



# Legislative Research Council

## RULES REVIEW COMMITTEE AGENDA

Revised 8/13/2008

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Senator Orville B. Smidt, Chair  
Representative Roger W. Hunt, Vice Chair

Two hundred eighty-ninth meeting  
Tuesday  
August 19, 2008

LCR 1  
State Capitol  
Pierre, South Dakota

*Agencies are asked to have a representative present at the meeting  
to give background information on their rules.*

9:30 a.m. Call to order, roll call, approval of minutes, staff report

9:35 a.m. Review of proposed rules

### Senator Smidt

Department of Corrections: Board of Pardons and Paroles – Amend rules to clarify and modernize operational procedures and reflect current case law.

Department of Game, Fish and Parks – Amend Application for License rules that would remove the 5 license limit after the third drawing for deer, antelope and turkey seasons for which a limited number of licenses are allocated per unit, and make the leftover licenses available on a first-come, first-served basis, and correct the reference in ARSD 41:06:01:09 to the rule subsection which establishes the fee which must be submitted with an application for a preference point from subdivision 41:06:02:03(48) to subdivision 41:06:02:03(49); amend Fall Wild Turkey Hunting Season rules to establish season dates, shooting hours, open units, requirements and restrictions; establish the number and types of licenses available which will include an increase of 500 resident and 40 nonresident one-tag "any turkey" licenses (14% increase of 540 tags over the number issued in 2007) in the Black Hills Unit, an increase of 244 resident one-tag and 400 resident two-tag "any turkey" licenses (8% increase of 644 tags over the number issued in 2007) in the Prairie Units, and an increase of 8 nonresident one-tag and a decrease of 16 two-tag "any turkey" licenses in the Prairie Units; combine Units 53A and 53B into one Unit 53A; combine Units 24A (Dewey County) and 64A (Ziebach County) into one Unit 24A; eliminate the split season for Units 44A and 44B (Lincoln County) and combine into one Unit 44A; and adjust the unit boundary for Units 49A and BH1; amend Black Hills Deer Hunting Season rules to establish season dates, shooting hours, open units, and requirements and restrictions; establish the number and types of resident and nonresident licenses available which will include offering residents 100 and nonresidents 8 fewer "any antlerless deer" licenses than were authorized in 2007, and offering residents 450 fewer and nonresidents 36 fewer "antlerless whitetail" licenses than were authorized in 2007; amend West River Deer Hunting Season rules to establish

season dates, shooting hours, open units, requirements and restrictions; establish the number and types of resident and nonresident licenses/tags available, which will include adjusting license numbers in 24 units by decreasing resident one-tag licenses by 1,110 licenses and nonresident one-tag licenses by 90 licenses, and increasing resident two-tag licenses by 2,315 licenses (4,630 tags) and nonresident two-tag licenses by 184 licenses (368 tags); combine Units 53A and 53B into one Unit 53A (Perkins County); combine Units 20A and 20B into one Unit 20A (Corson County); and update the Unit 58D description to incorporate "People First Language"; amend Mountain Lion Hunting Season rules to establish season dates, open area, harvest limits, requirements and restrictions, and number of resident licenses available; change the season dates from November 1 to December 31, inclusive, to January 1 through March 31, inclusive; allow the GFP Commission by resolution to extend the mountain lion season beyond March 31, and create a mountain lion license which allows landowners to hunt year round on their own land situated outside the Black Hills Fire Protection District; amend Furbearer Seasons (Beaver Trapping and Hunting Season) rules to establish season dates, areas open for trapping, requirements and restrictions, and remove the closed to beaver trapping status on the Spring Creek drainage in Pennington County and open that area to trapping from November 1, 2008, to April 1, 2009; amend Furbearer Seasons (Mink, Weasel and Muskrat Trapping Season) to establish season dates, areas open for trapping, requirements and restrictions, and revise the rule section pertaining to nonresident restrictions on trapping mink and weasel that will clarify that nonresidents may trap mink and weasel from December 6 through January 31, inclusive; amend Trapping Prohibitions rules to require trappers statewide to check any trap or snare set entirely beneath ice and which remains entirely beneath ice and remove any animal caught in the trap prior to 12:00 o'clock midnight of the fifth full calendar day following a previous check of the trap or following initial setting of the trap.

