

REGISTER



South Dakota Legislative Research Council

Volume 41

Tuesday, 8:00 a.m., February 17, 2015

NOTICE OF PROPOSED RULES: (The date in parentheses is the date the rules were filed in the Legislative Research Council.)

Department of Game, Fish, and Parks:

(February 9, 2015) intends to amend a Use of Parks and Public Lands rule to expand the area within North Point Recreation Area in Charles Mix County that is restricted to shot shell and archery hunting to include the area situated west of 382nd Avenue and north of 297th Street, and situated south of 297th Street and west of Prairie Dog Bay; amend a Public Water Zoning rule to amend the existing "no wake zone" and designate a "public swimming zone" at Rocky Point Recreation Area on the Belle Fourche Reservoir in Butte County; amend a Refuges rule to eliminate the Cottonwood Lake State Waterfowl Refuge in Sully County; and amend Aquatic Nuisance Species rules to change all references in current rule from "aquatic nuisance species" to "aquatic invasive species", add "Common Reed, *Phragmites australis*" to the list of invasive plants, allow law enforcement officers to require the removal of vegetation and all aquatic invasive species from a boat, and to require that all drain plugs and related devices be opened or removed from all boats when being transported with exceptions for emergency response boats and vehicles and other boats while on lands owned, leased, controlled, or managed by the department or other government entities adjacent to the water, authorize the department secretary to declare a waterbody an aquatic invasive species containment water, describe the conditions that would necessitate this action, and outline department responsibilities, and prohibit the transportation of fish and aquatic bait in water away from any aquatic invasive species

containment water body except when on lands owned, leased, controlled, or managed by the department or other government entities, and allow no more than five gallons of vegetation-free water to be possessed for transport of bait and fish away from water bodies not designated as aquatic invasive species containment waters. The general authority for these rules, as cited by the department, is SDCL §§ 32-3A-1, 41-2-18, and 41-17-1.1.

A public hearing will be held at the RedRossa Convention Center, 808 W. Sioux Ave., Pierre, South Dakota, on March 5, 2015, at 2:00 p.m. (CST). Copies of the proposed rules may be obtained from and written comments sent to the office of the Secretary of the Department of Game, Fish and Parks, Foss Building, 523 East Capitol, Pierre, South Dakota 57501. Copies of the proposed rules are also available at: <https://rules.sd.gov/>. Written comments must be received by and in the office of the Secretary of the Department of Game, Fish and Parks on or before 12:00 p.m. three (3) days prior to the date of the hearing to be included within the record of the public hearing and to be considered by the Commission. Comments may also be sent by email to either wildinfo@state.sd.us or gfpadminrules@state.sd.us. All written and email comments must include the commenter's name, home town/city, and state. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3718 or (605) 223-7684 (Telecommunication Device for the Deaf) before the hearing.

Department of Revenue: Division of Business

Tax: (February 9, 2015) intends to amend rules to clarify the definition of the term "receive," source attorney services at the office of the attorney who is performing such services, and clarify the taxability of nonresident attorney services used in South Dakota. The general authority for these rules, as cited by the department, is SDCL §§ 10-45-47.1, 10-45-108, and 10-46-35.1.

A public hearing will be held in the Anderson Building, Room 109, 445 E. Capitol Avenue, Pierre, South Dakota, on March 9, 2015, at 1:30 p.m. Copies of the proposed rules may be obtained without charge from and written comments sent to the Department of Revenue, Legal Division, 445 East Capitol Avenue, Pierre, South Dakota 57501-3185. Copies of the rules are also available at the department's website at:

http://dor.sd.gov/Publications/Public_Notices/PDFs/btrules2015.pdf or at South Dakota's

Administrative Rules website at

<http://rules.sd.gov/>. Material sent by mail must reach the department by March 19, 2015, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-4701 at least 48 hours before the hearing.

