

# REGISTER



## South Dakota Legislative Research Council

Volume 32

Monday, 8:00 a.m., July 18, 2005

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

**Department of Revenue and Regulation: Real Estate Commission:** (July 13, 2005) intends to adopt and amend rules to clarify appointed agent procedures regarding disclosure and confidentiality, to repeal forms in appendices by establishing contents of forms prescribed by the Real Estate Commission, and to update materials incorporated by reference. The general authority for these rules, as cited by the commission, is SDCL 36-21A-90, 36-21A-130, 36-21A-141.1, and 36-21A-147.

A public hearing will be held in Conference Room A of the Holiday Inn Express, 110 East Stanley, Fort Pierre, South Dakota at 9:00 a.m. CDT on August 25, 2005. A copy of the proposed rules may be obtained without charge from and written comments sent to the South Dakota Real Estate Commission, 221 W. Capitol, Suite 101, Pierre, SD 57501. Written comments must be received on or before August 22, 2005, to be considered. This hearing is being held in a physically accessible place. Persons who have special needs for which the commission can make arrangements are asked to call (605) 773-3600 at least 48 hours before the hearing.

**Department of Game, Fish and Parks:** (July 15, 2005) intends to amend rules regarding: private shooting preserves - modify tagging requirements (placement and time of placement) for harvested birds, define tracts of land which do not constitute a "contiguous" tract of land for purposes of issuance of a permit and inclusion within a preserve, repeal reference to public hearings on applications, require

division investigations and reporting of findings to the department, and require the department to consider certain factors in issuance of permits for preserves located within 1 mile of a publicly owned shooting area; waterfowl (duck/goose) hunting seasons – modify the daily limit on scaup from 3 to 2, modify the hunting season dates for certain ducks in the High Plains Zone, modify and define areas previously in a Special Goose Unit to be included within Goose Hunting Unit 2, modify the hunting season dates in certain Goose Hunting Units, reduce the daily bag limit on white-fronted geese from 2 to 1, and (by reason of yet to be determined federal regulations within the federal framework relating to migratory birds which will not be known until time of Hearing) the Commission will possibly consider and make other modifications to the daily bag limits and possession limits of certain waterfowl and hunting season dates and length of applicable seasons for certain waterfowl in the various areas and applicable zones (all to be in compliance with and inclusive of regulations permitted within the adopted Federal framework); public water zoning – in Marshall County create a "no boating zone" on certain waters within Piyas Lake during certain periods of time; mountain lion hunting season and license fees – establish a mountain lion hunting season and the license fee for issuance of the applicable licenses; continued hearing on park concession leases – modification of regulations relative to the park concession leases: definitions, general provisions, expiration or amendment of lease, and sale of interest in lease. The general authority for these rules, as cited by the department, is SDCL 32-3A-1, 41-2-18, 41-6-10, 41-6-18.4, 41-6-19.6, 41-11-5, and 41-17-1.1.

A public hearing will be held at the Ramkota River Center in Pierre, South Dakota, on August 4, 2005, at 2:00 p.m. Copies of the proposed rules may be obtained from and written comments sent to John L. Cooper, Secretary, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. Written comments must be received prior to the hearing date. Comments may also be sent by e-mail to [chuck.schlueter@state.sd.us](mailto:chuck.schlueter@state.sd.us). E-mail comments must include the commenter's name and address. 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) 773-3387 before the hearing.

#### **DECLARATORY RULING:**

On July 12, 2005 the South Dakota Commission on Gaming issued a Declaratory Ruling to determine if a gaming tournament "buy in" or "entry fee" was a bet subject to the \$100 bet limit allowed for gaming in Deadwood. The petition requesting the declaratory ruling "specifically requested that the Commission declare and determine whether an entry fee for a blackjack, poker or slot tournament which exceeds \$100 violates the maximum bet limitations allowed pursuant to SDCL 42-7B-14."

The Commission conducted a contested case hearing after public notice regarding this question. The Commission heard evidence from various gaming interests in Deadwood and other evidence from people opposed to raising the bet limit.

