division, Department of Game, Fish and Parks, reviewed the proposed rules.

Senator Hunhoff asked about declining duck hunter numbers in South Dakota. Mr. Kirschenmann said in the early 2000's, there were 20,000 to 22,000 duck hunters in the state and there are currently about 10,000. He stated the decline nationwide is even more significant, with the reasons for the drop being lack of time, places to hunt, and the complexity of regulations, particularly regarding duck identification. South Dakota has partnered with the state of Nebraska in recruitment efforts to increase participation.

Senator Hunhoff inquired about the response of residents, especially those in the Yankton area, to the Nebraska partnership. Mr. Kirschenmann said the program does not change the number of nonresident licenses available in those areas and the nonresident hunting units are the most complex.

Responding to Senator Hunhoff on the proposed repeal of [ARSD 41:06:50:04](#), pertaining to nonresident Canada goose hunting in southeast South Dakota, Mr. Kirschenmann explained there may be some challenge to resident hunters by nonresident hunters in the early season over available hunting areas, and the department will be monitoring the situation to see how the numbers change.

Senator Hunhoff moved, seconded by Representative Hansen, 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 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

Department of Revenue: Repeal all administrative rules related to the administration of the bingo tax.

Mr. Jason Evans, Property and Special Taxes Division, Department of Revenue, reviewed the proposed rules.

Representative Jensen moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Revenue is complete. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

Public Testimony: General Purposes

No public testimony was offered or received.

Adjournment

Senator Hunhoff moved, seconded by Senator Johns, that the meeting be adjourned. Motion prevailed on a roll call vote with 5 AYES and 1 EXCUSED. Voting AYE: Foster, Jensen, Johns, Hunhoff, and Hansen. EXCUSED: Cwach.

Chair Hansen adjourned the meeting at 12:32 p.m.