



2026 South Dakota Legislature

Senate Bill 56

Introduced by: **Senators** Howard and Larson and **Representatives** Hansen, DeGroot, and Muckey at the request of the Interim Rules Review Committee

1 **An Act to require that agencies promulgating permanent rules publish the rules and**
 2 **associated rulemaking forms on a state website.**

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

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

5 **1-26-4.** The following notice, service, and public hearing procedure must be used
 6 to adopt, amend, or repeal a permanent rule:

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

11 (2) After receiving the written approval of the secretary, commissioner, or officer to
 12 proceed, the agency, at least twenty days before the public hearing to adopt the
 13 proposed rule, shall ~~serve~~;

14 (a) Serve code counsel with a copy of~~÷~~ the proposed rule~~÷~~, any publication
 15 described in § 1-26-6.6~~÷~~, the fiscal note required by § 1-26-4.2~~÷~~, the impact
 16 statement on small business required by § 1-26-2.1~~÷~~, any housing cost
 17 impact statement required by § 1-26-2.3~~÷~~, and the notice of hearing
 18 required by § 1-26-4.1. ~~The copy of these documents must be served at~~
 19 ~~least twenty days before the public hearing to adopt the proposed rule.~~ Any
 20 publication described in § 1-26-6.6 must be returned to the agency upon
 21 completion of the code counsel's review and retained by the agency. ~~Twenty~~
 22 ~~days before the public hearing, the agency shall serve; and~~

23 (b) Serve the commissioner of the Bureau of Finance and Management with a
 24 copy of~~÷~~ the proposed rule~~÷~~, the fiscal note required by § 1-26-4.2~~÷~~, the
 25 impact statement on small business required by § 1-26-2.1~~÷~~, any housing

- 1 cost impact statement required by § 1-26-2.3~~7~~ and the notice of hearing
2 required by § 1-26-4.1;
- 3 (3) At least twenty days before the public hearing, the agency shall:
- 4 (a) Publish the notice of hearing in the manner prescribed by § 1-26-4.1; and
5 (b) Publish, ~~on the agency's~~ a single website designated by the Governor and
6 maintained by the executive department, a copy of the proposed rule, the
7 impact statement on small business required by § 1-26-2.1, any housing
8 cost impact statement required by § 1-26-2.3, the notice of hearing
9 required by § 1-26-4.1, and the fiscal note required by § 1-26-4.2;
- 10 (4) After reviewing the proposed rule pursuant to § 1-26-6.5, code counsel shall advise
11 the agency of any recommended corrections to the proposed rule. If the agency
12 does not concur with any recommendation of code counsel, the agency may appeal
13 the recommended correction to the Interim Rules Review Committee for
14 appropriate action;
- 15 (5) The agency shall afford all interested persons reasonable opportunity to submit
16 amendments, data, opinions, or arguments at a public hearing held to adopt the
17 rule. The hearing may be continued from time to time. The agency shall keep
18 minutes of the hearing. A majority of the members of any board or commission
19 authorized to pass rules must be present during the course of the public hearing;
- 20 (6) If the authority promulgating the rule is a secretary, commissioner, or officer, the
21 agency shall accept written comments regarding the proposed rule for a period of
22 ten days after the public hearing. If the authority promulgating the rule is a board,
23 commission, committee, or task force, each interested person ~~shall~~ must submit
24 written comments at least seventy-two hours before the public hearing. The
25 seventy-two hours does not include the day of the public hearing. The written
26 comments may be submitted by mail or email. The record of written comments
27 may be closed at the conclusion of the public hearing. The hearing may be
28 continued for the purpose of taking additional comments;
- 29 (7) After the written comment period, the agency shall consider all amendments, data,
30 opinions, or arguments regarding the proposed rule. A proposed rule may be
31 modified or amended at this time to include or exclude matters that were described
32 in the notice of hearing; and
- 33 (8) The agency shall ~~serve~~, at least seven days before the agency appears before the
34 Interim Rules Review Committee to present the rules:

(a) Serve the minutes of the hearing, a complete record of written comments, the impact statement on small business, any housing cost impact statement, the fiscal note, the agency financial resource information required by § 1-26-4.8, and a corrected copy of the rule on the members of the Interim Rules Review Committee and on code counsel ~~at least seven days before the agency appears before the committee to present the rules;~~ and

(b) Publish, to the website referenced in subsection (3)(b) of this section, code counsel's advisement referenced in subdivision (4), the minutes of the public hearing referenced in subdivision (5), the agency financial resource information required by § 1-26-4.8, and the corrected copy of the rule referenced in subsection (8)(a).

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

Section 2. That § 1-26-6 be AMENDED:

1-26-6. The adoption, amendment, or repeal of a rule is complete when:

- (1) The requirements of § 1-26-4 have been completed or, if the rule is an emergency rule, three days have passed since the requirements of § 1-26-5 have been met;
- (2) It has been signed by a majority of the members of the multi-member body or by the officer having the authority to adopt it;
- (3) It has been signed by code counsel;
- (4) A copy has been filed with code counsel, in a form prescribed by code counsel to show amendments, deletions, and other changes to existing rules, for use in preparation of copy for the Administrative Rules of South Dakota;
- (5) The rule and a certificate have been filed with the secretary of state. The certificate must affirm that the rule filed is a true and correct copy of the rule as adopted and that the agency has complied with § 1-26-4 or 1-26-5, and with this section; ~~and~~
- (6) The rule and the certificate have been published on the website described in subsection 1-26-4(3)(b); and
- (7) For a permanent rule, the agency has appeared and presented the proposed rule to the Interim Rules Review Committee.

1 A certificate required by this section must be an affidavit executed, under oath, by
2 the officer authorized by statute to promulgate the rule. If a rule is promulgated by a
3 multi-member body, the body's presiding officer must sign the certificate.

4 An emergency rule is provisionally effective immediately after being filed.
5 Notwithstanding § 15-6-6(a), all other rules are provisionally effective on the twentieth
6 day after being filed, not counting the day of filing. In either case a later effective date
7 may be specified as part of the rules being filed. A rule that is not yet effective or a
8 provisionally effective rule may be suspended in the manner specified by § 1-26-38 any
9 time prior to the first day of July of the year following the year in which it became, or
10 would have become, effective. The rule's provisional status ends at that time, and the rule
11 may not thereafter be suspended by the rules committee. Unless suspended, a
12 provisionally effective rule must be enforced by the agency and the courts as if it were not
13 so conditioned.

14 No rule promulgated after June 30, 1975, is valid unless adopted in compliance
15 with § 1-26-4 or 1-26-5, and this section and copies of the rule are made available to the
16 public upon request, by the agency.