

2026 South Dakota Legislature

Senate Bill 133**AMENDMENT 133B
FOR THE INTRODUCED BILL**

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 proposed rule that is to have or is likely to have more than
25 ~~\$1,000,000~~ \$3,000,000 in implementation and compliance costs incurred by or
26 passed along to businesses, individuals, other nongovernmental entities, and units

1 of local government as a result of the ~~proposed~~ rule, over the ~~five-year two-year~~
 2 period following adoption of the rule;

3 ~~(6)~~ (7) "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~~ 5 of this Act and the
7 resulting 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~~ 5 of this Act, and any publication described in § 1-26-6.6,
18 upon the departmental secretary, bureau commissioner, public utilities
19 commissioner, or constitutional officer to which it is attached for the secretary's,
20 commissioner's, 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~~ 5 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 5 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 a single~~ website designated by the Governor and
 10 maintained by the executive department, a copy of the proposed rule, any
 11 housing cost impact statement required by § 1-26-2.3, the notice of hearing
 12 required by § 1-26-4.1, the fiscal note required by § 1-26-4.2, and the
 13 regulatory impact analysis required by section 5 of this Act; ~~and~~
 14 ~~(c) Publish, on a state website designated for proposed rule filings, the~~
 15 ~~regulatory impact analysis required by section 4 of this Act;~~
- 16 (4) After reviewing the proposed rule pursuant to § 1-26-6.5, code counsel shall advise
 17 the agency of any recommended corrections to the proposed rule and whether the
 18 proposed rule is a major rule. If the agency does not concur with any
 19 recommendation of code counsel, the agency may appeal the recommended
 20 correction to the Interim Rules Review Committee for appropriate action;
- 21 (5) The agency shall afford all interested persons reasonable opportunity to submit
 22 amendments, data, opinions, or arguments at a public hearing held to adopt the
 23 rule. The hearing may be continued from time to time. The agency shall keep
 24 minutes of the hearing. A majority of the members of any board or commission
 25 authorized to pass rules must be present during the course of the public hearing;
- 26 (6) If the authority promulgating the rule is a secretary, commissioner, or officer, the
 27 agency shall accept written comments regarding the proposed rule for a period of
 28 ten days after the public hearing. If the authority promulgating the rule is a board,
 29 commission, committee, or task force, each interested person shall submit written
 30 comments at least seventy-two hours before the public hearing. The seventy-two
 31 hours does not include the day of the public hearing. The written comments may
 32 be submitted by mail or email. The record of written comments may be closed at
 33 the conclusion of the public hearing. The hearing may be continued for the purpose
 34 of taking additional comments;

(7) After the written comment period, the agency shall consider all amendments, data, opinions, or arguments regarding the proposed rule. A proposed rule may be modified or amended at this time to include or exclude matters that were described in the notice of hearing; and

(8) The agency shall ~~serve, at least seven days before the agency appears before the 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 information required by § 1-26-4.8, the regulatory impact analysis required by section 4 5 of this Act, 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 (5), the agency financial resource information required by § 1-26-4.8, the corrected copy of the rule referenced in subsection (8)(a), and any update to the regulatory impact analysis required by section 5 of this Act.

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 4. That § 1-26-4.2 be AMENDED:

1-26-4.2. An agency shall, when submitting any proposed rule, except an emergency rule, include a fiscal note. The fiscal note must provide what effect, if any, the proposed rule will have on the revenues, expenditures, or fiscal liability of the state or its agencies ~~and subdivisions~~. The fiscal note must include an explanation of how such effect, if any, was computed.

The Bureau of Finance and Management shall prepare its own fiscal note and serve it on the agency, code counsel, and the co-chairs of the Joint Appropriations Committee prior to the hearing. ~~If a proposed rule has a negative fiscal impact on a political subdivision, the agency must direct the bureau to transmit a copy of the bureau's fiscal note to the South Dakota Municipal League, the Associated School Boards of South~~

1 ~~Dakota, and the South Dakota Association of County Commissioners, as applicable, prior~~
 2 ~~to the hearing.~~

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

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

7 The regulatory impact analysis must contain:

8 (1) A statement of whether the proposed permanent rule is a major rule;

9 (2) A statement detailing the need for the rule;

10 (3) The legal basis for the rule;

11 (4) An examination of alternative options;

12 (5) A cost-benefit evaluation that contains the proposed rule's:

13 (a) Estimated primary or direct benefits;

14 (b) Estimated cost savings or financial benefits to businesses, individuals, other
 15 nongovernmental entities, and units of local government;

16 (c) Estimated compliance costs for businesses, individuals, other
 17 nongovernmental entities, and units of local government;

18 (d) Estimated secondary or indirect costs for businesses, individuals, other
 19 nongovernmental entities, and units of local government;~~and~~

20 (e) Estimated opportunity cost. The analysis must identify the opportunity cost
 21 of compliance as a result of the removal of private capital from the market;
 22 ~~and~~

23 ~~(f) Impact on small business, with an identification of the type and the~~
 24 ~~estimation of the number of small businesses subject to the proposed rule,~~
 25 ~~and projected reporting and recordkeeping required for compliance with the~~
 26 ~~proposed rule;~~

27 (6) Sources consulted; and

28 (7) Key assumptions and sources of uncertainty.