Department of Game, Fish and Parks – Amend East River Deer Hunting Season rules to establish season dates, requirements and restrictions, open areas, shooting hours, and number of licenses/tags available which will include offering 1,855 less one-tag licenses and 65 less two-tag licenses (3% decrease of 1,985 tags) than were authorized in 2007; and remove Brown County from the "super unit" in north-central South Dakota; amend Antelope Hunting Season and License Forms and Fees rules to establish season dates, requirements and restrictions, open areas, shooting hours, and number of resident and nonresident licenses/tags available which will include offering residents 485 less one-tag licenses, 6,415 less two-tag licenses, and 9,150 more 3-tag licenses, and nonresidents 41 less one-tag licenses, 508 less two-tag licenses, and 732 more 3-tag licenses, than were authorized in 2007; create a new license that would be valid for "any antelope and two doe/fawn antelope" at a cost of \$40 for residents and \$240 for nonresidents; create a new license that would be valid for "three doe/fawn antelope" at a cost of \$20 for residents and \$75 for nonresidents; provide that unfilled "doe/fawn antelope" tags from Units 15, 35, 49 and 53 can be used anywhere in this 4-unit area during the West River Deer Season; provide that unfilled "any antelope" tags from Units 15, 35, 49 and 53 would convert to "doe/fawn antelope" tags and can be used anywhere in this 4-unit area during the West River Deer Season; combine Bennett and Shannon Counties into one unit; combine Units 27A and 27B (Fall River County) to make one Unit 27A but retain the split season; and establish a split season for Units 20A (Corson County) and 24A (Dewey County); amend National Wildlife Refuge Deer Hunting Season rules to establish season dates, requirements and restrictions, open areas, shooting hours, and establish the number of resident and nonresident licenses/tags available which will include elimination of 275 resident and 25 nonresident "any deer" licenses and instead offer 275 resident and 25 nonresident "any deer plus any antlerless deer" licenses on Sand

Lake National Wildlife Refuge; elimination of 20 resident and 2 nonresident 2-tag "any deer plus any antlerless deer" licenses and instead offer 20 resident and 2 nonresident "any deer" licenses on Waubay National Wildlife Refuge; and change the length of the third Waubay National Refuge season from 21 to 14 days; amend Youth Waterfowl Hunting Season rules to establish season dates, requirements and restrictions, shooting hours, open area, bag and possession limits; and adjust the age requirement to allow youth who have not reached the age of 16 by the first day of the season to participate in the youth waterfowl season; amend Early Fall Canada Goose Hunting Season rules to establish season dates, requirements and restrictions, shooting hours, open area, bag and possession limits; modify season dates to begin on the Saturday closest to September 7 (i.e., September 6, 2008) and run until the Friday before the last Saturday of September; and include Perkins County in the area closed for early Canada Goose hunting; adopt Mentored Youth Hunting and amend Application for License and Licensee Forms Fees to establish the framework for mentored youth hunting in South Dakota, including season dates for Youth Deer, Antelope (Rifle and Archery), Fall Turkey, Spring Turkey, Small Game, and Migratory Game Bird Seasons; open areas, required licenses, daily bag and possession limits; and include the following requirements and restrictions: allow a resident parent and/or guardian to purchase no more than one (1) mentor deer license (antlerless), one (1) mentor antelope license (doe/fawn), one (1) mentor fall turkey license "any turkey," and one (1) mentor spring turkey license "one male" for a designated mentored youth at the cost of \$5 per license; mentored youth must be at least 10 and younger than 16 years of age; mentored hunter must be accompanied by an unarmed parent, guardian, or designated mentor (except those persons carrying a pistol and possessing a valid concealed pistol permit as provided in SDCL chapter 23-7) and within immediate physical control and supervision; an adult mentor must have written permission from the parent or guardian to serve as a "mentor;" an adult mentor can not accompany more than one mentored child at any given time; a hunting party which includes a mentored youth can not exceed six (6) total persons; the adult mentor must be a resident, have successfully completed a hunter safety or hunter education course, and be at least 18 years of age; for each season and associated units, all applicable restrictions apply; mentor hunts involving migratory game birds will require the adult mentor to possess all required licenses and certifications for that specific season; for Upland and Migratory hunting, the combined take (daily limit) is not to exceed the limit authorized for the mentor license, as well as the possession limit not to exceed the limit authorized for the adult mentor; youth participating in a "Mentored Hunt" would be ineligible to obtain a regular season license for that specific season (i.e., Youth Deer, Archery and Rifle Antelope, Fall Turkey, Spring Turkey).

