

# REGISTER



## South Dakota Legislative Research Council

Volume 40

Monday, 8:00 a.m., October 28, 2013

---

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

**Department of Education: Board of Education:** (October 21, 2013) intends to adopt a Funding rule to allow school districts to use special education funds to pay for administrative expenses incurred by educational service cooperatives as a result of providing special education service. The general authority for this rule, as cited by the board, is SDCL § 13-16-32.

A public hearing will be held in Conference Room 4, MacKay Building, 800 Governors Drive, Pierre, South Dakota, on November 18, 2013, at 10:30 a.m. CST. Copies of the proposed rule may be obtained without charge from the Department of Education, Ferne Haddock, 800 Governors Drive, Pierre, South Dakota 57501 or from the Internet at <http://www.doe.sd.gov/board/index.aspx>. Written comments may be sent to the board at the address above and must be received by November 15, 2013, 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) 773-5669 at least 48 hours before the hearing.

**Department of Labor and Regulation: Board of Technical Professions:** (October 24, 2013) intends to amend rules to add deadlines for national examinations that will be moved to computer based testing (CBT); affirm deadlines to the Board's own examinations; remove fees collected by the Board for examinations that it no longer proctors; establish a fee in the event of an applicant having to retake the petroleum

release assessor or remediator examination; and clarify Comity licensure and examination requirements. The general authority for these rules, as cited by the board, is SDCL §§ 36-18A-22, 36-18A-28, 36-18A-31, and 36-18A-34.

A public hearing will be held in Suite 304, 3<sup>rd</sup> floor, 2040 W. Main Street, Rapid City, South Dakota, on November 22, 2013, at 2:00 p.m. MT. Copies of the proposed rules may be obtained from and written comments sent to the South Dakota Board of Technical Professions, 2040 W. Main, Suite 304, Rapid City, South Dakota 57702-2447. Written comments must be received by November 21, 2013, 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) 394-2510 at least 48 hours before the hearing.

**Department of Transportation:** (October 24, 2013) is proposing to amend a General Provisions rule to add definitions for construction contract and prospective bidder and delete the definition for department contract; amend Classification and Bidding Capacity Rating rules to allow the Secretary of Transportation to appoint a temporary alternate to the classification and rating committee if a member is unavailable, eliminate the requirement for the department to maintain a list of all bidding proposals for every letting, increase the threshold for requiring prequalification of bidders from \$100,000 to \$200,000, change the terms "contractor" and "applicant" to "prospective bidder", require a citation for specific statutory exemption from

disclosure of confidential financial records, work classifications are being amended to update work types and add a classification for bridge painting, establish the maximum per contract bidding capacity when an audited financial statement is submitted, amend the effective period for a bidding capacity rating to coincide with the expiration date of the surety bond or expiration of the certificate of surety and increase the permissible extension period from 30 to 60 days, clarify that a reduction in bidding capacity for uncompleted work on other contracts is for bonded work, clarify allowable deduction factors and how deductions may be applied, increase the maximum possible period of ineligibility and conform to federal requirements, define the potential maximum period of ineligibility, update the term "prospective bidder" and make additional clarifications, provide for appeal by a timely request to the Secretary to review a determination of the classification committee, and a decision within 5 days thereafter, rather than a formal Chapter 1-26 hearing process, clarify when the new prequalification statement must be received, clarify the time period for submission of a new prequalification statement, establish the process for a prospective bidder to retain or revise their prequalification status, clarify what prior work experience will be considered by the committee when establishing a bidding capacity rating, amend Bid Proposals rules to eliminate superfluous provisions and include Region lettings, update the term "prospective bidder", repeal a redundant rule regarding preference among multiple bid proposals, repeal a rule that is no longer necessary due to the new electronic bidding system; amend Suspension and Debarment rules to update language as reflected in the new definitions, clarify the suspension is from bidding construction contracts, eliminate reference to a hearing officer, clarify the effective date of debarment, clarify that only one of the three circumstances need to apply in a particular situation, correct references to other rules and remove the restriction on subcontracting, establish the factors for which

the department can suspend or deny a contractor's prequalification status, establish the period of suspension of a contractor's prequalification status, establish the procedure by which a suspended contractor may restore their prequalified status following the suspension period, and repeal Highway Construction Contract Requirements rules because the requirements are in the Standard Specifications for Roads and Bridges. The general authority for these rules, as cited by the department, is SDCL §§ 31-2-13.1 and 31-5-10.

A public hearing will be held in the Commission Room of the Becker Hansen Building, 700 East Broadway Avenue, Pierre, South Dakota, on November 21, 2013, at 9:05 a.m. CDST. Copies of the proposed rules may be obtained without charge from and written comments sent to the Secretary of Transportation, Becker-Hansen Building, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. Material sent by mail must reach the department by November 20, 2013, 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) 773-3540 or 1-800-877-1113 (Telecommunication Device for the Deaf).