After hearing the evidence the Commission issued its declaratory ruling and entered findings of fact and conclusions of law. In its findings the Commission found that the evidence in opposition to the petition confused the buy in or entry fee for a tournament with the raising of the maximum bet limits. An entry fee is used to purchase entry to the tournament and the player receives a set amount of chips that do not have a

cash value. The entry fee entitles a player to participate in a tournament. The commission found that a buy in is not a bet and is not a wager in a game of chance and a buy in or entry fee which exceeds \$100 does not violate the maximum amount for an initial or subsequent bet.

The Commission's declaratory ruling is specifically limited to gaming tournaments conducted by licensed establishments within the city limits of Deadwood.

A copy of the declaratory ruling may be reviewed or copied at the office of the Legislative Research Council during normal business hours.

#### **FILINGS IN THE SECRETARY OF STATES OFFICE:**

##### **Executive Appointments:**

**Dana Darger**, Rapid City, was reappointed on July 1, 2005, to the **South Dakota Commission on Health Care**, effective July 1, 2005, and shall continue until June 30, 2008.

**Molly Guitierrez**, Sioux Falls, was reappointed on July 1, 2005, to the **South Dakota Commission on Health Care**, effective July 1, 2005, and shall continue until June 30, 2008.

**Bill Nelson**, Sisseton, was reappointed on July 1, 2005, to the **South Dakota Commission on Health Care**, effective July 1, 2005, and shall continue until June 30, 2008.

**Carol J. Peterson**, Brookings, was reappointed on July 1, 2005, to the **South Dakota Commission on Health Care**, effective immediately and shall continue until June 30, 2008.

**Jim Reynolds**, Sioux Falls, was reappointed on July 1, 2005, to the **South Dakota Commission on Health Care**, effective immediately and shall continue until June 30, 2008.

**Jim Szana**, Pierre, was reappointed on July 1, 2005, to the **South Dakota Commission on Health Care**, effective July 1, 2005, and shall continue until June 30, 2008.

**Dennis Landguth**, Rapid City, was appointed on July 6, 2005, to the **Board of Minerals and Environment**, to replace Brian Radke, effective immediately and shall continue until June 30, 2009.

**Steve Lindquist**, Sioux Falls, was appointed on July 8, 2005, to the **South Dakota Commission on Health Care**, to replace Bill Forey, effective July 1, 2005, and shall continue until June 30, 2008.

**Marilyn Seymour**, White River, was appointed on July 8, 2005, to the **South Dakota Commission on Health Care**, to replace Rita Wagner, effective immediately and shall continue until June 30, 2008.

**Dennis Hagny**, Aberdeen, was appointed on July 12, 2005, to the **Education Assistance Corporation Board of Directors**, to replace Tim Kessler, effective immediately and shall continue until June 30, 2007.

**Arlene Ham-Burr**, Rapid City, was appointed on July 12, 2005, to the **Commission on Human Rights**, to replace Clint Waara, effective immediately and shall continue until June 30, 2007.

**Cathy Holden**, Pierre, was appointed on July 12, 2005, to the **South Dakota Interagency Coordinating Council**, to replace Sandi Carstensen, effective immediately.

**James K. Lust**, Aberdeen, was reappointed on July 12, 2005, to the **Education Assistance Corporation Board of Directors**, effective July 1, 2005, and shall continue until June 30, 2009.

**Jack Thompson**, Aberdeen, was reappointed on July 12, 2005, to the **Education Assistance Corporation Board of Directors**, effective July 1, 2005, and shall continue until June 30, 2009.

**Damian Prunty**, Pierre, was appointed on July 13, 2005, to the **South Dakota Risk Pool Advisory Board**, to replace Ken Hericks, effective immediately and shall continue until June 30, 2006.

**Michael Shaw**, Pierre, was appointed on July 13, 2005, to the **South Dakota Risk Pool Advisory Board**, to replace Vicky Rizzolo, effective immediately and shall continue until June 30, 2008.

