



## 2026 South Dakota Legislature

# Senate Bill 133

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

1 **An Act to provide additional legislative oversight of rulemaking.**

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

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

4 **1-26-1.** Terms used in this chapter mean:

- 5 (1) "Agency," each association, authority, board, commission, committee, council,  
6 department, division, office, officer, task force, or other agent of the state vested  
7 with the authority to exercise any portion of the state's sovereignty. The term  
8 includes a home-rule municipality that has adopted its own administrative appeals  
9 process, whose final decisions, rulings, or actions rendered by that process are  
10 subject to judicial review pursuant to this chapter. The term does not include the  
11 Legislature, the Unified Judicial System, any unit of local government, or any  
12 agency under the jurisdiction of these exempt departments and units unless the  
13 department, unit, or agency is specifically made subject to this chapter by statute;
- 14 (2) "Contested case," a proceeding, including rate-making and licensing, in which the  
15 legal rights, duties, or privileges of a party are required by law to be determined  
16 by an agency after an opportunity for hearing but the term does not include the  
17 proceedings relating to rule making other than rate-making, proceedings related  
18 to inmate disciplinary matters as defined in § 1-15-20, or student academic  
19 proceedings under the jurisdiction of the Board of Regents;
- 20 (3) "License," the whole or part of any agency permit, certificate, approval,  
21 registration, charter, or similar form of permission required by law;
- 22 (4) "Licensing," the agency process respecting the grant, denial, renewal, revocation,  
23 suspension, annulment, withdrawal, or amendment of a license;
- 24 (5) "Major rule," any rule that is to have or is likely to have more than \$1,000,000 in  
25 implementation and compliance costs incurred by or passed along to businesses,

1 individuals, other nongovernmental entities, and units of local government as a  
 2 result of the proposed rule, over the five-year period following adoption of the rule;

3 ~~(6)~~ \_\_\_\_\_ "Party," each person or agency named or admitted as a party, or properly seeking  
 4 and entitled as of right to be admitted as a party;

5 ~~(6)~~~~(7)~~ "Person," all political subdivisions and agencies of the state;

6 ~~(7)~~~~(8)~~ "Rule," each agency statement of general applicability that implements, interprets,  
 7 or prescribes law, policy, procedure, or practice requirements of any agency. The  
 8 term includes the amendment or repeal of a prior rule, but does not include:

9 (a) Statements concerning only the internal management of an agency;

10 (b) Statements not affecting private rights or procedure available to the public;

11 (c) Declaratory rules issued pursuant to § 1-26-15;

12 (d) Official opinions issued by the attorney general pursuant to § 1-11-1;

13 (e) Executive orders issued by the Governor;

14 (f) Student matters under the jurisdiction of the Board of Regents;

15 (g) Actions of the Department of Transportation pursuant to § 1-44-28;

16 (h) Inmate disciplinary matters as defined in § 1-15-20;

17 (i) Internal control procedures adopted by the Gaming Commission pursuant  
 18 to § 42-7B-25.1;

19 (j) Policies governing specific state fair premiums, awards, entry, and exhibit  
 20 requirements adopted by the Department of Agriculture and Natural  
 21 Resources pursuant to § 1-21-10; and

22 (k) Lending procedures and programs of the South Dakota Housing  
 23 Development Authority; and

24 ~~(8)~~~~(9)~~ "Substantial evidence," such relevant and competent evidence as a reasonable  
 25 mind might accept as being sufficiently adequate to support a conclusion.

26 **Section 2. That § 1-26-1.2 be AMENDED:**

27 **1-26-1.2.** The Interim Rules Review Committee shall choose a chair and a vice  
 28 chair from its members and prescribe its rules of procedure. Meetings of the committee  
 29 are at the call of the chair or a majority of the committee.

30 On or before the first Monday following the last day of the legislative session, the  
 31 committee and the agencies shall determine a schedule of dates for meetings to be held  
 32 during the following twelve months. However, the committee is not required to hold a  
 33 meeting if no submission has been made to committee members in accordance with

1 subdivision 1-26-4(8). All meetings are open to the public and any interested person may  
2 be heard and present evidence.

3 The committee shall review all proposed agency rules and make recommendations  
4 to the agencies regarding rules and legislation authorizing rules, and to the Legislature  
5 regarding administrative law. In its review of agency rules, the committee shall consider  
6 the regulatory impact analysis provided pursuant to section 4 of this Act and the resulting  
7 review of code counsel and Legislative Research Council personnel.