## **FILINGS IN THE SECRETARY OF STATE'S OFFICE:**

### **Executive Appointments:**

**Edward Anderson**, Pierre, was reappointed on October 21, 2013, to the **Statewide One-Call Notification Center Board**, effective November 1, 2013, and shall continue until October 31, 2016.

**Patricia F. Harding**, Pierre, was reappointed on October 21, 2013, to the **State Capitol Complex Restoration and Beautification Commission**, effective immediately and shall continue until June 30, 2017.

**Fay M. Jandreau**, Kimball, was reappointed on October 21, 2013, to the **Statewide One-Call Notification Center Board**, effective November 1, 2013, and shall continue until October 31, 2016.

**Carla A. Sahr**, Pierre, was reappointed on October 21, 2013, to the **State Capitol Complex Restoration and Beautification Commission**, effective immediately and shall continue until June 30, 2017.

**John L. Ward**, Rapid City, was reappointed on October 21, 2013, to the **Statewide One-Call Notification Center Board**, effective November 1, 2013, and shall continue until October 31, 2016.

**Michael W. Amolins**, Sioux Falls, was appointed on October 23, 2013, to the **South Dakota Professional Teachers Practices and Standards Commission**, to replace Janet Metzger, effective immediately and shall continue until December 31, 2015.

**Patti A. Benson**, Lemmon, was reappointed on October 23, 2013, to the **South Dakota Professional Teachers Practices and Standards Commission**, effective January 1, 2014, and shall continue until December 31, 2016.

**Jim Borszich**, Huron, was appointed on October 23, 2013, to the **South Dakota Workforce Development Council**, to replace Shelly Stingley, effective immediately and shall continue until June 30, 2016.

**Cal Geis**, Belle Fourche, was reappointed on October 23, 2013, to the **South Dakota Workforce Development Council**, effective immediately and shall continue until June 30, 2016.

**Warren Lotsberg**, Huron, was reappointed on October 23, 2013, to the **South Dakota Workforce Development Council**, effective immediately and shall continue until June 30, 2016.

**Roger Wilson**, Rapid City, was reappointed on October 23, 2013, to the **State Board of Dentistry**, effective immediately and shall continue until October 30, 2016.

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**

10-29-2013	Social Services: Board of Examiners of Psychologists	Amend rules to increase the fee for licensure renewal, repeal an obsolete provision, and update supervision requirements; 40 SDR 63.
10-30-2013	<p><del>Human Services: South Dakota Developmental Center</del></p> <p><b>Hearing has been cancelled.</b></p>	<p><del>Amend rules to remove all references to "mental retardation" or "mentally retarded" from South Dakota Administrative Rules and replace them with "intellectual disability". These changes will remove terms that are outdated and offensive and replace those terms with more appropriate people's first language; 40 SDR 67.</del></p>

11-6-2013	Governor's Office of Economic Development	Amend rules to bring the certification criteria into line with industry standards relating to utility, transportation, and environmental program requirements; 40 SDR 67.
11-7-2013	Game, Fish and Parks	Amend rules to add Sheps Canyon Horse Camp to the list of areas that require an equestrian campground fee and increase camping permit fees; increase the fees to reserve picnic shelters, purchase firewood, adjust the fees to use certain park facilities and authorize fees for new services and facilities; raise resident and nonresident hunting and fishing license fees; add a new section which, with certain exceptions for law enforcement and emergency personnel, would prohibit the use of external felt soled footwear including boots and waders in the waters of the state; change the statewide possession limits for all species in inland waters from two to three times the daily limit; change the possession limit for yellow perch from 15 to 30 fish on South Dakota-Minnesota boundary waters; add East and West Heritage GPS ponds to the list of waters with a 15-inch minimum length limit for largemouth and smallmouth bass and remove current walleye limits on Lake Oahe of 8 daily of which at most four can be 15 inches or longer in length, and 24 in possession, and instead apply statewide walleye harvest restrictions; modify ARSD 41:07:06:01 to include spearing of rough fish in South Dakota-Minnesota boundary waters and repeal ARSD 41:07:06:01.02 pertaining to spearing rough fish in South-Dakota-Minnesota boundary waters; modify ARSD 41:07:06:03 to remove subsection (7) which allows game fish spearing in certain waters in Eastern South Dakota, add South Island Lake and county designations for North and South Island Lakes which allows northern pike to be taken in inland waters except those managed for muskies; revise language that allows the director of the Division of Wildlife to temporarily open game fish spearing for special events areas otherwise closed to game fish spearing; modify ARSD 41:09:04:02.02 pertaining to species that may be taken as bait for commercial use to allow emerald shiners