Department of Game, Fish and Parks – Amend Wildlife Preservation Facility rules to establish a "wildlife preservation facility" defined to include persons/entities that hold a South Dakota sales tax license to operate a business that receives, possesses or has custody of any wild animal belonging to another person for the purpose of picking, skinning, cleaning, freezing, processing or storage; establish requirements for a "wildlife preservation facility" pertaining to record keeping, record retention and issuance of receipts for all wild animals leaving such facilities; and establish authority for department personnel to inspect wildlife preservation facilities, wild animals and records required to be maintained and held on the premises; amend Transportation of Game rules to establish a new rule section setting forth requirements for gifting of game and defining what is meant by "gift;" revise game bird transportation and packaging requirements to allow removal of plumage on game birds (except wild turkeys) after they leave a "wildlife preservation facility" with the required receipt or a possessor's license, clarify that game birds may not be transported by unlicensed individuals, and create an allowance and

tagging requirements for game birds, except wild turkey, to be transported by another licensed individual to a "wildlife preservation facility;" except gifts of game from the requirement for a game transportation permit; and revise the identification requirements pertaining to transportation of big game to create an allowance and requirements for big game parts to be transported from a person's domicile to another location; amend Waterfowl Hunting Seasons (Duck Hunting Season) rules to establish season dates, daily bag and possession limits for duck, coot and merganser, which include increasing the daily bag limit for Wood Duck from 2 to 3; amend Waterfowl Hunting Seasons (Goose Hunting Season) rules to establish season dates, daily bag and possession limits for Canada geese, light geese and white-fronted geese; remove Perkins County from Unit 1 and include with Unit 2; change the opening date for the Canada goose hunting season in Unit 2 from the fourth Saturday of October to the Saturday closest to November 1 (November 1, 2008); amend Waterfowl Hunting Season (Roadways Closed to Hunting) rules to open road rights-of-way around Sand Lake National Wildlife Refuge to hunting that once were closed in the "spaced Blind Areas," except for the five mile stretch along Brown County Highway 16 near the refuge headquarters; and amend General Provisions (Fish) rules to establish a new rule section setting forth requirements for gifting of fish and defining what is meant by "gift;" revise requirements pertaining to transportation and storage of fish to reflect the new emphasis on "domicile" in the revised statutory definition of "resident," and incorporate statutory tagging requirements; and except gifts of fish from the requirement for a fish transportation permit.

### **Senator Hunhoff**

Department of Health: Board of Chiropractic Examiners – Amend or adopt rules to clarify requirements for declaratory rulings; approve accreditation from the Council of Chiropractic Education International; update application and reciprocity requirements; update renewal application requirements; update actions which may warrant sanctions; clarify procedures for formal hearings and sanctions; clarify chiropractic radiography application process and procedures for formal hearing; update addresses to obtain peer review reference guides; and establish rules for chiropractic assistants.

Department of Health: Board of Dentistry – Amend rules to increase the number of hours that a licensed dentist, dental hygienist or advanced dental assistant may take via home study from 10 hours in a licensing cycle to 20 hours.

Department of Health: Board of Pharmacy – Amend and adopt rules to establish criteria to permit use of Board of Pharmacy registered technicians to operate a retail telepharmacy when connect to a licensed South Dakota central pharmacy using advanced technology, automation and design, and will establish criteria to permit a licensed South Dakota hospital pharmacy with 24-hour services to provide limited or part-time pharmacy services to small hospitals.

Department of Health: Health Systems Development and Regulation: – Amend Radiation Control rules to permit hand held intra-oral radiographic imaging devices and a reporting process for lost or damaged equipment.

### **Representative Hunt**

Department of Public Safety: Office of Weights and Measures - Amend rules to adopt the 2005 editions of the National Institute of Standards and Technology (NIST) handbooks 44, 133 and 130; to modify the fee structure for conducting heavy scales inspections,

retail device inspections, and calibrations in the State metrology laboratory; and to adopt the 2005 Annual Book of the American Society for Testing and Materials Standards for petroleum quality.

Secretary of State: Board of Elections – Amend rules to amend the voter registration form to include the change for the maximum penalty for perjury; amend the address for where the voter registration address verification notice is sent; amend the municipal notice of special election to include wording for a county to use as their notice of special election; amend the personal identification affidavit to include the change for the maximum penalty for perjury; add shaded boxes for the instructions to voters on the general election ballot; add the optical scan ballot format to the primary ballot layout; amend the guidelines for acceptance of petitions to remove the date requirement which is clarified in another rule; amend the requirements for counting signatures on petitions to prohibit more than one circulator on a petition sheet; amend the declaration on the partisan nominating petition to include county commissioner under the residency requirement; amend the declaration on the independent nominating petition to include county commissioner under the residency requirement; amend the water development district director nominating petition to include the term length the candidate is running for; amend the nominating petition for road or sanitary district trustee to the nominating petition for special district trustee; amend the requirement of paper seals on the ballot box; repeal the Presidential primary ballot format; add petition format for consumers power district director; and add an oath of recount board.

