

2020 South Dakota Legislature

Draft 50

Requested by: at the request of the Rules Review

1 **An Act to revise the South Dakota Administrative Procedures Act.**

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

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

4 **1-26-42. Definitions**

5 As used in this chapter:

6 (1) "Agency" means any association, authority, board, commission, committee,
7 council, department, division, office, officer, task force, or other agent of
8 the state in the executive branch, and any home-rule municipality that has
9 adopted an administrative appeals process in which a final decision, ruling,
10 or action of the municipality is subject to judicial review in accordance with
11 this chapter;

12 (2) "Contested case" means any proceeding in which the legal rights, duties, or
13 privileges of a party must be determined by an agency after an opportunity
14 for hearing, including rate-making and licensing. The term does not include
15 proceedings regarding:

16 (a) Rule promulgation other than rate-making;

17 (b) Inmate disciplinary matters prescribed under § 1-15-20; or

18 (c) Student academic proceedings under the jurisdiction of the Board of
19 Regents;

20 (3) "License" means the whole or part of any agency permit, certificate,
21 approval, registration, charter, or similar form of permission required by
22 law;

23 (4) "Party" each person or agency named or admitted, or properly seeking and
24 entitled to be admitted, in a contested case;

25 (5) "Person" includes any political subdivision and agency of the state;

26 (6) "Rule" means an agency statement of general applicability, or any
27 amendment or repeal of the statement, which implements, interprets, or
28 prescribes law, policy, procedure, or practice requirements of the agency.
29 The term does not include any:

- 1 (a) Statement governing solely the internal management of an agency,
2 provided the statement does not affect any private right or
3 procedure available to the public;
4 (b) Declaratory ruling issued in accordance with § 1-26-50;
5 (c) Opinion issued by the attorney general in accordance with § 1-11-1;
6 (d) Executive order issued by the Governor;
7 (e) Student matter under the jurisdiction of the Board of Regents;
8 (f) Action of the railroad board under § 1-44-28;
9 (g) Policy or procedure for the management of inmate disciplinary
10 matters prescribed by the Department of Corrections in accordance
11 with § 1-15-20;
12 (h) Internal control procedure established by the South Dakota
13 Commission on Gaming under § 42-7B-25.1;
14 (i) Policy governing specific state fair premiums, awards, entry, and
15 exhibit requirements adopted by the Department of Agriculture
16 under § 1-21-10; or
17 (j) Lending procedure or program of the South Dakota Housing
18 Development Authority;
19 (7) "Small business" means a business entity that employs twenty-five or fewer
20 full-time employees; and
21 (8) "Substantial evidence" means any relevant and competent evidence a
22 reasonable mind might accept as adequate to support a conclusion.

23 **Section 2.** That a NEW SECTION be added:

24 **1-26-43. Interim Rules Review Committee -- Membership -- Compensation**

- 25 (1) The Interim Rules Review Committee consists of six members of the Legislature:
26 (a) Three members of the Senate appointed by the president pro tempore of
27 the Senate, with no more than two members of the Senate to be of the
28 same political party; and
29 (b) Three members of the House of Representatives appointed by the speaker
30 of the House of Representatives, with no more than two members of the
31 House of Representatives to be of the same political party.
32 (2) Each member of the committee must be appointed for a two-year term prior to the
33 adjournment of the regular session of the Legislature in an odd-numbered year.
34 Each term ends at noon on the second Tuesday in January of the following odd-

1 numbered year, or at the time the member's successor is appointed, whichever is
2 later.

3 (3) The original appointing authority shall fill any vacancy on the committee occurring
4 whenever a member of the committee is no longer a member of the Legislature.
5 An appointment under this subsection is for the remainder of the original appointed
6 term.

7 (4) The committee shall select a chair from among its members and shall determine
8 the committee's rules of procedure.

9 (5) Members of the committee must be compensated for their attendance at any
10 meeting and for any time spent in the conduct of committee business at rates
11 established by the Executive Board of the Legislative Research Council.

