

MINUTES

Rules Review



Representative Jon Hansen, Chair
Senator Jean Hunhoff, Vice Chair

Four hundred twelfth meeting
Tuesday, September 13, 2022

Room 414 – State Capitol
Pierre, South Dakota

The four hundred twelfth meeting of the Interim Rules Review Committee (IRRC) was called to order by Representative Jon Hansen, Chair, at 10:01 a.m. (CT) on September 13, 2022, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Jon Hansen, Chair, Ryan Cwach (remote), and Kevin Jensen (remote); and Senators Red Dawn Foster (remote), Timothy Johns (remote), and Jean Hunhoff, Vice Chair. Staff members present were Doug Decker, LRC Staff; Kelly Thompson, Supervisor of Text Editing Services; and Hilary Carruthers, Legislative Systems Analyst.

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 Hunhoff moved, seconded by Representative Cwach, that the August 23, 2022, meeting minutes be approved. Motion prevailed on a roll call vote with 6 AYES. Voting AYE: Cwach, Foster, Jensen, Johns, Hunhoff, and Hansen.

Staff Report

Mr. Doug Decker, LRC Staff, announced that this is his last meeting serving as LRC staff for the IRRC, as the new Code Counsel will be starting on September 26, 2022. Representative Hansen thanked Mr. Decker for his assistance with the committee over the last four months.

Rules Reviewed

[South Dakota Board of Education Standards \(Department of Education\)](#): Amend rules to:

- Revise criteria pertaining to attendance, coursework readiness, exiting the English learner program, comprehensive and targeted support designation calculations; and
- Clarify and update language.

Ms. Amanda LaCroix and Ms. Shannon Malone, South Dakota Board of Education Standards, Department of Education, reviewed the proposed rules.

Senator Hunhoff asked about the schools' reaction to the proposed rules and how the outcomes will be compared with past actions. Ms. Malone responded that the majority of the proposed changes are for consistency and clarification and the department has had regular communication with school districts, working with them to ensure the changes will have a positive impact in the districts.

Senator Hunhoff inquired as to the impact of removing gap groups from the definitions of student groups. Ms. Malone replied that the action eliminates the duplication of students in more than one subgroup.

Responding to a question regarding changing the names of assessments conducted by the Department of Education, Ms. Malone said the names are being updated to clarify that they are South Dakota-specific assessments. She confirmed that the assessment council is comprised mainly of active teachers, along with those who have retired.

Representative Jensen asked how students with disabilities are defined in student groups. Ms. Malone responded that any student with a coded disability will be counted in that particular subgroup. When asked by Representative Jensen if a child needs to be diagnosed by a qualified mental health professional as having an emotional disability to be counted in a subgroup, Ms. Malone said the proposed rules are based on the Every Student Succeeds Act state plan and a separate plan exists for children with disabilities. Representative Jensen indicated he would contact the department directly for more information.

Representative Cwach asked how the rules changes affect students themselves. Ms. Malone explained that sanctions are placed on the school districts and not on individuals.

Senator Hunhoff moved, seconded by Representative Hansen, 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 6 AYES. Voting AYE: Cwach, Foster, Jensen, Johns, Hunhoff, and Hansen.

Department of Transportation: Amend rules to establish or modify reduced speed zones on State Trunk Highway 63 in Corson County and Todd County, U.S. Highway 212 in Dewey County, and U.S. Highway 12 in Walworth County.

Ms. Karla Engle, Department of Transportation, reviewed the proposed rules, noting that the changes were supported by both the South Dakota Highway Patrol and tribal officials, in those areas impacting tribal lands.

Representative Hansen moved, seconded by Senator Johns, 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, Foster, Jensen, Johns, Hunhoff, and Hansen.

South Dakota Appraiser Certification Program (Department of Labor and Regulation): Amend rules to establish experience training programs.

