



2026 South Dakota Legislature  
**Senate Bill 133**  
**ENROLLED**

AN ACT

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

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

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

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

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

government as a result of the rule, over the two-year period following adoption of the rule;

- (6) "Party," each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;
- (7) "Person," all political subdivisions and agencies of the state;
- (8) "Rule," each agency statement of general applicability that implements, interprets, or prescribes law, policy, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:
  - (a) Statements concerning only the internal management of an agency;
  - (b) Statements not affecting private rights or procedure available to the public;
  - (c) Declaratory rules issued pursuant to § 1-26-15;
  - (d) Official opinions issued by the attorney general pursuant to § 1-11-1;
  - (e) Executive orders issued by the Governor;
  - (f) Student matters under the jurisdiction of the Board of Regents;
  - (g) Actions of the Department of Transportation pursuant to § 1-44-28;
  - (h) Inmate disciplinary matters as defined in § 1-15-20;
  - (i) Internal control procedures adopted by the Gaming Commission pursuant to § 42-7B-25.1;
  - (j) Policies governing specific state fair premiums, awards, entry, and exhibit requirements adopted by the Department of Agriculture and Natural Resources pursuant to § 1-21-10; and
  - (k) Lending procedures and programs of the South Dakota Housing Development Authority; and
- (9) "Substantial evidence," such relevant and competent evidence as a reasonable mind might accept as being sufficiently adequate to support a conclusion.

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

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

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

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

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

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

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

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

- (1) An agency shall serve a copy of a proposed rule, the regulatory impact analysis required by section 5 of this Act, and any publication described in § 1-26-6.6, upon the departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer to which it is attached for the secretary's, commissioner's, or officer's written approval to proceed;
- (2) After receiving the written approval of the secretary, commissioner, or officer to proceed, and at least twenty days before the public hearing, the agency shall:
  - (a) Serve code counsel with a copy of the proposed rule; any publication described in § 1-26-6.6; the fiscal note required by § 1-26-4.2; any housing cost impact statement required by § 1-26-2.3; the notice of hearing required by § 1-26-4.1; and the regulatory impact analysis required by section 5 of this Act. Any publication described in § 1-26-6.6 must be returned to the agency upon completion of the code counsel's review and retained by the agency; and
  - (b) Serve the commissioner of the Bureau of Finance and Management with a copy of the proposed rule; the fiscal note required by § 1-26-4.2; any housing cost impact statement required by § 1-26-2.3; the notice of hearing required by § 1-26-4.1, and the regulatory impact analysis required by section 5 of this Act;

- (3) At least twenty days before the public hearing, the agency shall:
  - (a) Publish the notice of hearing in the manner prescribed by § 1-26-4.1; and
  - (b) Publish, on a single website designated by the Governor and maintained by the executive department, a copy of the proposed rule, any housing cost impact statement required by § 1-26-2.3, the notice of hearing required by § 1-26-4.1, the fiscal note required by § 1-26-4.2, and the regulatory impact analysis required by section 5 of this Act;
- (4) After reviewing the proposed rule pursuant to § 1-26-6.5, code counsel shall advise the agency of any recommended corrections to the proposed rule and whether the proposed rule is a major rule. If the agency does not concur with any recommendation of code counsel, the agency may appeal the recommended correction to the Interim Rules Review Committee for appropriate action;
- (5) The agency shall afford all interested persons reasonable opportunity to submit amendments, data, opinions, or arguments at a public hearing held to adopt the rule. The hearing may be continued from time to time. The agency shall keep minutes of the hearing. A majority of the members of any board or commission authorized to pass rules must be present during the course of the public hearing;
- (6) If the authority promulgating the rule is a secretary, commissioner, or officer, the agency shall accept written comments regarding the proposed rule for a period of ten days after the public hearing. If the authority promulgating the rule is a board, commission, committee, or task force, each interested person shall submit written comments at least seventy-two hours before the public hearing. The seventy-two hours does not include the day of the public hearing. The written comments may be submitted by mail or email. The record of written comments may be closed at the conclusion of the public hearing. The hearing may be continued for the purpose 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, 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, any housing cost impact statement, the fiscal note, the information required by § 1-26-4.8, the regulatory impact analysis required by section 5 of this

Act, and a corrected copy of the rule on the members of the Interim Rules Review Committee and on code counsel; and

- (b) Publish, to the website referenced in subsection (3)(b) of this section, code counsel's advisement referenced in subdivision (4), 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. 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.

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

For all proposed permanent rules, the agency seeking to promulgate the rule shall, prior to proceeding under § 1-26-4, prepare a regulatory impact analysis.

The regulatory impact analysis must contain:

- (1) A statement of whether the proposed permanent rule is a major rule;
- (2) A statement detailing the need for the rule;
- (3) The legal basis for the rule;
- (4) An examination of alternative options;
- (5) A cost-benefit evaluation that contains the proposed rule's:
  - (a) Estimated primary or direct benefits;
  - (b) Estimated cost savings or financial benefits to businesses, individuals, other nongovernmental entities, and units of local government;

- (c) Estimated compliance costs for businesses, individuals, other nongovernmental entities, and units of local government;
  - (d) Estimated secondary or indirect costs for businesses, individuals, other nongovernmental entities, and units of local government;
  - (e) Estimated opportunity cost. The analysis must identify the opportunity cost of compliance as a result of the removal of private capital from the market; and
  - (f) Impact on small business, with an identification of the type and the estimation of the number of small businesses subject to the proposed rule, and projected reporting and recordkeeping required for compliance with the proposed rule;
- (6) Sources consulted; and
  - (7) Key assumptions and sources of uncertainty.

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

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

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

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

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

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

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

Any legislation seeking to enact the substance of any proposed rule addressed pursuant to this section, whether in statute or as directed via the permanent rulemaking

process, must be denoted as having substance that was previously brought before the Interim Rules Review Committee as a major rule, and whether or not the Interim Rules Review Committee recommended enactment of that substance.

**Section 7. 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;
- (6) For a permanent rule, the agency has appeared and presented the proposed rule to the Interim Rules Review Committee; and
- (7) For a permanent major rule on which the Interim Rules Review Committee does not make a determination of sufficient legislative authority pursuant to subdivision (2) of section 6 of this Act, statute specifically directs the enactment of the adoption, amendment, or repeal of the rule.

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

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

provisionally effective rule must be enforced by the agency and the courts as if it were not so conditioned.

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

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

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

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

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

Legislation directing the promulgation of a major rule may not:

- (1) Be interpreted as a grant or modification of statutory authority by the Legislature for the promulgation of a rule; or
- (2) Extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule.

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

An Act to provide additional legislative oversight of rulemaking.

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I certify that the attached Act originated in the:

Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_,

Senate as Bill No. 133

2026 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2026

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2026  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of State

Senate Bill No. 133  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State