12 **Section 3.** That a NEW SECTION be added:

13 **1-26-44. Interim Rules Review Committee -- Regular Meetings -- Special**
14 **Meetings**

15 (1) On or before the first Monday following the last day of each regular session of the
16 Legislature, the committee and the agencies shall determine the date for each
17 regular meeting of the committee to be held during the following twelve-month
18 period. The committee may cancel a regular meeting if no proposed rules are filed
19 with the committee prior to that meeting.

20 (2) The chair or a majority of the members of the committee may call a special meeting
21 of the committee. Any meeting of the committee shall be open to the public, and
22 any interested person may be heard.

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

24 **1-26-45. Interim Rules Review Committee -- Duties and Authority**

25 (1) At each regular meeting, the committee shall review all rules proposed by an
26 agency and make any recommendation to the agency regarding the proposed rules
27 and legislation authorizing rules. The committee may make any recommendation
28 to the Legislature regarding administrative law.

29 (2) The committee may:

30 (a) Declare the rule promulgation process is complete to the satisfaction of the
31 committee;

1 (b) Require an agency to revert to any step in the rule promulgation process, if
2 the public notice was not sufficient to give adequate notice to persons likely
3 to be affected by the proposed rule or the final proposed rule:

4 (i) Has been significantly rewritten from the original proposed rule not
5 as a result of testimony received during the public hearing;

6 (ii) Needs to be significantly rewritten in order to accomplish the intent
7 of the agency;

8 (iii) Needs to be rewritten to address the recommendations or objections
9 of the committee;

10 (iv) Is not a valid exercise of delegated legislative authority;

11 (v) Is not in proper form;

12 (vi) Is not consistent with the legislative intent of the law that is being
13 implemented;

14 (vii) Is not a reasonable implementation of the law as it affects the
15 convenience of the general public or any person likely affected by
16 the rule; or

17 (viii) May impose more than nominal costs upon a unit of local
18 government or school district when the unit of local government or
19 school district may not have sufficient funding to perform the activity
20 required by the proposed rule; or

21 (c) Upon a majority vote of the members of the committee, suspend any
22 provisional rule, or any rule that has not become effective, at any time prior
23 to the first day of July of the year following the year in which the rule
24 became, or would have become, provisionally effective, if the committee:

25 (i) Holds a hearing to consider suspension of the rule, which may be
26 held during a regular meeting of the committee;

27 (ii) Provides the agency with at least two weeks' notice of the hearing;
28 and

29 (ii) Files a resolution suspending the rule with the Office of the Secretary
30 of State, effective from the date of the filing through the first day of
31 July of the year following the year in which the rule became or would
32 have become effective.

33 (3) The committee may not suspend a rule that is effective.

34 **Section 5.** That a NEW SECTION be added:

1 **1-26-46. Legislative Research Council -- Review -- Recommendations**

2 (1) The Director of the Legislative Research Council shall:

3 (a) Prescribe a uniform standard for style and form by which rules must be
4 prepared and filed under this chapter. The form must include:

5 (i) A citation to the statute granting the agency general authority to
6 promulgate the rules;

7 (ii) A citation to the section, subsection, or subdivision of the statute the
8 rule implements; and

9 (iii) Direction to the agency to identify prior rules amended or repealed;

10 (b) Review each proposed rule for compliance with the uniform standard for
11 style, form, and clarity;

12 (c) Review each proposed rule for legality, including whether the rule is
13 authorized by statute;

14 (d) Review, for any emergency rule, the statement of reasons that the
15 emergency procedure is necessary; and

16 (e) Review any pamphlet to be published by an agency.

17 (2) Following the review under subsection (1), the director shall recommend any
18 change to the agency, in writing, prior to the public hearing or, in the case of an
19 emergency rule, within three days of receiving the proposed emergency rule. The
20 agency may appeal any recommended change to the Interim Rules Review
21 Committee.

22 (3) The director may provide notice to any agency whose rules are not in compliance
23 with the uniform standard for style and form prescribed under subsection (1). A
24 copy of the notice must be filed with the Office of the Secretary of State. The
25 agency shall redraft any rule that is the subject of the notice within one hundred
26 eighty days after receipt of the notice and shall file the redrafted rule with the
27 Office of the Secretary of State. An agency may not enforce any rule that is not
28 redrafted in accordance with this subsection.