12:00 p.m. – 1:00 p.m. Lunch Break

### **Senator Hundstad**

Department of Revenue and Regulation: Business Tax – Amend rules to add the phrase "products transferred electronically;" update laws regulation is based on; update filing requirements; repeal a definition that is now in statute; repeal outdated regulations; comply with the Streamlined Sales Tax Agreement; and repeal outdated and unnecessary regulations.

Department of Revenue and Regulation: Division of Insurance – Amend a Medicare Supplement Insurance rule to prohibit duplication of coverage when Medicare Advantage coverage is replacing Medicare supplement coverage or when being replaced by Medicare supplement coverage; and adopt Discretionary Clause rules to prohibit discretionary clauses in health insurance policies.

Department of Revenue and Regulation: Division of Motor Vehicle – Repeal rules that are no longer necessary because South Dakota joined a national program called the Unified Carrier Registration (UCR); repeal rules to address law changes; repeal a rule no longer needed and add new rules concerning the initial and renewal of staggered licensing of boat dealer and dealers; amend requirements in conducting of business for dealers within the state; repeal rules no longer needed concerning dealer permit and create a new rule to address all the permits; repeal unnecessary rules; and repeal outdated and unnecessary regulations.

Department of Revenue and Regulation: Gaming Commission – Amend a Deadwood Gambling Rule to adopt a variation of blackjack known as Winners Option Blackjack.

Department of Transportation – Amend a speed zone in Clark County on US Highway 212 in the City of Clark to reduce speed limits for traffic along the area of recent commercial development west of town.

Department of Transportation – Amend a speed zone in Meade County on SD Highway 34 through and to the east of the City of Sturgis to reduce speed limits for traffic along the area of the high school where there are heavy traffic volumes entering and exiting the highway.

### **Representative Lust**

Board of Regents – Amend rules to allow students receiving an associate degree or certificate to continue their enrollment in the South Dakota Opportunity Scholarship program, allow for students to take the ACT exam during the summer before starting their post-secondary education, change the curriculum requirements to reflect the Department of Education's distinguished high school program, and establish dates for student eligibility for funding into administrative rules.

Department of Education: Board of Education – Amend a Career and Technical Education rule to utilize a better and consistent accountability system for the South Dakota Technical Institutes; amend Early Intervention Program rules to provide clarity on the Birth to Three Program, eligibility changes and the posting of rate changes on the South Dakota Department of Education website; and amend Accreditation and School Improvement rules to require that all non-certified administrators will need to have a "plan of intent" on file indicating their intention to become properly certified within three years of their date of hire.

Public Utilities Commission – Amend Public Warehouses rules to repeal bond requirements for a public storage warehouse licensee; delete the requirement for a South Dakota resident agent to sign the grain warehouse bond and change the reference from "dealer's" to "buyer's"; delete the requirement for a resident agent signature on a rider or additional bond; delete a reference being repealed; add the word "grain" before "warehouse licensee"; add references to open storage scale ticket holders and grain bank depositors when a license is revoked, suspended or ownership is transferred; delete requirements regarding the ordering of additional warehouse receipts; require information on a scale ticket as to the disposition of the grain and remove the requirement that scale tickets be converted to a uniform warehouse receipt, cash, check, or other grain purchase contract within 30 days; allow a temporary public grain storage unit to have a fly ash base, delete the requirement that the base must be at least one foot above the terrain, modify the requirement regarding air flow, add a requirement that an operator must notify the Commission prior to storing grain in a new storage unit, and provide flexibility regarding the inspection of new temporary storage; adopt a new rule that allows a warehouse operator to request a waiver of a rule; amend Grain Dealers rules to change all references to "dealers" to "buyers" and delete the requirement to obtain the signature of a South Dakota resident agent; delete the requirement that the voluntary credit sale contract contain the date of delivery of the grain; change the requirements for class A and class B licenses and the conditions under which the Commission may require a second financial statement; require a grain buyer to post information regarding its license and how to contact the Commission; allow a grain buyer to request a waiver of a rule; amend Assessment of Fees for Intrastate Gas Pipeline Operators rules to change the assessment of charges on pipeline operators from quarterly to annually.