Note: A copy of the rules may be obtained directly from the above agencies. 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**

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| 7-19-2005 | Human Services: Rehabilitation Services | Adopt rules to establish requirements for the cochlear implant program; 31 SDR 219.   |
| 7-25-2005 | Labor: Cosmetology Commission           | Amend rules to set the esthetician education hours at six-hundred clock hours; delete the medical description from microdermabrasion devices; allow birds or animals in salons; require schools to have at least one electric file with attachments as part of the school's |

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|           |   | equipment; update the school curriculum for cosmetology, nail technology, and esthetics; change the required school reports and records to record clock hours or credit hours; and set hours for esthetics or nail technology school field trips; 32 SDR 1.   |
| 7-26-2005 | Revenue and Regulation: Gaming Commission | Adopt new licensing categories as well as license fee schedules for Hub employees, key employees, and multi-jurisdictional totalizer hub licensees; adopt rules to allow for account wagering and multi-jurisdictional simulcasting and interactive wagering totalizer hubs with the state of South Dakota; 32 SDR 1.   |
| 7-28-2005 | Transportation                            | Amend speed zones in the following counties: Brown, Day, and Roberts Counties – US Highway 12 from east of Aberdeen to Interstate 29; Davison, Sanborn, and Beadle Counties – SD Highway 37 from north of Mitchell to south of Huron; Yankton, Clay, and Union Counties – SD Highway 50 from east of Yankton to Interstate Highway 29; Stanley and Lyman Counties – US Highway 83 from south of Fort Pierre to Interstate Highway 90; Brown and Spink Counties – US Highway 281 from south of Aberdeen to the junction with SD Highway 20.; and adopt rules for utility corridor management; 32 SDR 1.  |
| 7-28-2005 | Bureau of Finance and Management          | Amend a rule to require that requests for Advance Travel have a minimum of \$200; 32 SDR 7.   |
| 8-4-2005  | Game, Fish and Parks                      | Adopt, amend and repeal rules regarding: private shooting preserves - modify tagging requirements (placement and time of placement) for harvested birds, define tracts of land which do not constitute a "contiguous" tract of land for purposes of issuance of a permit and inclusion within a preserve, repeal reference to public hearings on applications, require division investigations and reporting of findings to the department, and require the department to consider certain factors in issuance of permits for preserves located within 1 mile of a publicly owned shooting area; waterfowl (duck/goose) hunting seasons – modify the daily limit on scaup from 3 to 2, modify the hunting season dates for certain ducks in the High Plains Zone, modify and define areas previously in a Special Goose |

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|           |  | <p>Unit to be included within Goose Hunting Unit 2, modify the hunting season dates in certain Goose Hunting Units, reduce the daily bag limit on white-fronted geese from 2 to 1, and (by reason of yet to be determined federal regulations within the federal framework relating to migratory birds which will not be known until time of Hearing) the Commission will possibly consider and make other modifications to the daily bag limits and possession limits of certain waterfowl and hunting season dates and length of applicable seasons for certain waterfowl in the various areas and applicable zones (all to be in compliance with and inclusive of regulations permitted within the adopted Federal framework); public water zoning – in Marshall County create a "no boating zone" on certain waters within Piyas Lake during certain periods of time; mountain lion hunting season and license fees – establish a mountain lion hunting season and the license fee for issuance of the applicable licenses; continued hearing on park concession leases – modification of regulations relative to the park concession leases: definitions, general provisions, expiration or amendment of lease, and sale of interest in lease; 32 SDR 11.</p> |
| 8-25-2005 | Revenue and Regulation: Real Estate Commission | <p>Adopt and amend rules to clarify appointed agent procedures regarding disclosure and confidentiality, to repeal forms in appendices by establishing contents of forms prescribed by the Real Estate Commission, and to update materials incorporated by reference; 32 SDR 11.</p>   |

### *Rules Review Committee Meetings*

The next meeting of the Interim Rules Review Committee will be held Tuesday, August 9, 2005, in Room 413 of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2005 interim: September 20, October 18, December 6, and January 9, 2006.

**Note:** An updated version of the Administrative Rules Guide to Form and Style is available at the LRC office and on the Legislative Web site.

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