

# State of South Dakota

## EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

973Q0066

### HOUSE BILL NO. 1082

Introduced by: Representatives Hunt, Lust, and Thompson and Senators Hunhoff (Jean) and Hundstad at the request of the Interim Committee on Rules Review

1 FOR AN ACT ENTITLED, An Act to revise the procedure to adopt rules.

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

3 Section 1. That § 1-26-1.3 be amended to read as follows:

4 1-26-1.3. ~~To assist him in carrying out his duties, the~~ The director may delegate the duties  
5 imposed ~~upon him~~ by this chapter to other persons in the Legislative Research Council's office.  
6 ~~Such~~ Each person to whom the duties are delegated ~~shall have~~ has the same power and authority  
7 as the director for the purposes of this chapter. The papers specifying the delegation of duties  
8 shall be filed with the secretary of state.

9 Section 2. That § 1-26-4 be amended to read as follows:

10 1-26-4. The following notice, service, and public hearing procedure shall be ~~complied with~~  
11 ~~prior to the adoption, amendment, or repeal of any rule, except an emergency~~ used to adopt,  
12 amend, or repeal a permanent rule:

13 (1) An agency shall serve a copy of a proposed rule and any publication described in § 1-  
14 26-6.6 upon the departmental secretary, bureau commissioner, public utilities  
15 commissioner, or constitutional officer ~~of the department~~ to which it is attached for



1        the secretary's, commissioner's, or officer's written approval to proceed;

2        (2)    ~~Fifteen days after the service required by subdivision (1) or upon~~ After receiving the  
3        written approval of ~~that the secretary, commissioner, or officer to proceed, whichever~~  
4        ~~comes first, and twenty days before the hearing,~~ the agency shall serve the director  
5        with a copy of: the proposed rules, ~~a copy of;~~ any publication described in § 1-26-6.6;  
6        ~~a copy of;~~ the fiscal note described in § 1-26-4.2, ~~a copy of;~~ the impact statement on  
7        small business described in § 1-26-2.1, ~~and a copy of;~~ and the notice of hearing  
8        required by § 1-26-4.1. The copy of these documents shall be served at least twenty  
9        days before the public hearing to adopt the proposed rules. Any publication described  
10       in § 1-26-6.6 shall be returned to the agency upon completion of the director's review  
11       and retained by the agency. Also, twenty days before the public hearing, the agency  
12       shall serve the commissioner of the Bureau of Finance and Management with a copy  
13       of: the proposed rules, ~~a copy of;~~ the fiscal note described in § 1-26-4.2, ~~a copy of;~~  
14       the impact statement on small business described in § 1-26-2.1, ~~and a copy of;~~ and  
15       the notice of hearing required by § 1-26-4.1;

16       (3)    The agency shall publish the notice of hearing in the manner prescribed by § 1-26-  
17       4.1, at least twenty days before the public hearing;

18       (4)    After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise the  
19       agency of any recommended corrections to the proposed rule. If the agency does not  
20       concur with any recommendation of the director, the agency may appeal the  
21       recommended correction to the interim Rules Review Committee for appropriate  
22       action;

23       (5)    The agency shall afford all interested persons reasonable opportunity to submit  
24       amendments, data, opinions, or arguments, ~~either orally or in writing, or both,~~ at a

1 public hearing held for that purpose to adopt the rule. The hearing may be continued  
2 from time to time ~~until its business has been completed.~~ The agency shall keep  
3 minutes of the hearing. A majority of the members of any board or commission  
4 authorized to pass rules must be present during the course of the public hearing  
5 ~~required by this subdivision;~~

6 ~~(5)(6)~~ For a period of ten days after the hearing If the agency is headed by a secretary,  
7 commissioner, or officer, the agency shall accept written comments regarding the  
8 proposed rule, ~~unless the entity~~ for a period of ten days after the public hearing. If the  
9 agency promulgating the rule is a part-time citizen board, commission, committee,  
10 or task force, ~~or other multiperson decision maker, in which case~~ the record of  
11 written comments shall be closed at the conclusion of the public hearing. However,  
12 the hearing may be specifically continued for the purpose of taking additional  
13 comments;

14 ~~(6)(7)~~ After the written comment period, the agency shall fully consider all ~~written and oral~~  
15 ~~submissions~~ amendments, data, opinions, or arguments regarding the proposed rule.  
16 A proposed rule may be modified or amended at this time to include or exclude  
17 matters which were described in the notice of hearing;

18 ~~(7)~~ ~~After reviewing the proposed rule, the director shall advise the agency of any~~  
19 ~~recommended corrections to the proposed rule;~~

20 ~~(8)~~ ~~If the agency does not concur with any recommendation of the director, the agency~~  
21 ~~shall appeal the recommended correction to the Interim Rules Review Committee for~~  
22 ~~appropriate action; and~~

23 ~~(9)(8)~~ The agency shall, ~~at least five days prior to the time set for the agency to appear~~  
24 ~~before the committee to present the rules,~~ serve the minutes of the hearing, a

complete record of written comments, the impact statement on small business, the fiscal note, the information required in § 1-26-4.8, and a corrected copy of the rules on the members of the Interim Rules Review Committee at least five days before the agency appears before the committee to present the rules.

