



2021 South Dakota Legislature

Senate Bill 92

Introduced by: **Senator Herman Otten**

1 **An Act to require that certain proposed rules include an affordable housing impact**
 2 **statement.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That a NEW SECTION be added:

5 **1-26-2.2. Affordable housing impact statement--Content.**

6 An agency shall, when submitting any proposed rule that will have a direct impact
 7 on the cost of single-family or multi-family housing, prepare an affordable housing impact
 8 statement that includes:

- 9 (1) An explanation, in plain, easy-to-read language, regarding the effect of the rule on
 10 the cost of housing, the basis for the enactment, and the reason that the rule is
 11 necessary;
 12 (2) The type of housing that will be subject to the rule;
 13 (3) (a) The projected reporting and recordkeeping for compliance with the rule; and
 14 (b) The professional skills necessary to prepare the report or record;
 15 (4) A cost estimate, per housing unit, of compliance with the rule; and
 16 (5) A description of any less intrusive or less costly alternative for achieving the
 17 purpose of the rule.

18 In preparing the affordable housing impact statement, an agency is required to use
 19 only readily available information and existing resources.

20 **Section 2.** That § 1-26-4 be AMENDED.

21 **1-26-4. Notice, service, and hearing required--Service on interim rules**
 22 **committee--Waiver of service.**

23 The following notice, service, and public hearing procedure ~~shall~~ must be used to
 24 adopt, amend, or repeal a permanent rule:

- 1 (1) An agency shall serve a copy of a proposed rule and any publication described in
2 § 1-26-6.6 upon the departmental secretary, bureau commissioner, public utilities
3 commissioner, or constitutional officer to which it is attached for the secretary's,
4 commissioner's, or officer's written approval to proceed;
- 5 (2) After receiving the written approval of the secretary, commissioner, or officer to
6 proceed, the agency shall serve the director with a copy of: the proposed ~~rules~~ rule;
7 any publication described in § 1-26-6.6; the fiscal note ~~described in required by~~
8 § 1-26-4.2; the impact statement on small business ~~described in required by~~ § 1-
9 26-2.1; the impact statement on affordable housing required by § 1-26-2.2; and
10 the notice of hearing required by § 1-26-4.1. The copy of these documents ~~shall~~
11 must be served at least twenty days before the public hearing to adopt the proposed
12 ~~rules~~ rule. Any publication described in § 1-26-6.6 ~~shall~~ must be returned to the
13 agency upon completion of the director's review and retained by the agency. ~~Also,~~
14 ~~twenty~~ Twenty days before the public hearing, the agency shall serve the
15 commissioner of the Bureau of Finance and Management with a copy of: the
16 proposed ~~rules~~ rule; the fiscal note ~~described in required by~~ § 1-26-4.2; the impact
17 statement on small business ~~described in required by~~ § 1-26-2.1; the impact
18 statement on affordable housing required by § 1-26-2.2; and the notice of hearing
19 required by § 1-26-4.1;
- 20 (3) ~~The~~ At least twenty days before the public hearing, the agency shall publish:
21 (a) Publish the notice of hearing in the manner prescribed by § 1-26-4.1, ~~at~~
22 ~~least twenty days before the public hearing;~~ and
23 (b) Publish, on the agency's website, the impact statement on affordable
24 housing required by § 1-26-2.2;
- 25 (4) After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise
26 the agency of any recommended corrections to the proposed rule. If the agency
27 does not concur with any recommendation of the director, the agency may appeal
28 the recommended correction to the Interim Rules Review Committee for appropriate
29 action;
- 30 (5) The agency shall afford all interested persons reasonable opportunity to submit
31 amendments, data, opinions, or arguments at a public hearing held to adopt the
32 rule. The hearing may be continued from time to time. The agency shall keep
33 minutes of the hearing. A majority of the members of any board or commission
34 authorized to pass rules must be present during the course of the public hearing;

- 1 (6) If the authority promulgating the rule is a secretary, commissioner, or officer, the
2 agency shall accept written comments regarding the proposed rule for a period of
3 ten days after the public hearing. If the authority promulgating the rule is a part-
4 time citizen board, commission, committee, or task force, each interested person is
5 ~~required to~~ shall submit written comments at least seventy-two hours before the
6 public hearing. The seventy-two hours does not include the day of the public
7 hearing. The written comments may be submitted by mail or email. The record of
8 written comments may be closed at the conclusion of the public hearing. ~~However,~~
9 ~~the~~ The hearing may be ~~specifically~~ continued for the purpose of taking additional
10 comments;
- 11 (7) After the written comment period, the agency shall ~~fully~~ consider all amendments,
12 data, opinions, or arguments regarding the proposed rule. A proposed rule may be
13 modified or amended at this time to include or exclude matters ~~which~~ that were
14 described in the notice of hearing; and
- 15 (8) The agency shall serve the minutes of the hearing, a complete record of written
16 comments, the impact statement on small business, the impact statement on
17 affordable housing, the fiscal note, the information required ~~in~~ by § 1-26-4.8, and
18 a corrected copy of the ~~rules~~ rule on the members of the Interim Rules Review
19 Committee, at least five days before the agency appears before the committee to
20 present the rules.

21 The time periods specified in this section may be extended by the agency. The
22 requirement to serve the committee in subdivision (8) may be waived by the committee
23 chair, if the agency presents sufficient reasons to the committee chair that the agency is
24 unable to comply with the time limit. The waiver may not be granted solely for the
25 convenience of the agency.