

# State of South Dakota

## NINETY-SECOND SESSION LEGISLATIVE ASSEMBLY, 2017

937Y0074

HOUSE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to revise certain requirements for a public notice of a public  
2 meeting.

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

4 Section 1. That § 1-25-1.3 be amended to read:

5 1-25-1.3. The state and each state board, commission, or department shall provide public  
6 notice, ~~with proposed agenda, that is visible, readable, and accessible to the public for at least~~  
7 ~~two continuous days, as that time period is computed pursuant to § 15-6-6(a), immediately~~  
8 ~~preceding any meeting,~~ of a meeting by posting a copy of the ~~notice~~ proposed agenda at the  
9 principal office of the public body holding the meeting. The proposed agenda shall include the  
10 date, time, and location of the meeting, be visible, readable, and accessible to the public. The  
11 agenda shall be posted at least seventy-two hours before the meeting is scheduled to start  
12 according to the agenda. The seventy-two hours does not include the day the agenda is posted  
13 nor Saturday, Sunday, or legal holidays. The notice shall also be posted on the public body's  
14 website upon dissemination of the notice, if such a website exists. For any special or  
15 rescheduled meeting, the information in the notice shall be delivered in person, by mail, by  
16 email, or by telephone, to members of the local news media who have requested notice. For any



special or rescheduled meeting, each public body shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

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

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~~ authority promulgating the rule is 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~~ authority promulgating the rule is a part-time citizen board, commission, committee, or task force, ~~the~~ each interested person is required to submit written comments at least seventy-two hours before the public hearing. The seventy-two hours does not include the day of the public hearing. The written comments may be submitted by mail or email. The record of written comments shall may 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

1       (8)   The agency shall serve the minutes of the hearing, a complete record of written  
2            comments, the impact statement on small business, the fiscal note, the information  
3            required in § 1-26-4.8, and a corrected copy of the rules on the members of the  
4            Interim Rules Review Committee at least five days before the agency appears before  
5            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 (8) 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:

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

16       The notice of a public hearing or the notice of intent to adopt an emergency rule shall be  
17       mailed to each person who has made a timely request of the agency for advance notice of its  
18       rule-making proceedings.

19       A notice of hearing or a notice of intent to adopt emergency rules shall contain a narrative  
20       description of the effect of the proposed rule and the reasons for adopting the proposed rule. A  
21       notice of hearing shall also state where and when the hearing will be held, how amendments,  
22       data, opinions, and arguments may be presented, the deadline to submit written comments, and  
23       how the public may obtain copies of the proposed rule.