

## 2021 South Dakota Legislature

**Senate Bill 92****AMENDMENT 92A FOR THE INTRODUCED BILL**

1 **An Act to require that certain proposed rules include ~~an affordable housing impact~~**  
2 **statement a housing cost impact statement.**

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

4 **Section 1.** That a NEW SECTION be added:

5 **1-26-2.2. Housing cost impact statement--Content.**

6 ~~An agency shall, when submitting any proposed rule that will have a direct impact~~  
7 ~~on the cost of single family or multi-family housing, prepare an affordable housing impact~~  
8 ~~statement that includes:~~

9 ~~(1) An explanation, in plain, easy to read language, regarding the effect of the rule on~~  
10 ~~the cost of housing, the basis for the enactment, and the reason that the rule is~~  
11 ~~necessary;~~

12 ~~(2) The type of housing that will be subject to the rule;~~

13 ~~(3) (a) The projected reporting and recordkeeping for compliance with the rule; and~~

14 ~~(b) The professional skills necessary to prepare the report or record;~~

15 ~~(4) A cost estimate, per housing unit, of compliance with the rule; and~~

16 ~~(5) A description of any less intrusive or less costly alternative for achieving the~~  
17 ~~purpose of the rule.~~

18 ~~In preparing the affordable housing impact statement, an agency is required to use~~  
19 ~~only readily available information and existing resources. Before an agency may~~  
20 ~~promulgate any rule prescribing new standards or requirements for building or remodeling~~  
21 ~~a residential structure that is based on a model code developed by a national or~~  
22 ~~international organization of trade professionals, including standards for electrical,~~  
23 ~~plumbing or mechanical systems, energy conservation, or fire prevention, the agency shall~~  
24 ~~prepare a housing cost impact statement setting forth the need for each new standard or~~  
25 ~~requirement and the estimated cost, per dwelling unit, of compliance. To determine the~~  
26 ~~estimated cost of compliance, the agency shall obtain from three licensed contractors, or~~

1 other applicable building trades professionals operating in this state an estimate of the  
 2 total cost to consumer of all materials, labor and taxes necessary to comply with the  
 3 proposed new standard or requirement. The agency shall use the average of these  
 4 estimates in preparing the impact statement. For purposes of this section, residential  
 5 structure, means any one-family dwelling, two-family dwelling, or townhouse not more  
 6 than three stories above grade.

7 **Section 2.** That § 1-26-4 be AMENDED.

8 **1-26-4. Notice, service, and hearing required--Service on interim rules**  
 9 **committee--Waiver of service.**

10 The following notice, service, and public hearing procedure ~~shall~~ must be used to  
 11 adopt, amend, or repeal a permanent rule:

- 12 (1) An agency shall serve a copy of a proposed rule and any publication described in  
 13 § 1-26-6.6 upon the departmental secretary, bureau commissioner, public utilities  
 14 commissioner, or constitutional officer to which it is attached for the secretary's,  
 15 commissioner's, or officer's written approval to proceed;
- 16 (2) After receiving the written approval of the secretary, commissioner, or officer to  
 17 proceed, the agency shall serve the director with a copy of: the proposed ~~rules~~ rule;  
 18 any publication described in § 1-26-6.6; the fiscal note ~~described in~~ required by  
 19 § 1-26-4.2; the impact statement on small business ~~described in~~ required by § 1-  
 20 26-2.1; ~~the impact statement on affordable housing-housing cost impact statement~~  
 21 required by § 1-26-2.2; and the notice of hearing required by § 1-26-4.1. The copy  
 22 of these documents ~~shall~~ must be served at least twenty days before the public  
 23 hearing to adopt the proposed ~~rules~~ rule. Any publication described in § 1-26-6.6  
 24 ~~shall~~ must be returned to the agency upon completion of the director's review and  
 25 retained by the agency. ~~Also, twenty~~ Twenty days before the public hearing, the  
 26 agency shall serve the commissioner of the Bureau of Finance and Management  
 27 with a copy of: the proposed ~~rules~~ rule; the fiscal note ~~described in~~ required by § 1-  
 28 26-4.2; the impact statement on small business ~~described in~~ required by § 1-26-  
 29 2.1; ~~the impact statement on affordable housing-housing cost impact statement~~  
 30 required by § 1-26-2.2; and the notice of hearing required by § 1-26-4.1;
- 31 (3) ~~The~~ At least twenty days before the public hearing, the agency shall ~~publish:~~  
 32 (a) Publish the notice of hearing in the manner prescribed by § 1-26-4.1, ~~at~~  
 33 least twenty days before the public hearing; and

- 1           (b) Publish, on the agency's website, the ~~impact statement on affordable~~  
 2           housing housing cost impact statement required by § 1-26-2.2;
- 3       (4) After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise  
 4       the agency of any recommended corrections to the proposed rule. If the agency  
 5       does not concur with any recommendation of the director, the agency may appeal  
 6       the recommended correction to the Interim Rules Review Committee for appropriate  
 7       action;
- 8       (5) The agency shall afford all interested persons reasonable opportunity to submit  
 9       amendments, data, opinions, or arguments at a public hearing held to adopt the  
 10      rule. The hearing may be continued from time to time. The agency shall keep  
 11      minutes of the hearing. A majority of the members of any board or commission  
 12      authorized to pass rules must be present during the course of the public hearing;
- 13      (6) If the authority promulgating the rule is a secretary, commissioner, or officer, the  
 14      agency shall accept written comments regarding the proposed rule for a period of  
 15      ten days after the public hearing. If the authority promulgating the rule is a part-  
 16      time citizen board, commission, committee, or task force, each interested person is  
 17      ~~required to shall~~ submit written comments at least seventy-two hours before the  
 18      public hearing. The seventy-two hours does not include the day of the public  
 19      hearing. The written comments may be submitted by mail or email. The record of  
 20      written comments may be closed at the conclusion of the public hearing. ~~However,~~  
 21      ~~the~~ The hearing may be ~~specifically~~ continued for the purpose of taking additional  
 22      comments;
- 23      (7) After the written comment period, the agency shall ~~fully~~ consider all amendments,  
 24      data, opinions, or arguments regarding the proposed rule. A proposed rule may be  
 25      modified or amended at this time to include or exclude matters ~~which~~ that were  
 26      described in the notice of hearing; and
- 27      (8) The agency shall serve the minutes of the hearing, a complete record of written  
 28      comments, the impact statement on small business, ~~the~~ the impact statement on  
 29      affordable housing housing cost impact statement, the fiscal note, the information  
 30      required ~~in~~ by § 1-26-4.8, and a corrected copy of the ~~rules~~ rule on the members  
 31      of the Interim Rules Review Committee, at least five days before the agency  
 32      appears before the committee to present the rules.

33           The time periods specified in this section may be extended by the agency. The  
 34           requirement to serve the committee in subdivision (8) may be waived by the committee  
 35           chair, if the agency presents sufficient reasons to the committee chair that the agency is

- 1       unable to comply with the time limit. The waiver may not be granted solely for the
- 2       convenience of the agency.

AMENDED