



## 2026 South Dakota Legislature

**House Bill 1234**

HOUSE JUDICIARY ENGROSSED

Introduced by: **Representative Roby**

1 **An Act to revise provisions related to serving a subpoena in a contested case.**

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

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

4 **1-26-18.** Opportunity shall be afforded to all parties to respond and present  
5 evidence on issues of fact and argument on issues of law or policy. ~~However, each~~ Each  
6 agency, upon the motion of any party, may dispose of any defense or claim:

- 7 (1) If the pleadings, depositions, answers to interrogatories, and admissions on file,  
8 together with the affidavits, if any, show that there is no genuine issue as to any  
9 material fact and a party is entitled to a judgment as a matter of law; or  
10 (2) At the close of the evidence offered by the proponent of the defense or claim, ~~if it~~  
11 the agency determines that the evidence offered by the proponent of the defense  
12 or claim is legally insufficient to sustain the defense or claim.

13 A party to a contested case proceeding may appear in person or by counsel, or  
14 both, and may be present during the giving of all evidence, ~~The party or the party's~~  
15 attorney of record may have reasonable opportunity to inspect all documentary evidence,  
16 ~~may~~ examine and cross-examine witnesses, ~~may~~ present evidence in support of the  
17 party's interest, and ~~may have subpoenas issued~~ issue subpoenas to compel attendance  
18 of witnesses and production of evidence ~~in~~ on the party's behalf.

19 **Section 2. That § 1-26-19.1 be AMENDED:**

20 **1-26-19.1.** Each agency and ~~the officers thereof~~ any attorney of record or officer  
21 of the agency charged with the duty to administer the laws of ~~this~~ the state and the rules  
22 of the agency ~~shall have power to administer~~ may:

- 23 (1) Administer oaths as provided by chapter 18-3 ~~and to subpoena~~; and  
24 (2) Subpoena witnesses or interested parties to appear and give testimony and to  
25 produce records, books, papers, and documents relating to any ~~matters in~~

1 ~~contested cases and likewise issue subpoenas for such purposes for persons~~  
2 ~~interested therein~~ matter in a contested case, as provided ~~by~~ in § 15-6-45.

3 Unless otherwise provided by law, ~~fees for witnesses shall be~~ are as set forth in  
4 chapter 19-5 and must be paid by the agency or party for whom the witness is  
5 subpoenaed.

6 Failure of a person to obey ~~the~~ a subpoena issued pursuant to this chapter may be  
7 punished as a contempt of court in the manner provided by chapter 21-34.

8 **Section 3. That a NEW SECTION be added to chapter 1-26:**

9 Before a subpoena commanding the production of documentary evidence pursuant  
10 to § 1-26-19.1 is served on the person to whom it is directed, a notice and copy of the  
11 subpoena must be served on each party to the matter pending. The hearing examiner or  
12 administrative law judge, upon motion made promptly and at or before the time specified  
13 in the subpoena for compliance with the subpoena, may:

- 14 (1) Quash or modify the subpoena if it is unreasonable and oppressive; or  
15 (2) Condition denial of the motion upon the advancement, by the person on whose  
16 behalf the subpoena is issued, of the reasonable cost of producing the records,  
17 books, papers, or documents.