

## AN ACT

ENTITLED, An Act to revise the procedure to adopt rules.

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

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

1-26-1.3. The director may delegate the duties imposed by this chapter to other persons in the Legislative Research Council's office. Each person to whom the duties are delegated has the same power and authority as the director for the purposes of this chapter. The papers specifying the delegation of duties shall be filed with the secretary of state.

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

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

- (1) An agency shall serve a copy of a proposed rule 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, the agency shall serve the director with a copy of: the proposed rules; any publication described in § 1-26-6.6; the fiscal note described in § 1-26-4.2; the impact statement on small business described in § 1-26-2.1; and the notice of hearing required by § 1-26-4.1. The copy of these documents shall be served at least twenty days before the public hearing to adopt the proposed rules. Any publication described in § 1-26-6.6 shall be returned to the agency upon completion of the director's review and retained by the agency. Also, twenty days before the public hearing, the agency shall serve the commissioner of the Bureau of Finance and Management with a copy of: the proposed rules; the fiscal note

described in § 1-26-4.2; the impact statement on small business described in § 1-26-2.1; and the notice of hearing required by § 1-26-4.1;

- (3) The agency shall publish the notice of hearing in the manner prescribed by § 1-26-4.1, at least twenty days before the public hearing;
- (4) After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise the agency of any recommended corrections to the proposed rule. If the agency does not concur with any recommendation of the director, 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 agency is headed by 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 agency promulgating the rule is a part-time citizen board, commission, committee, or task force, the record of written comments shall be closed at the conclusion of the public hearing. However, the hearing may be specifically continued for the purpose of taking additional comments;
- (7) After the written comment period, the agency shall fully 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 which were described in the notice of hearing; and
- (8) The agency shall 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. 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. 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. The provisions of chapter 17-2 do not apply to notices required by this section.

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, and how the public may obtain copies of the proposed rule.

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

1-26-5. Prior to the adoption or amendment of an emergency rule, an agency shall publish a notice of intent to adopt an emergency rule in the manner prescribed in § 1-26-4.1 and shall serve

on the person specified by subdivision 1-26-4(1), each member of the Interim Rules Review Committee, and the director:

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

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

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

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

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

1-26-6.5. The director shall review each rule for compliance with the requirements for form, style, and clarity. The director shall review each rule for legality. The review for legality is a determination that the rule is authorized by the standards provided in the statutes cited by the agency to promulgate the rule. The director shall review the statement of reasons that the emergency

procedure is necessary. If the director finds need for change, the director shall make the requirements known in writing to the agency prior to the hearing or within three days in the case of emergency rules.

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

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

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

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

- (1) If a later date is required by statute or specified in the rule, the later date is the effective date;
- (2) Subject to applicable constitutional or statutory provisions, an emergency rule is effective immediately upon filing with the secretary of state, or at a stated date less than twenty days later. No emergency rule may remain in effect for a period of longer than ninety days.

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

1-26-12.1. To assist interested persons dealing with it, each agency which has adopted rules shall make available, either electronically or through paper copy, a list of the agency's rules and a descriptive statement of its central and field organization. This information includes the locations of persons and places from which the public can secure information, make submittals or requests, or obtain decisions.

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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1082

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

Attest:

\_\_\_\_\_  
Chief Clerk

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

Attest:

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

House Bill No. 1082

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor  
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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

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

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