

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

400B0269

SENATE BILL NO. 60

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise the administrative rule process to reduce the
2 number of document copies an agency must file when incorporating outside materials into
3 administrative rules.

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

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

6 1-26-4. The following procedure shall be complied with prior to the adoption, amendment,
7 or repeal of any rule, except an emergency rule:

8 (1) An agency shall serve a copy of a proposed rule and any publication described in
9 § 1-26-6.6 upon the departmental secretary, bureau commissioner, or constitutional
10 officer of the department to which it is attached;

11 (2) Fifteen days after the service required by subdivision (1) or upon receiving the written
12 approval of that officer to proceed, whichever comes first, and twenty days before the
13 hearing, the agency shall serve the director with a copy of the proposed rules, ~~a copy~~
14 ~~of any publication described in § 1-26-6.6~~, a copy of the fiscal note described in
15 § 1-26-4.2, and a copy of the notice of hearing required by § 1-26-4.1. Also, twenty

1 days before the hearing, the agency shall serve the Bureau of Finance and
2 Management with a copy of the proposed rules, a copy of the fiscal note described in
3 § 1-26-4.2, and a copy of the notice of hearing required by § 1-26-4.1;

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

6 (4) The agency shall afford all interested persons reasonable opportunity to submit data,
7 opinions, or arguments, either orally or in writing, or both, at a hearing held for that
8 purpose. The hearing may be continued from time to time until its business has been
9 completed. The agency shall keep minutes of the hearing. A majority of the members
10 of any board or commission authorized to pass rules must be present during the
11 course of the hearing required by this subdivision;

12 (5) For a period of ten days after the hearing, the agency shall accept written comments
13 regarding the proposed rule, unless the entity promulgating the rule is a part-time
14 citizen board, commission, committee, task force, or other multiperson decision
15 maker, in which case the record of written comments shall be closed at the conclusion
16 of the public hearing. However, the hearing may be specifically continued for the
17 purpose of taking additional comments;

18 (6) After the written comment period, the agency shall fully consider all written and oral
19 submissions regarding the proposed rule. A proposed rule may be modified or
20 amended at this time to include or exclude matters which were described in the notice
21 of hearing;

22 (7) After reviewing the proposed rule, the director shall advise the agency of any
23 recommended corrections to the proposed rule;

24 (8) If the agency does not concur with any recommendation of the director, the agency
25 shall appeal the recommended correction to the Interim Rules Review Committee for

1 appropriate action; and

2 (9) The agency shall serve the minutes of the hearing, a complete record of written
3 comments, and a corrected copy of the rules on the members of the Interim Rules
4 Review Committee.

5 The time periods specified in this section may be extended by the agency.

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

7 1-26-6. The adoption, amendment, or repeal of a rule shall be is complete when:

8 (1) Ten days have passed since all the requirements of § 1-26-4 have been completed or,
9 if the rule is an emergency rule, three days have passed since all the requirements of
10 § 1-26-5 have been complied with;

11 (2) It has been signed by a majority of the members of the multi-member body or by the
12 officer having the authority to adopt it;

13 (3) It has been signed by the director ~~or his designee~~;

14 (4) A copy has been filed with the director, in a form prescribed by ~~him~~ the director to
15 show amendments, deletions and other changes to existing rules, for use in
16 preparation of copy for the Administrative Rules of South Dakota; and

17 (5) The rule, ~~together with any publication described in § 1-26-6.6,~~ and a certificate have
18 been filed with the secretary of state. The certificate shall affirm that the rule filed is
19 a true and correct copy of the rule as adopted and that the agency has complied with
20 § 1-26-4 or 1-26-5, and with this section.

21 Certificates required by this section shall be affidavits executed, under oath, by the officers
22 authorized by statute to promulgate the rule. ~~When~~ If a rule is promulgated by a multi-member
23 body, the certificate shall be signed by its presiding officer.

24 Emergency rules are provisionally effective immediately after being filed. Notwithstanding
25 § 15-6-6(a), all other rules are provisionally effective on the twentieth day after being filed, not

1 counting the day of filing. In either case a later effective date may be specified as part of the rules
2 being filed. A rule which is not yet effective or a provisionally effective rule may be suspended
3 in the manner specified by § 1-26-38 any time prior to the first day of July of the year following
4 the year in which it became, or would have become, effective. The rule's provisional status ends
5 at that time, and it may not thereafter be suspended by the rules committee. Unless suspended,
6 a provisionally effective rule shall be enforced by the agency and the courts as if it were not so
7 conditioned.

8 No rule adopted after June 30, 1975, is valid unless adopted in compliance with § 1-26-4 or
9 1-26-5, and this section and copies of it are made available to the public upon request, by the
10 agency.