29 (4) The director may delegate any duty imposed by this chapter to any other person
30 in the Legislative Research Council who shall have the same power and authority
31 as the director for purposes of this chapter. The director shall file a notice of the
32 delegation under this subsection with the Office of the Secretary of State.

33 **Section 6.** That a NEW SECTION be added:

1 **1-26-47. Permanent rule promulgation -- Review -- Public Hearing --**
2 **Presentation to committee**

3 (1) An agency that is required or permitted to adopt, amend, or repeal a permanent
4 rule shall:

5 (a) Obtain written approval to proceed with rule promulgation by the secretary,
6 commissioner, or officer for the department, bureau, or office to which the
7 agency is attached by submitting the proposed rule and any publication
8 that:

9 (i) Contains comprehensive regulations that the agency is incorporating
10 in the rule by reference, unless the regulations are published by an
11 organization that is not part of the government of this state;

12 (ii) Is generally available to the public at a reasonable cost; and

13 (iii) Contains a statement attached to the face of the publication
14 indicating the name of the agency, the section number of the rule
15 incorporating the regulations within the publication, and the date the
16 rule was submitted for approval to proceed;

17 (b) After receiving approval to proceed with promulgation under subdivision
18 (a), and no fewer than twenty days prior to holding a public hearing:

19 (i) Submit to the director of the Legislative Research Council in a form
20 and manner to be determined by the director:

21 (A) The proposed rules;

22 (B) Any publication submitted under subdivision (a), to be
23 returned to the agency by the director and retained by the
24 agency;

25 (C) A fiscal note that describes any effect the proposed rule would
26 have on the revenues, expenditures, or fiscal liability of the
27 state or any agency or political subdivision of the state, and
28 that includes an explanation of how the effect was computed;

29 (D) A statement of any impact on small business that uses readily
30 available information and existing resources, and which
31 contains:

32 (1) An explanation in plain, easy-to-read language of the
33 effect of the rule on small business, including the basis
34 for the enactment, and an explanation of why the rule
35 is needed;

- 1 to time. The agency shall keep minutes of the hearing. If the agency is a board or
2 commission, a majority of its members must be present at the public hearing.
- 3 (3) For any permanent rule promulgated by a secretary, commissioner, or officer, the
4 agency shall accept written comments by mail or email from the public for at least
5 ten days following the public hearing.
- 6 (4) For any permanent rule promulgated by a part-time citizen board, commission,
7 committee, or task force, written comments must be received by the agency by
8 mail or email at least seventy-two hours before the public hearing, excluding the
9 day of the public hearing. The agency may close the record of written comments
10 received under this subsection at the conclusion of the public hearing, provided
11 that the hearing may be continued for the purpose of taking additional comments.
- 12 (5) After the close of the written comment period under subsection (3) or (4), the
13 agency shall consider any amendment, data, opinion, or argument submitted to
14 the agency at the public hearing or by written comment. The agency may amend
15 any proposed rule to include or exclude any matter described in the notice of public
16 hearing.
- 17 (6) At least five days before the meeting of the Interim Rules Review Committee at
18 which the agency is scheduled to present the final proposed rules, the agency shall
19 submit to the committee:
- 20 (a) A copy of the final proposed rules;
21 (b) The minutes of the public hearing;
22 (c) A complete record of written comments received by the agency;
23 (d) The statement of any impact on small business;
24 (e) The fiscal note; and
25 (f) For any proposed rule that increases a fee, the financial resources available
26 to the agency consisting of:
- 27 (i) The agency's beginning fund balance, receipts, disbursements, and
28 ending fund balance for each of the preceding two fiscal years; and
29 (ii) The agency's beginning fund balance, projected receipts, projected
30 disbursements, and ending balance for the current and next fiscal
31 years.
- 32 (7) The chair of the committee may waive the requirement to submit to the committee
33 under subsection (6) if the chair determines that the agency is unable to comply
34 with the time requirement. The chair may not waive the requirement solely for the
35 convenience of the agency.