8 Members of the committee are compensated for their attendance at meetings and  
9 for time spent in the conduct of committee business, at rates established by the Executive  
10 Board of the Legislative Research Council. Code counsel, and one or more personnel from  
11 the Legislative Research Council with the consent of the council's director, shall staff the  
12 committee.

13 **Section 3. That § 1-26-4 be AMENDED:**

14 **1-26-4.** The following notice, service, and public hearing procedure must be used  
15 to adopt, amend, or repeal a permanent rule:

16 (1) An agency shall serve a copy of a proposed rule, the regulatory impact analysis  
17 required by section 4 of this Act, and any publication described in § 1-26-6.6, upon  
18 the departmental secretary, bureau commissioner, public utilities commissioner,  
19 or constitutional officer to which it is attached for the secretary's, commissioner's,  
20 or officer's written approval to proceed;

21 (2) After receiving the written approval of the secretary, commissioner, or officer to  
22 proceed, and at least twenty days before the public hearing, the agency shall ~~serve~~  
23 ~~code:~~

24 (a) Serve code counsel with a copy of ~~the~~ proposed rule; any publication  
25 described in § 1-26-6.6; the fiscal note required by § 1-26-4.2; the impact  
26 statement on small business required by § 1-26-2.1; any housing cost  
27 impact statement required by § 1-26-2.3; ~~and~~ the notice of hearing  
28 required by § 1-26-4.1. ~~The copy of these documents must be served at~~  
29 ~~least twenty days before the public hearing to adopt the proposed rule; and~~  
30 the regulatory impact analysis required by section 4 of this Act. Any  
31 publication described in § 1-26-6.6 must be returned to the agency upon  
32 completion of the code counsel's review and retained by the agency. ~~Twenty~~  
33 ~~days before the public hearing, the agency shall serve the; and~~

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

1 (8) The agency shall serve the minutes of the hearing, a complete record of written  
 2 comments, the impact statement on small business, any housing cost impact  
 3 statement, the fiscal note, the information required by § 1-26-4.8, the regulatory  
 4 impact analysis required by section 4 of this Act, and a corrected copy of the rule  
 5 on the members of the Interim Rules Review Committee and on code counsel at  
 6 least seven days before the agency appears before the committee to present the  
 7 rules.

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

13 **Section 4. That a NEW SECTION be added to chapter 1-26:**

14 For all proposed permanent rules, the agency seeking to promulgate the rule shall,  
 15 prior to proceeding under § 1-26-4, prepare a regulatory impact analysis that details  
 16 whether the proposed rule is a major rule.

17 The regulatory impact analysis must contain:

- 18 (1) A statement of whether the proposed permanent rule is a major rule;  
 19 (2) A statement detailing the need for the rule;  
 20 (3) The legal basis for the rule;  
 21 (4) An examination of alternative options;  
 22 (5) A cost-benefit evaluation that contains the proposed rule's:  
 23 (a) Estimated primary or direct benefits;  
 24 (b) Estimated cost savings or financial benefits to businesses, individuals, other  
 25 nongovernmental entities, and units of local government;  
 26 (c) Estimated compliance costs for businesses, individuals, other  
 27 nongovernmental entities, and units of local government;  
 28 (d) Estimated secondary or indirect costs for businesses, individuals, other  
 29 nongovernmental entities, and units of local government; and  
 30 (e) Estimated opportunity cost. The analysis must identify the opportunity cost  
 31 of compliance as a result of the removal of private capital from the market;  
 32 (6) Sources consulted; and  
 33 (7) Key assumptions and sources of uncertainty.  
 34 The chief officer of the agency shall sign the analysis upon verifying its contents.

1 **Section 5. That a NEW SECTION be added to chapter 1-26:**

2 For a major rule, the Interim Rules Review Committee shall:

- 3 (1) Revert the rule to an earlier step in the rule adoption procedure to consider an  
 4 amendment to the proposed rule that would no longer make it a major rule; and  
 5 (2) Recommend that, should the rule be brought as future legislation, the Legislature  
 6 vote to enact or not to enact the legislation.

7 If the agency proposing the major rule seeks to amend the rule for the Interim  
 8 Rules Review Committee's reconsideration, the agency must submit an updated regulatory  
 9 impact analysis to the commissioner of the Bureau of Finance and Management, code  
 10 counsel, and the Interim Rules Review Committee, at least twenty days prior to the  
 11 committee hearing at which the rule is to be reconsidered.

12 Any proposed rule addressed pursuant to this section must be reported to the  
 13 Executive Board of the Legislative Research Council annually prior to the regular session.

