



2021 South Dakota Legislature

Senate Bill 92

SENATE LOCAL GOVERNMENT ENGROSSED

Introduced by: **Senator Herman Otten**

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

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

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

5 **1-26-2.3. Housing cost impact statement--Content.**

6 Before an agency may promulgate any rule prescribing new standards or
 7 requirements for building or remodeling a residential structure that is based on a model
 8 code developed by a national or international organization of trade professionals, including
 9 standards for electrical, plumbing or mechanical systems, energy conservation, or fire
 10 prevention, the agency shall prepare a housing cost impact statement setting forth the
 11 need for each new standard or requirement and the estimated cost, per dwelling unit, of
 12 compliance. To determine the estimated cost of compliance, the agency shall obtain from
 13 three licensed contractors, or other applicable building trades professionals operating in
 14 this state an estimate of the total cost to consumer of all materials, labor and taxes
 15 necessary to comply with the proposed new standard or requirement. The agency shall
 16 use the average of these estimates in preparing the impact statement. For purposes of
 17 this section, residential structure, means any one-family dwelling, two-family dwelling, or
 18 townhouse not more than three stories above grade.

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

20 **1-26-4. Notice, service, and hearing required--Service on interim rules**
 21 **committee--Waiver of service.**

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

24 (1) An agency shall serve a copy of a proposed rule and any publication described in
 25 § 1-26-6.6 upon the departmental secretary, bureau commissioner, public utilities

- 1 commissioner, or constitutional officer to which it is attached for the secretary's,
2 commissioner's, or officer's written approval to proceed;
- 3 (2) After receiving the written approval of the secretary, commissioner, or officer to
4 proceed, the agency shall serve the director with a copy of: the proposed ~~rules~~ rule;
5 any publication described in § 1-26-6.6; the fiscal note ~~described in~~ required by
6 § 1-26-4.2; the impact statement on small business ~~described in~~ required by § 1-
7 26-2.1; the housing cost impact statement required by § 1-26-2.3; and the notice
8 of hearing required by § 1-26-4.1. The copy of these documents ~~shall~~ must be
9 served at least twenty days before the public hearing to adopt the proposed ~~rules~~
10 rule. Any publication described in § 1-26-6.6 ~~shall~~ must be returned to the agency
11 upon completion of the director's review and retained by the agency. ~~Also, twenty~~
12 Twenty days before the public hearing, the agency shall serve the commissioner of
13 the Bureau of Finance and Management with a copy of: the proposed ~~rules~~ rule; the
14 fiscal note ~~described in~~ required by § 1-26-4.2; the impact statement on small
15 business ~~described in~~ required by § 1-26-2.1; the housing cost impact statement
16 required by § 1-26-2.3; and the notice of hearing required by § 1-26-4.1;
- 17 (3) ~~The~~ At least twenty days before the public hearing, the agency shall publish:
18 (a) Publish the notice of hearing in the manner prescribed by § 1-26-4.1, ~~at~~
19 ~~least twenty days before the public hearing; and~~
20 (b) Publish, on the agency's website, the housing cost impact statement
21 required by § 1-26-2.3;
- 22 (4) After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise
23 the agency of any recommended corrections to the proposed rule. If the agency
24 does not concur with any recommendation of the director, the agency may appeal
25 the recommended correction to the Interim Rules Review Committee for appropriate
26 action;
- 27 (5) The agency shall afford all interested persons reasonable opportunity to submit
28 amendments, data, opinions, or arguments at a public hearing held to adopt the
29 rule. The hearing may be continued from time to time. The agency shall keep
30 minutes of the hearing. A majority of the members of any board or commission
31 authorized to pass rules must be present during the course of the public hearing;
- 32 (6) If the authority promulgating the rule is a secretary, commissioner, or officer, the
33 agency shall accept written comments regarding the proposed rule for a period of
34 ten days after the public hearing. If the authority promulgating the rule is a part-
35 time citizen board, commission, committee, or task force, each interested person is

1 ~~required to~~shall submit written comments at least seventy-two hours before the
2 public hearing. The seventy-two hours does not include the day of the public
3 hearing. The written comments may be submitted by mail or email. The record of
4 written comments may be closed at the conclusion of the public hearing. ~~However,~~
5 ~~the~~The hearing may be ~~specifically~~ continued for the purpose of taking additional
6 comments;

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

11 (8) The agency shall serve the minutes of the hearing, a complete record of written
12 comments, the impact statement on small business, the housing cost impact
13 statement, the fiscal note, the information required ~~in~~by § 1-26-4.8, and a
14 corrected copy of the ~~rules~~rule on the members of the Interim Rules Review
15 Committee, at least five days before the agency appears before the committee to
16 present the rules.

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