## **Representative Thompson**

Department of Social Services: Child Support – Repeal obsolete rules and amend rules for a household receiving assistance from the Department, change the assignment of support rights to apply only to those months the recipient actually receives assistance; when distributing amounts of child support collected for a household currently receiving assistance, specify that the Department shall retain the amount of unpaid support obligation accrued under an assignment or the amount necessary to reimburse the Department for the cumulative amount of unreimbursed assistance paid to a family, whichever is less; if the amount collected through an Internal Revenue Services (IRS) tax refund offset is based on a joint return, allow the Department to delay distribution of amounts collected until the Department is notified that the unobligated spouse's share of the refund has been paid or up to six months from the date the offset was paid to the Department, whichever is earlier; specify that if the amount collected exceeds the amount of the unpaid support obligation, the Department shall refund the excess to the absent parent or to the parties filing a joint return within 45 days after it is collected; and eliminate the threshold amount for notifying the federal government of delinquent support obligations for purposes of denying, revoking, or limiting passports.

Department of Social Services: Economic Assistance – Amend Low Income Energy Assistance Program (LIEAP) rules to reduce the amount payable under LIEAP when a household's rent includes the cost of heat; allow the Department to make adjustments to a household's LIEAP benefit amount until the benefit is paid; and extend the time during which a utility company can use meter readings for energy supplied to households eligible for LIEAP assistance; amend an Emergency Crisis Intervention Program (ECIP) rule to extend the deadline for applying for funds under ECIP.

Department of Social Services: Medical Services – Amend optometric services and supplies rules to define the term "amblyopia"; delete the term "keratoconus"; move the list of covered services, the associated procedure codes, and the rates of reimbursement, to the Department's website; limit the replacement of contact lenses to two lenses a year for standard rigid gas permeable or standard annual replacement daily wear soft contact lenses; specify that patients fitted with planned replacement daily wear soft contact lenses must be provided with a year's supply of lenses at the initial fitting and specify that no other replacement lenses will be covered during that year; specify that covered items and services provided for children under the age of 21 are not subject to established limits providing the items or services are medically necessary; expand the list of non-covered services to include extended wear or daily disposable contact lenses and LASIK surgery; establish a mechanism for providers to request a review of a rate for possible adjustment or to request the inclusion or exclusion of a particular procedure code from the list; establish a co-pay for exams; allow for the electronic submission of claims; and repeal a rule that is no longer necessary; amend physician services rules to specify that a procedure code reported with a two-digit modifier of 23 (unusual anesthesia) is reimbursed at 100 percent of the fee established by the Department or 40 percent of the physician's usual and customary charge if the Department has not established a fee; specify that a procedure code reported with a two-digit modifier of 59 (distinct procedure) is reimbursed at 100 percent of the fee established by the Department or 30 percent of the physician's usual and customary charge if the Department has not established a fee; and specify that a procedure code reported with a two-digit modifier of 50 (bilateral procedure) is reimbursed at 40 percent of the physician's usual and customary charge if the Department has not established a fee for service

Department of Social Services: Medical Services – Delete from rules and move to the Department's website the lists of covered services, procedure codes, and rates of payment for the following: DRG-exempt hospital psychiatric units, outpatient laboratory services, outpatient surgical procedures provided by a hospital, surgical procedures provided by an ambulatory surgical center, medical equipment, mental health services provided by an independent practitioner, nutritional therapy, nutritional supplements, enteral nutritional therapy, parenteral nutritional therapy, and diabetes education services and to move into rule the procedures currently being used by the Department which allows a provider to request a review of an established rate for possible adjustment or to request the inclusion or exclusion of a particular procedure code.

Department of Environment and Natural Resources: Board of Minerals and Environment – Amend a rule to eliminate the minimum 100 feet of surface casing requirement to allow the Secretary of the department to determine how much surface casing is required for all new oil and gas wells on a case by case basis. *(This rule was previously sent back by the Interim Rules Review Committee for further clarification.)*

4:00 p.m.      Adjourn

**Members:** Senators Jean M. Hunhoff, Jim Hundstad, and Orville B. Smidt; and Representatives Roger W. Hunt, David Lust, and Bill Thompson.

**NOTE:** *Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Legislative Research Council (605/773-3251) in advance of the meeting to make any necessary arrangements.*



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