The time periods specified in this section may be extended by the agency. The requirement to serve the committee in subdivision (9) 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 3. That § 1-26-4.1 be amended to read as follows:

1-26-4.1. ~~Any notice required by this chapter~~ The notice of a public hearing of an agency's intent to adopt, amend, or repeal a rule shall be published in a manner selected to notify persons likely to be affected by the proposed rule. ~~Publication of a notice as a display advertisement~~ At a minimum the notice of the public hearing shall be published in at least three newspapers of general circulation in different parts of the state ~~shall be construed as compliance by the agency with the requirements for publication.~~ The provisions of chapter 17-2 do not apply to notices required by this section.

~~Notices of hearings and notices of intention to adopt emergency rules shall be mailed to all persons who have made timely requests~~ The notice of a public hearing or the notice of intent to adopt an emergency rule shall be mailed to each person who has made a timely request of the agency for advance notice of its rule-making proceedings.

A notice of hearing or a notice of intent to adopt emergency rules shall contain a narrative description of the effect of the proposed rule and the reasons for adopting the proposed rule. A notice of hearing shall also state where and when the hearing will be held, how amendments, data, opinions, and arguments may be presented ~~by persons unable to attend the hearing,~~ and

1 how the public may obtain copies of the proposed rule.

2 Section 4. That § 1-26-5 be amended to read as follows:

3 1-26-5. Prior to the adoption or amendment of an emergency rule, an agency shall publish  
4 a notice of intent to adopt an emergency rule in the manner prescribed in § 1-26-4.1 and shall  
5 serve on the person specified by subdivision 1-26-4(1), each member of the Interim Rules  
6 Review Committee, and the director:

- 7 (1) A copy of the proposed rule, which shall bear a special number to distinguish it from  
8 a permanent rule;
- 9 (2) Any publication described in § 1-26-6.6 which shall be returned to the agency upon  
10 completion of the director's review and retained by the agency; and
- 11 (3) A statement, with the reasons ~~therefor~~, that the emergency procedure is necessary;  
12 because of imminent peril to the public health, safety, or welfare, ~~is necessary~~; to  
13 prevent substantial unforeseen financial loss to state government, ~~or is necessary~~; or  
14 because of the occurrence of an unforeseen event at a time when the adoption of a  
15 rule in response to such event by the emergency procedure is required to secure or  
16 protect the best interests of the state or its residents.

17 Any agency may use the emergency rule adoption procedure. However, no agency may use  
18 the emergency rule adoption procedure for the convenience of the agency merely to avoid the  
19 consequences for failing to timely promulgate rules.

20 Section 5. That § 1-26-6.3 be amended to read as follows:

21 1-26-6.3. The director may notify any agency whose rules are not in the proper style and  
22 form ~~as prescribed by him~~. A copy of such this notice shall be filed with the secretary of state.  
23 One hundred eighty days after an agency receives such notification, the rules of that agency shall  
24 be of no further force and effect unless redrafted in the prescribed style and form and filed with

1 the secretary of state and the director.

2 Section 6. That § 1-26-6.5 be amended to read as follows:

3 1-26-6.5. The director shall review ~~the rules received~~ each rule for compliance with ~~his the~~  
4 requirements for form, style, and clarity, ~~for their legality and for the sufficiency of the reasons~~  
5 ~~for the passage of emergency rules.~~ The director shall review each rule for legality. The review  
6 for legality is a determination of whether the statutory authority to promulgate a rule:

7 (1) Provides the clearly expressed statement to delegate rule-making authority to the  
8 agency; and

9 (2) Includes sufficient standards to guide the agency in the execution of its rule-making  
10 authority.

11 The director shall review the statement of reasons that the emergency procedure is necessary.

12 If the director finds need for change ~~he shall make his,~~ the director shall make the requirements  
13 known in writing to the agency prior to the hearing or within three days in the case of emergency  
14 rules.

15 Section 7. That § 1-26-7 be amended to read as follows:

16 1-26-7. Each agency shall keep the original records, documents, and instruments required  
17 by this chapter. ~~Agencies and~~ shall make copies of all records, documents, and exhibits available  
18 to members of the Legislature upon request. The secretary of state shall keep a copy of the  
19 agency's current rules and the certificates pertaining thereto, which shall be open to public  
20 inspection.

21 Section 8. That § 1-26-8 be amended to read as follows:

22 1-26-8. Each rule ~~hereafter adopted~~ is effective twenty days after filing with the secretary  
23 of state, except that:

24 (1) If a later date is required by statute or specified in the rule, the later date is the

1 effective date;

2 (2) Subject to applicable constitutional or statutory provisions, an emergency rule  
3 ~~becomes~~ is effective immediately upon filing with the secretary of state, or at a stated  
4 date less than twenty days ~~thereafter~~ later. No emergency rule ~~shall~~ may remain in  
5 effect for a period of longer than ninety days.

6 Section 9. That § 1-26-12.1 be amended to read as follows:

7 1-26-12.1. To assist interested persons dealing with it, each agency which has adopted rules  
8 shall ~~prepare and~~ make available for inspection in a prominent place at each of its offices  
9 ~~servicing the public, either electronically or through paper copy,~~ a list of ~~its~~ the agency's rules  
10 and a descriptive statement of its central and field organization, ~~including. This information~~  
11 includes the locations of persons and places from which the public can secure information, make  
12 submittals or requests, or obtain decisions. ~~All such lists and descriptive statements shall be kept~~  
13 ~~current.~~