



2025 South Dakota Legislature

Senate Bill 182

Introduced by: **Senator Peterson (Sue)**

1 **An Act to require every permanent or emergency administrative rule proposal to**
 2 **receive the approval of an elected official before submission to the Legislative**
 3 **Research Council.**

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

5 **Section 1. That § 1-26-4 be AMENDED:**

6 **1-26-4.** The following notice, service, and public hearing procedure must be used
 7 to adopt, amend, or repeal a permanent rule:

8 (1) An agency shall serve a copy of a proposed rule and any publication described in
 9 § 1-26-6.6 upon the departmental secretary, bureau commissioner, public utilities
 10 commissioner, or constitutional officer to which it is attached for the secretary's,
 11 commissioner's, or officer's written approval to proceed. After receiving the written
 12 approval of the departmental secretary or bureau commissioner, the agency shall
 13 serve a copy of the rule and any publication upon the Governor for the Governor's
 14 approval to proceed;

15 (2) After receiving the written approval of the ~~secretary~~ Governor, public utilities
 16 commissioner, or officer to proceed, the agency shall serve the director with a copy
 17 of: the proposed rule; any publication described in § 1-26-6.6; the fiscal note
 18 required by § 1-26-4.2; the impact statement on small business required by § 1-
 19 26-2.1; the housing cost impact statement required by § 1-26-2.3; ~~and~~ the notice
 20 of hearing required by § 1-26-4.1; and the written approvals described in
 21 subdivision (1). The copy of these documents must be served at least twenty days
 22 before the public hearing to adopt the proposed rule. Any publication described in
 23 § 1-26-6.6 must be returned to the agency upon completion of the director's review
 24 and retained by the agency. Twenty days before the public hearing, the agency
 25 shall serve the commissioner of the Bureau of Finance and Management with a
 26 copy of: the proposed rule; the fiscal note required by § 1-26-4.2; the impact

- 1 statement on small business required by § 1-26-2.1; the housing cost impact
2 statement required by § 1-26-2.3; ~~and the notice of hearing required by § 1-26-~~
3 ~~4.1; and the written approvals described in subdivision (1);~~
- 4 (3) At least twenty days before the public hearing, the agency shall:
- 5 (a) Publish the notice of hearing in the manner prescribed by § 1-26-4.1; and
6 (b) Publish, on the agency's website, the housing cost impact statement
7 required by § 1-26-2.3;
- 8 (4) After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise
9 the agency of any recommended corrections to the proposed rule. If the agency
10 does not concur with any recommendation of the director, the agency may appeal
11 the recommended correction to the Interim Rules Review Committee for
12 appropriate action;
- 13 (5) The agency shall afford all interested persons reasonable opportunity to submit
14 amendments, data, opinions, or arguments at a public hearing held to adopt the
15 rule. The hearing may be continued from time to time. The agency shall keep
16 minutes of the hearing. A majority of the members of any board or commission
17 authorized to pass rules must be present during the course of the public hearing;
- 18 (6) If the authority promulgating the rule is a secretary, commissioner, or officer, the
19 agency shall accept written comments regarding the proposed rule for a period of
20 ten days after the public hearing. If the authority promulgating the rule is a part-
21 time citizen board, commission, committee, or task force, each interested person
22 shall submit written comments at least seventy-two hours before the public
23 hearing. The seventy-two hours does not include the day of the public hearing. The
24 written comments may be submitted by mail or email. The record of written
25 comments may be closed at the conclusion of the public hearing. The hearing may
26 be continued for the purpose of taking additional comments;
- 27 (7) After the written comment period, the agency shall consider all amendments, data,
28 opinions, or arguments regarding the proposed rule. A proposed rule may be
29 modified or amended at this time to include or exclude matters that were described
30 in the notice of hearing; and
- 31 (8) The agency shall serve the minutes of the hearing, a complete record of written
32 comments, the impact statement on small business, the housing cost impact
33 statement, the fiscal note, the information required by § 1-26-4.8, and a corrected
34 copy of the rule on the members of the Interim Rules Review Committee, at least
35 seven days before the agency appears before the committee to present the rules.

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

6 **Section 2. That § 1-26-5 be AMENDED:**

7 **1-26-5.** Prior to the adoption or amendment of an emergency rule, an agency shall
 8 publish a notice of intent to adopt an emergency rule in the manner prescribed in § 1-26-
 9 4.1 and shall serve on ~~the~~ any applicable person specified ~~by~~ in subdivision 1-26-4(1),
 10 each member of the Interim Rules Review Committee, and the director:

- 11 (1) A copy of the proposed rule, ~~which shall bear~~ bearing a special number to
 12 distinguish it from a permanent rule;
- 13 (2) Any publication described in § 1-26-6.6, ~~which shall~~ must be returned to the
 14 agency upon completion of the director's review and retained by the agency; ~~and~~
- 15 (3) The written approvals of any applicable person specified in subdivision 1-26-4(1);
 16 and
- 17 (4) A statement, with the reasons, that the emergency procedure is necessary: ~~because~~
 18 (a) Because of imminent peril to the public health, safety, or welfare; ~~to~~
 19 (b) To prevent substantial unforeseen financial loss to state government;
 20 ~~or because~~
 21 (c) Because of the occurrence of an unforeseen event at a time when the
 22 adoption of a rule in response to such event by the emergency procedure
 23 is required to secure or protect the best interests of the state or its
 24 residents.

25 ~~Any agency may use the emergency rule adoption procedure. However, no~~ No
 26 agency may use the emergency rule adoption procedure for the convenience of the agency
 27 merely to avoid the consequences for failing to timely promulgate rules.