Department of Health: Board of Medical and Osteopathic Examiners:

(February 11, 2015) intends to adopt rules to establish what constitutes a conflict of interest and a potential conflict of interest related to hearings held by the board; establish best practices related to prescribing controlled substances; and add a code of ethics to existing rules. The general authority for these rules, as cited by the board, is SDCL §§ 36-4-35, 36-4A-42, 36-4B-35, 36-4C-14, 36-10-36, 36-10B-3, 36-29-17, 36-31-13, and 36-36-12.

A public hearing will be held at the First Dakota National Bank Building, 101 N. Main Ave.,

Suite 301, Room 215, Sioux Falls, South Dakota, on March 11, 2015, at 9:00 a.m. Copies of the proposed rules may be obtained from and written comments sent to the South Dakota Board of Medical and Osteopathic Examiners, 101 N. Main Ave., Suite 301, Sioux Falls, South Dakota, 57104. Written comments must be received by March 10, 2015, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the Board can make arrangements are asked to call (605) 367-7781.

NOTICE:

The **Department of Social Services** has published a Home and Community Based Services Statewide Transition Plan pursuant to the federal requirements of 42 CFR 441.301. The transition plan contains a description of how South Dakota Home and Community Based Services settings will come into compliance with the Centers for Medicare and Medicaid Services (CMS) final rule published on January 16, 2014. The Transition Plan is available on the Department's website at <http://dss.sd.gov/medicaid/hcbs.aspx>. The transition plan will be open for public comment from February 2, 2015 to March 4, 2015. Comments may be made by e-mail to hcbs@state.sd.us. Comments will also be accepted by mail or phone. Written requests for a copy of the transition plan, and corresponding comments, may be sent to Division of Medical Services, Attn: HCBS Transition Plan, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501-2291.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

DEPARTMENT OF GAME, FISH AND PARKS: 41:06:61:06.

History-Notice: 41 SDR 107, Dec. 22, 2014

Hearing: January 15, 2015

Filed: February 9, 2015

Effective: March 2, 2015

Executive Appointments:

Steve Emery, Pierre, was appointed on January 9, 2015, as **Secretary** of the **Department of Tribal Affairs**, effective October 27, 2014, and shall continue at the pleasure of the Governor.

Darin Bergquist, Pierre, was appointed on January 20, 2015, as **Secretary** of the **Department of Transportation**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Pat Costello, Sioux Falls, was appointed on January 20, 2015, as **Commissioner** of the **Governor's Office of Economic Development**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Andy Gerlach, Pierre, was appointed on January 20, 2015, as **Secretary** of the **Department of Revenue**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Laurie Gill, Pierre, was appointed on January 20, 2015, as **Commissioner** of the **Bureau of Human Resources**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

James Hagen, Pierre, was appointed on January 20, 2015, as **Secretary** of the **Department of Tourism**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Marcia Hultman, Pierre, was appointed on January 20, 2015, as **Secretary** of the **Department of Labor**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Trevor Jones, Pierre, was appointed on January 20, 2015, as **Secretary** of the **Department of Public Safety**, effective

January 12, 2015, and shall continue at the pleasure of the Governor.

Dennis Kaemingk, Mitchell, was appointed on January 20, 2015, as **Secretary** of the **Department of Corrections**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Lucas Lentsch, Pierre, was appointed on January 20, 2015, as **Secretary** of the **Department of Agriculture**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Gloria Pearson, Yankton, was appointed on January 20, 2015, as **Secretary** of the **Department of Human Services**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Steven Pirner, Pierre, was appointed on January 20, 2015, as **Secretary** of the **Department of Environment and Natural Resources**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Major General Timothy A. Reisch, Howard, was appointed on January 20, 2015, as **Adjutant General**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Melody Schopp, Meadow, was appointed on January 20, 2015, as **Secretary** of the **Department of Education**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Lynne Valenti, Pierre, was appointed on January 20, 2015, as **Secretary** of the **Department of Social Services**, effective January 12, 2015, and shall continue at the pleasure of the Governor.

Larry Zimmerman, Rapid City, was appointed on January 20, 2015, as **Secretary** of the **Department of Veterans Affairs**, effective

January 12, 2015, and shall continue at the pleasure of the Governor.