29 The chief officer of the agency shall sign the analysis upon verifying its contents.

30 ~~For purposes of this section, "small business" means a nongovernmental entity~~
 31 ~~that employs twenty-five or fewer full-time employees.~~

32 **Section 6. That a NEW SECTION be added to chapter 1-26:**

33 For a major rule, the Interim Rules Review Committee~~shall~~ may:

- 1 (1) Revert the rule to an earlier step in the rule adoption procedure to ~~consider permit~~
 2 ~~consideration of~~ an amendment to the proposed rule that would no longer make it
 3 a major rule; ~~and~~
 4 (2) Determine there is sufficient legislative authority for the agency to implement the
 5 proposed rule and declare the rulemaking process complete; or
 6 (3) Recommend that, ~~should~~ the rule be brought as future legislation, ~~and that~~ the
 7 Legislature vote to enact or not to enact the legislation.

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

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

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

20 **~~Section 7. That § 1-26-5 be AMENDED:~~**

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

26 ~~(1) A copy of the proposed rule, bearing a special number to distinguish it from a permanent~~
 27 ~~rule; and~~

28 ~~(2) A statement, with the reasons, that the emergency procedure is necessary for one or more~~
 29 ~~of the following circumstances:~~

30 ~~(a) Because of imminent peril to the public health, safety, or welfare;~~

31 ~~(b) To prevent substantial unforeseen financial loss to state government; or~~

1 ~~(c) Because of the occurrence of an unforeseen event at a time when the adoption of a rule~~
2 ~~in response to such the event by the emergency procedure is required to secure or protect~~
3 ~~the best interest of the state or its residents; and~~

4 ~~(3) A statement:~~

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

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

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

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

16 ~~An agency may not use the emergency rule adoption procedure merely to allow for the~~
17 ~~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;

- 1 (5) The rule and a certificate have been filed with the secretary of state. The certificate
 2 must affirm that the rule filed is a true and correct copy of the rule as adopted and
 3 that the agency has complied with § 1-26-4 or 1-26-5, and with this section; and
 4 (6) For a permanent rule, the agency has appeared and presented the proposed rule
 5 to the Interim Rules Review Committee; and
 6 (7) For a permanent major rule on which the Interim Rules Review Committee does
 7 not make a determination of sufficient legislative authority pursuant to subdivision
 8 (2) of section 6 of this Act, statute specifically directs the enactment of the
 9 adoption, amendment, or repeal of a the rule.

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

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

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

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

27 **1-26-14.** The validity or applicability of a rule may be determined in an action for
 28 declaratory judgment in the circuit court for the county of the plaintiff's residence, if it is
 29 alleged that the rule, or its threatened application, interferes with or impairs, or threatens
 30 to interfere with or impair, the legal rights or privileges of the plaintiff. The agency ~~shall~~
 31 must be made a party to the action. A declaratory judgment may be rendered whether or
 32 not the plaintiff has requested the agency to pass upon the validity or applicability of the
 33 rule in question.

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

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

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

3 (1) Be interpreted as a grant or modification of statutory authority by the Legislature
4 for the promulgation of a rule; or

5 (2) Extinguish or affect any claim, whether substantive or procedural, against any
6 alleged defect in a rule; or.

7 ~~(3) Form part of the record before the court in any judicial proceeding concerning a~~
8 ~~rule, except for purposes of determining whether or not the rule is in effect.~~

9 **Section 10. That § 1-26-2.1 be REPEALED.**

10 ~~An agency shall, when submitting any proposed rule that will have a direct impact~~
11 ~~on small business, prepare an impact statement that includes the following:~~

12 ~~(1) A narrative explanation in plain, easy to read language of the effect of the rule on~~
13 ~~small business, the basis for its enactments, and why the rule is needed;~~

14 ~~(2) An identification and estimate of the number of small businesses subject to the~~
15 ~~proposed rule;~~

16 ~~(3) The projected reporting and recordkeeping required for compliance with the~~
17 ~~proposed rule, including the types of professional skills necessary for preparation~~
18 ~~of the report or record; and~~

19 ~~(4) A description of any less intrusive or less costly alternative methods of achieving~~
20 ~~the purpose of the proposed rule.~~

21 ~~An agency is only required to use readily available information and existing~~
22 ~~resources to prepare the impact statement.~~

23 ~~For purposes of this section, "small business" means a nongovernmental entity~~
24 ~~that employs twenty five or fewer full-time employees.~~