14 Any legislation seeking to enact the substance of any proposed rule addressed  
 15 pursuant to this section, whether in statute or as directed via the permanent rulemaking  
 16 process, must be denoted as having substance that was previously brought before the  
 17 Interim Rules Review Committee as a major rule, and whether or not the Interim Rules  
 18 Review Committee recommended enactment of that substance.

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

20 **1-26-5.** Prior to the adoption or amendment of an emergency rule, an agency shall  
 21 publish the text of the emergency rule on its website, publish a notice of intent to adopt  
 22 an emergency rule in the manner prescribed in § 1-26-4.1, and serve on the ~~person~~  
 23 individual specified by subdivision 1-26-4(1), each member of the Interim Rules Review  
 24 Committee, and code counsel:

- 25 (1) A copy of the proposed rule, bearing a special number to distinguish it from a  
 26 permanent rule; ~~and~~  
 27 (2) A statement, with the reasons, that the emergency procedure is necessary for one  
 28 or more of the following circumstances:  
 29 (a) Because of imminent peril to the public health, safety, or welfare;  
 30 (b) To prevent substantial unforeseen financial loss to state government; or  
 31 (c) Because of the occurrence of an unforeseen event at a time when the  
 32 adoption of a rule in response to ~~such~~ the event by the emergency

1 procedure is required to secure or protect the best interest of the state or  
 2 its residents; and

3 (3) A statement:

4 (a) Explaining whether the proposed rule would be a major rule if made  
 5 permanent; and

6 (b) If the Legislature is not in session, explaining why the Legislature cannot  
 7 be called back into session to consider and vote on the major rule.

8 If a publication is incorporated by reference in the proposed emergency rule,  
 9 pursuant to § 1-26-6.6, the publication and ~~statement~~ statements must also be served on  
 10 the ~~person~~ individual specified by subdivision 1-26-4(1) and on code counsel. Code  
 11 counsel shall return the publication to the agency upon completion of code counsel's  
 12 review and the agency shall retain the publication.

13 Any agency may use the emergency rule adoption procedure. An agency may not  
 14 use the emergency rule adoption procedure for the convenience of the agency merely to  
 15 avoid the consequences for failing to timely promulgate rules.

16 An agency may not use the emergency rule adoption procedure merely to allow for  
 17 the enactment of a major rule.

18 **Section 7. That § 1-26-6 be AMENDED:**

19 **1-26-6.** The adoption, amendment, or repeal of a rule is complete when:

- 20 (1) The requirements of § 1-26-4 have been completed or, if the rule is an emergency  
 21 rule, three days have passed since the requirements of § 1-26-5 have been met;
- 22 (2) It has been signed by a majority of the members of the multi-member body or by  
 23 the officer having the authority to adopt it;
- 24 (3) It has been signed by code counsel;
- 25 (4) A copy has been filed with code counsel, in a form prescribed by code counsel to  
 26 show amendments, deletions, and other changes to existing rules, for use in  
 27 preparation of copy for the Administrative Rules of South Dakota;
- 28 (5) The rule and a certificate have been filed with the secretary of state. The certificate  
 29 must affirm that the rule filed is a true and correct copy of the rule as adopted and  
 30 that the agency has complied with § 1-26-4 or 1-26-5, and with this section; and
- 31 (6) For a permanent rule, the agency has appeared and presented the proposed rule  
 32 to the Interim Rules Review Committee; and
- 33 (7) For a permanent major rule, statute specifically directs the enactment of the  
 34 adoption, amendment, or repeal of a rule.

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.

17 **Section 8. That § 1-26-14 be AMENDED:**

18 **1-26-14.** The validity or applicability of a rule may be determined in an action for  
 19 declaratory judgment in the circuit court for the county of the plaintiff's residence, if it is  
 20 alleged that the rule, or its threatened application, interferes with or impairs, or threatens  
 21 to interfere with or impair, the legal rights or privileges of the plaintiff. The agency ~~shall~~  
 22 must be made a party to the action. A declaratory judgment may be rendered whether or  
 23 not the plaintiff has requested the agency to pass upon the validity or applicability of the  
 24 rule in question.

25 The court shall review de novo whether a rule is a major rule.

26 **Section 9. That a NEW SECTION be added to chapter 1-26:**

27 Legislation directing the promulgation of a major rule may not:

- 28 (1) Be interpreted as a grant or modification of statutory authority by the Legislature  
 29 for the promulgation of a rule;  
 30 (2) Extinguish or affect any claim, whether substantive or procedural, against any  
 31 alleged defect in a rule; or  
 32 (3) Form part of the record before the court in any judicial proceeding concerning a  
 33 rule, except for purposes of determining whether or not the rule is in effect.