		and spottail shiners to be taken and sold by any licensed resident bait dealer or sold by any licensed nonresident bait dealer; modify ARSD 41:09:04:02.04 pertaining to species that may be taken as bait for noncommercial use to allow golden shiners, emerald shiners, spottail shiners and dead gizzard shad to be transported away from the water from which they were taken to be used as bait; modify ARSD 41:09:04:03 pertaining to waters closed to the taking of bait; 40 SDR 67.
11-13-2013	Health: Board of Medical and Osteopathic Examiners	Adopt rules to create the standards in which an applicant can be issued a license through reciprocity and to allow provisional licenses to those requesting the examination waiver based on ABMS Board Certification; 40 SDR 73.
11-15-2013	Labor and Regulation: Appraiser Certification Program	Amend rules to require notice of change of email address; include in the appraiser application a requirement to disclose email address, if available; completion of the supervisory and state-registered appraiser education program before supervision begins; state that nonclient appraisal experience is allowed for experience credit; change supervising to supervisory appraiser; adoption of the new edition of the uniform standards; change a cited statute; provide update conditions for continuing education; and allow partial hours for continuing education under certain circumstances; 40 SDR 73.
11-18-2013	Education: Board of Education	Adopt a Funding rule to allow school districts to use special education funds to pay for administrative expenses incurred by educational service cooperatives as a result of providing special education service; 40 SDR 77.
11-21-2013	Transportation	Amend a General Provisions rule to add definitions for construction contract and prospective bidder and delete the definition for department contract; amend Classification and Bidding Capacity Rating rules to allow the Secretary of Transportation to appoint a temporary alternate to the classification and rating committee if a member is unavailable, eliminate the requirement for the department to maintain a list of all bidding proposals for every letting, increase the threshold for requiring prequalification of bidders from

	<p>\$100,000 to \$200,000, change the terms "contractor" and "applicant" to "prospective bidder", require a citation for specific statutory exemption from disclosure of confidential financial records, work classifications are being amended to update work types and add a classification for bridge painting, establish the maximum per contract bidding capacity when an audited financial statement is submitted, amend the effective period for a bidding capacity rating to coincide with the expiration date of the surety bond or expiration of the certificate of surety and increase the permissible extension period from 30 to 60 days, clarify that a reduction in bidding capacity for uncompleted work on other contracts is for bonded work, clarify allowable deduction factors and how deductions may be applied, increase the maximum possible period of ineligibility and conform to federal requirements, define the potential maximum period of ineligibility, update the term "prospective bidder" and make additional clarifications, provide for appeal by a timely request to the Secretary to review a determination of the classification committee, and a decision within 5 days thereafter, rather than a formal Chapter 1-26 hearing process, clarify when the new prequalification statement must be received, clarify the time period for submission of a new prequalification statement, establish the process for a prospective bidder to retain or revise their prequalification status, clarify what prior work experience will be considered by the committee when establishing a bidding capacity rating, amend Bid Proposals rules to eliminate superfluous provisions and include Region lettings, update the term "prospective bidder", repeal a redundant rule regarding preference among multiple bid proposals, repeal a rule that is no longer necessary due to the new electronic bidding system; amend Suspension and Debarment rules to update language as reflected in the new definitions, clarify the suspension is from bidding construction contracts, eliminate reference to a hearing officer, clarify the effective date of</p>
--	---

		debarment, clarify that only one of the three circumstances need to apply in a particular situation, correct references to other rules and remove the restriction on subcontracting, establish the factors for which the department can suspend or deny a contractor's prequalification status, establish the period of suspension of a contractor's prequalification status, establish the procedure by which a suspended contractor may restore their prequalified status following the suspension period, and repeal Highway Construction Contract Requirements rules because the requirements are in the Standard Specifications for Roads and Bridges; 40 SDR 77.
11-22-2013	Labor and Regulation: Board of Technical Professions	Amend rules to add deadlines for national examinations that will be moved to computer based testing (CBT); affirm deadlines to the Board's own examinations; remove fees collected by the Board for examinations that it no longer proctors; establish a fee in the event of an applicant having to retake the petroleum release assessor or remediator examination; and clarify Comity licensure and examination requirements; 40 SDR 77.

### **RULES REVIEW COMMITTEE MEETINGS**

The next meeting of the Interim Rules Review Committee will be held Tuesday, November 12, 2013, in Room 414, Fourth Floor, of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2013 interim: December 17.

**Note:** An updated version of the Administrative Rules Guide to Form and Style is available on the Legislative Web site at <http://legis.state.sd.us/rules/index.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 40 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 Internet at <http://legis.state.sd.us>. Subscribe to receive electronic notification of the availability of the **South Dakota Register** at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).