

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

973Q0066

HOUSE JUDICIARY ENGROSSED NO. **HB 1082** - 1/26/2009

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



1 commissioner, or constitutional officer of the department to which it is attached for
2 the secretary's, commissioner's, or officer's written approval to proceed;

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

17 (3) The agency shall publish the notice of hearing in the manner prescribed by § 1-26-
18 4.1, at least twenty days before the public hearing;

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

24 (5) The agency shall afford all interested persons reasonable opportunity to submit

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

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

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

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

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

24 ~~(9)(8)~~ The agency shall, ~~at least five days prior to the time set for the agency to appear~~

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

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

10 Section 3. That § 1-26-4.1 be amended to read as follows:

11 1-26-4.1. ~~Any notice required by this chapter~~ The notice of a public hearing of an agency's
12 intent to adopt, amend, or repeal a rule shall be published in a manner selected to notify persons
13 likely to be affected by the proposed rule. ~~Publication of a notice as a display advertisement~~ At
14 a minimum the notice of the public hearing shall be published in at least three newspapers of
15 general circulation in different parts of the state ~~shall be construed as compliance by the agency~~
16 ~~with the requirements for publication.~~ The provisions of chapter 17-2 do not apply to notices
17 required by this section.

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

22 A notice of hearing or a notice of intent to adopt emergency rules shall contain a narrative
23 description of the effect of the proposed rule and the reasons for adopting the proposed rule. A
24 notice of hearing shall also state where and when the hearing will be held, how amendments,

1 data, opinions, and arguments may be presented ~~by persons unable to attend the hearing,~~ and
2 how the public may obtain copies of the proposed rule.

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

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

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

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

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

22 1-26-6.3. The director may notify any agency whose rules are not in the proper style and
23 form ~~as prescribed by him~~. A copy of ~~such~~ this notice shall be filed with the secretary of state.
24 One hundred eighty days after an agency receives such notification, the rules of that agency shall

1 be of no further force and effect unless redrafted in the prescribed style and form and filed with
2 the secretary of state and the director.

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

4 1-26-6.5. The director shall review ~~the rules received~~ each rule for compliance with ~~his the~~
5 requirements for form, style, and clarity, ~~for their legality and for the sufficiency of the reasons~~
6 ~~for the passage of emergency rules.~~ The director shall review each rule for legality. The review
7 for legality is a determination that the rule is authorized by the standards provided in the statutes
8 cited by the agency to promulgate the rule. The director shall review the statement of reasons
9 that the emergency procedure is necessary. If the director finds need for change ~~he shall make~~
10 ~~his,~~ the director shall make the requirements known in writing to the agency prior to the hearing
11 or within three days in the case of emergency rules.

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

13 1-26-7. Each agency shall keep the original records, documents, and instruments required
14 by this chapter. ~~Agencies and~~ and shall make copies of all records, documents, and exhibits available
15 to members of the Legislature upon request. The secretary of state shall keep a copy of the
16 agency's current rules and the certificates pertaining thereto, which shall be open to public
17 inspection.

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

19 1-26-8. Each rule ~~hereafter adopted~~ is effective twenty days after filing with the secretary
20 of state, except that:

21 (1) If a later date is required by statute or specified in the rule, the later date is the
22 effective date;

23 (2) Subject to applicable constitutional or statutory provisions, an emergency rule
24 ~~becomes~~ is effective immediately upon filing with the secretary of state, or at a stated

1 date less than twenty days ~~thereafter~~ later. No emergency rule ~~shall~~ may remain in
2 effect for a period of longer than ninety days.

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

4 1-26-12.1. To assist interested persons dealing with it, each agency which has adopted rules
5 shall ~~prepare and~~ make available ~~for inspection in a prominent place at each of its offices~~
6 ~~servicing the public, either electronically or through paper copy,~~ a list of its the agency's rules
7 and a descriptive statement of its central and field organization, ~~including~~. This information
8 includes the locations of persons and places from which the public can secure information, make
9 submittals or requests, or obtain decisions. ~~All such lists and descriptive statements shall be kept~~
10 ~~current.~~