Ms. Marcia Hultman, Secretary, Department of Labor and Regulation, reviewed the proposed rules which were reverted by the IRRC at its August 23, 2022, meeting, and are being resubmitted for consideration a second time. Ms. Hultman told the committee that the current training path to licensure has been the state model for many years and that the intent of the rules is not to change that path but allow for the addition of an alternative route ([Document 1](#)).

Public Testimony

Mr. Karl Adam, South Dakota Bankers Association (SDBA), spoke in support of the proposed rules and provided information ([Document 2](#)) from his members regarding their concerns over the lack of appraisers in South Dakota and the impact of that shortage on their industry. Included in the documentation were the results of a membership survey which indicated 23 of 43 respondents felt there was a problem getting timely commercial appraisals while 16 of the 43 had the same problem with agricultural appraisals.

Ms. Sandra Gresh, Professional Appraisers Association of South Dakota (PAASD), testified in opposition to the revised rules, saying the department did not publicly disclose the changes nor provide an opportunity for input by

the public or the appraiser industry before bringing them to the IRRRC for a second time. Ms. Gresh referenced two letters ([Document 3](#) and [Document 4](#)) relating to those issues as well as a September 6, 2022, meeting of the Appraiser Certification Program Advisory Council at which the rules were discussed but not distributed. Ms. Gresh said her organization has been willing to compromise throughout the process and while both sides are in support of implementing the Experience Training Program (ETP), they differ on how that should be accomplished.

Senator Johns, acting as Chair for this portion of the IRRRC meeting, noted for the record that [SDCL 1-26-4.10](#) allows an agency to make proposed amendments to a reverted rule and resubmit it at the next IRRRC meeting without holding a public hearing. He asked Ms. Gresh if she now felt she had had an adequate opportunity to respond to the amendments. Ms. Gresh replied yes.

Ms. Amy Frink, Appraiser Advisory Council, spoke as an opponent, saying a survey given to council members following last week's meeting indicated that many of them were not in favor of the proposed changes. Ms. Frink said all appraisers should follow the same path to become licensed in South Dakota.

Senator Johns asked Ms. Frink if more time was needed for appraisers and the department to work out their differences with the rules. Ms. Frink responded yes.

Mr. Craig Steinley, PAASD, testified that more time is needed to reach a compromise on the proposed rules, which did not eliminate the Memorandum of Understanding (MOU) that caused discomfort for some IRRRC members at the August 23, 2022, meeting. According to Mr. Steinley, although the Department of Labor and Regulation said they would not be collecting the fees for the ETP program, the department does have the authority under [ARSD 36-21B-3\(22\)](#) to promulgate rules regarding the fees. Mr. Steinley said the MOU will include numerous parameters that should be included in rule to allow for proper oversight of the program.

In reference to comments made by Mr. Adam that one hundred percent of SDBA members would hire ETP graduates, Mr. Steinley said the Veterans Administration, Federal Housing Administration, Fannie Mae, and Freddie Mac require appraisers to have years of appraisal experience to be put on appraisal panels. As ETP graduates will be "orphans" without a supervisor, they will not be able to amass the necessary experience. In terms of grant funds for training programs, there are other non-competitive grant programs that are only available to state regulators of appraisers. Mr. Steinley ended by saying more time is needed for the department and the industry to iron out the rules.

Mr. Daryl Washechek, self, who serves as an advisory council member as well as a trainee supervisor, said it is important for an appraiser trainee to have a supervisor they can ask questions of to learn what they are supposed to be doing. With the ETP program, one "super trainer" will be overseeing twenty students who may not all be learning at the same pace, making it difficult for the trainer to ensure that all students understand the curriculum. Mr. Washechek was appreciative of the change made to proposed rule 20:14:15:08 requiring work product reviews.

A letter of support ([Document 5](#)) from **Mr. Brian Gatzke, self**, was received prior to today's meeting.

Rebuttal

Ms. Hultman said the testimony from the opposition illustrates the passion and emotion surrounding the program and the industry, and while there was no requirement to have a hearing on the changes proposed following reversion of the rules last month, the department acted in good faith by calling an advisory council meeting last week to discuss the rules. Ms. Hultman told members the rules will establish the bare minimum for requirements which is not to say that more training will not be needed. There is still much work to do on the program and the department will likely return with other proposed rules in the future.