Kimberley Malsam-Rysdon, Pierre, was appointed on January 27, 2015, as **Secretary** of the **Department of Health**, effective January 26, 2015, and shall continue at the pleasure of the Governor.

Note: A copy of the rules may be obtained directly from the above agencies or at <https://rules.sd.gov>. Write to the agency at the address given under "Notices of Proposed

Rules." There is no charge for proposed rules. The following agencies have permission from the Interim Rules Review Committee to charge for adopted rules: the Division of Insurance, the Cosmetology Commission, the State Board of Examiners in Optometry, the State Plumbing Commission, the Board of Nursing, the Department of Social Services, the State Electrical Commission, the South Dakota Board of Pharmacy, the Real Estate Commission, the Gaming Commission, the Department of Revenue and Regulation, and the Department of Labor for Article 47:03.

REMINDER OF HEARINGS SCHEDULED

2/26/2015	Transportation	Amend a Speed Zone rule to change a reference to SD Highway 264 to Aspen Boulevard in two limited speed zone segments on SD Highway 11 in Brandon; 41 SDR 123; February 9, 2015.
3/5/2015	Game, Fish and Parks	Amend a Use of Parks and Public Lands rule to expand the area within North Point Recreation Area in Charles Mix County that is restricted to shot shell and archery hunting to include the area situated west of 382 nd Avenue and north of 297 th Street, and situated south of 297 th Street and west of Prairie Dog Bay; amend a Public Water Zoning rule to amend the existing "no wake zone" and designate a "public swimming zone" at Rocky Point Recreation Area on the Belle Fourche Reservoir in Butte County; amend a Refuges rule to eliminate the Cottonwood Lake State Waterfowl Refuge in Sully County; and amend Aquatic Nuisance Species rules to change all references in current rule from "aquatic nuisance species" to "aquatic invasive species", add "Common Reed, <i>Phragmites australis</i> " to the list of invasive plants, allow law enforcement officers to require the removal of vegetation and all aquatic invasive species from a boat, and to require that all drain plugs and related devices be opened or removed from all boats when being transported with exceptions for emergency response boats and vehicles and other boats while on lands owned, leased, controlled, or managed by the department or other government entities adjacent to the water, authorize the department

		secretary to declare a waterbody an aquatic invasive species containment water, describe the conditions that would necessitate this action, and outline department responsibilities, and prohibit the transportation of fish and aquatic bait in water away from any aquatic invasive species containment water body except when on lands owned, leased, controlled, or managed by the department or other government entities, and allow no more than five gallons of vegetation-free water to be possessed for transport of bait and fish away from water bodies not designated as aquatic invasive species containment waters; 41 SDR 125; February 17, 2015.
3-9-2015	Revenue: Division of Business Tax	Amend rules to clarify the definition of the term "receive," source attorney services at the office of the attorney who is performing such services, and clarify the taxability of nonresident attorney services used in South Dakota; 41 SDR 126, February 17, 2015.
3-11-2015	Health: Board of Medical and Osteopathic Examiners	Adopt rules to establish what constitutes a conflict of interest and a potential conflict of interest related to hearings held by the board; establish best practices related to prescribing controlled substances; and add a code of ethics to existing rules; 41 SDR 126, February 17, 2015.

RULES REVIEW COMMITTEE MEETINGS

The Interim Rules Review Committee will have an informal meeting near the close of the Ninetieth Legislative Session to set the tentative meeting schedule for the 2015 interim. Watch for a notice of this informal meeting on the LRC website and at the Capitol.

Note: An updated version of the Administrative Rules Guide to Form and Style is available on the LRC website at <http://legis.sd.gov/Rules/RulesManual.aspx>.

The **South Dakota Register**, ISSN 0191-1104, is published by the South Dakota Legislative Research Council pursuant to SDCL 1-26A-1. Subscriptions to Volume 41 are \$25. Make checks payable to "State of South Dakota" and mail to the Legislative Research Council, State Capitol, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070. Information from the Register is available free of charge on the LRC website: <http://legis.sd.gov>. You may subscribe to electronic delivery of the **South Dakota Register** at *E-Subscribe* on the LRC website.