Representative Hansen asked why the experience requirements were being placed in an MOU instead of in rule. Ms. Hultman replied that the rules were first drafted with the MOU but the department has no objection to placing the requirements in rule.

Representative Hansen inquired as to whether the fees are set in rule or in the MOU. Ms. Hultman responded that as the department cannot collect the fees without the express authority to do so, the program provider, South Dakota State University (SDSU), would need to handle that duty, which is specified in the MOU.

Senator Hunhoff asked about the exams appraiser trainees must pass to progress through the levels of licensure. **Ms. Amber Mulder, Department of Labor and Regulation**, explained that each category of license has an Appraiser Qualifications Board exam that a trainee must successfully complete before passing to the next level.

Senator Hunhoff requested an explanation of how the supervisor-trainee relationship will work with the ETP. Ms. Hultman said when a person has completed the course, they will go back to the trainer and request input about their performance, as is currently done in the traditional training model. Responding to a question about whether the MOU has definite criteria specifying that a trainee must have experience in certain areas, Ms. Hultman replied that the criteria will be part of the curriculum development which has yet to be finalized.

Senator Hunhoff asked Ms. Gresh if trainee supervisors have expressed concern over not having the time to work on their own because the supervisor role is so time-consuming. Ms. Gresh noted that some supervisors have made such comments and the training model as it currently stands has always been the model used by PAASD.

Senator Johns asked what the supervisor process entails from the supervisor perspective. Ms. Frink explained that a supervisor sometimes spends five days a week or more with their trainee, taking them through every level of the appraisal process, from going to the courthouse to obtain the initial data to doing research and building reports. The supervisor will determine when the trainee is competent in all areas to become an appraiser; the length of training needed depends on the trainee's ability to understand and execute the tasks required of them. As there is not a set curriculum for supervisors to use, the trainee learns what the supervisor knows. Ms. Frink said to become a supervisor, an experienced appraiser must take the supervisor class and pass the required test.

Representative Jensen commented that while not every profession may need stringent requirements, the quality of an appraiser's work is crucial to an individual trying to sell their property, and he is uncomfortable with the lack of a set curriculum for appraisers.

Representative Hansen said from a policy standpoint, he is supportive of the ETP program and providing more alternatives to obtaining licensure, but he still has concerns over the MOU from a legal standpoint. The MOU removes IRRC from the loop in terms of oversight, putting the process between the Department of Labor and Regulation and SDSU. Representative Hansen noted the department clearly has the authority to set the hours of training and if the rules only dealt with that issue, the committee would find the process is complete. As the MOU is the point of contention, he would like to see it removed from the proposed rules.

Senator Hunhoff noted that the appraiser industry has designed a supervisor-based training system under which supervision can be inconsistent, and as such, the supervisor program should be reviewed. As much of today's testimony centered on the process and not the rules themselves, Senator Hunhoff said she was unsure if reverting the rules one more time and giving the two sides more time for discussion would help, and that some compromise was needed.

Senator Johns said people learn by instruction and by doing, and while the ETP would include experience, it was unclear how the MOU would lay out any requirements for that experience.

Representative Cwach moved, seconded by Senator Foster, that proposed rules 20:14:15:04 and 20:14:15:08 be reverted to a step prior under SDCL 1-26-4.7(3).

Representative Hansen asked Representative Cwach what his rationale was for reverting 20:14:15:08 when changes requested by the opposition were made to the rule in its revised form. Representative Cwach responded that the proposed rules still do not address all of the concerns raised by the IRRC in August.

Motion prevailed on a roll call vote with 6 AYES. Voting AYE: Cwach, Foster, Jensen, Johns, Hunhoff, and Hansen.

Public Testimony: General Purposes

No public testimony was offered or received.

Adjournment

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

Chair Hansen adjourned the meeting at 12:21 p.m.