- 1 (8) Any period of time specified in this section may be extended by the agency.
- 2 (9) A permanent rule may not be filed with the Office of the Secretary of State:
- 3 (a) Until the committee declares the rule promulgation process is complete; or
- 4 (b) If more than sixty days have passed from the date the committee declared
- 5 the rule promulgation process to be complete.
- 6 (10) If an act of the Legislature, which becomes effective on the date set forth in § 2-
- 7 14-16, authorizes an agency to promulgate rules, the agency may begin the rule
- 8 promulgation process under this section at any time after the Governor signs the
- 9 act. Any rule promulgated in accordance with this subsection is not effective until
- 10 the act authorizing the rule promulgation is effective.
- 11 (11) All notices of hearings on the adoption of rules made prior to July 1, 1984, are
- 12 hereby in all respects legalized and validated. If a person has a vested right in any
- 13 real or personal property by reason of an error in a notice or an error in the method
- 14 of giving a notice referred to in this section, and if no action or proceeding to
- 15 enforce such right was commenced prior to July 1, 1985, such right shall be forever
- 16 barred. An action or proceeding involving real property may not be brought or
- 17 maintained in a court of this state unless a notice of such action, made in
- 18 accordance with chapter 15-10, was recorded in the office of the register of deeds
- 19 of the county in which the affected real property is located prior to July 1, 1985.
- 20 (12) A permanent rule may not be amended, repealed, or suspended, except in
- 21 accordance with this chapter, even if the rule is not yet effective.
- 22 (13) No agency rule may be enforced by the courts of this state until it has been adopted
- 23 in accordance with the procedures set forth in this section.
- 24 (14) For any rule the Interim Rules Review Committee reverts, the time limitations set
- 25 by this chapter shall also revert to the same step. If the committee reverts a rule
- 26 to consider amendments to the proposed rule, the agency may make the
- 27 amendment and resubmit the rule as amended at the next scheduled regular
- 28 meeting of the committee without conducting a public hearing. An amended rule
- 29 must be published in the South Dakota Register.
- 30 (15) During a hearing of the committee to consider suspension of a rule, the agency
- 31 shall provide the basis that the rule:
- 32 (a) Is necessary;
- 33 (b) Does not violate any constitutional or statutory provision; and
- 34 (c) Falls within the legislative intent of the statutory authority to promulgate
- 35 the rule.

1 (16) If the committee suspends an amendment to an existing rule, the existing rule is
2 returned to its form prior to the amendment.

3 (17) Following submission to the commissioner of the Bureau of Finance and
4 Management under subsection (1), and prior to the agency's public hearing, the
5 commissioner shall prepare a fiscal note and submit it to the agency, the director
6 of the Legislative Research Council, and the co-chairs of the Joint Appropriations
7 Committee. For any proposed rule that the commissioner determines would have
8 a negative fiscal impact on a political subdivision of the state, the commissioner
9 shall transmit a copy of the commissioner's fiscal note to the South Dakota
10 Municipal League, the Associated School Boards of South Dakota, and the South
11 Dakota County Commissioners Association.

12 **Section 7.** That a NEW SECTION be added:

13 **1-26-48. Temporary Emergency Rule Promulgation**

14 (1) An agency may promulgate a temporary emergency rule without a hearing before
15 the Interim Rules Review Committee. To promulgate the emergency rule, the
16 agency shall:

17 (a) Publish a notice of intent to adopt an emergency rule containing a narrative
18 description of the effect of and the reason for adopting the emergency rule
19 in a manner that notifies any person likely to be affected by the emergency
20 rule, including in at least three newspapers of general circulation in different
21 parts of the state;

22 (b) Mail the notice of intent to adopt an emergency rule to each person who
23 has requested advanced notice of the agency's rule promulgation;

24 (c) Serve on the secretary, commissioner, or officer for the department,
25 bureau, or office to which the agency is attached; each member of the
26 committee; and the director of the Legislative Research Council:

27 (i) A copy of the emergency rule, which shall bear a special number to
28 distinguish it from a permanent rule;

29 (ii) Any publication that:

30 (A) Contains comprehensive regulations that the agency is
31 incorporating by reference in the rule, provided that the
32 regulations are published by an organization that is not part
33 of the government of this state;

34 (B) Is generally available to the public at a reasonable cost; and

- 1 (C) Contains a statement attached to the face of the publication
2 indicating the name of the agency, the section number of the
3 rule incorporating the regulations within the publication, and
4 the date the rule was submitted under this subdivision; and
5 (iii) A statement identifying the reason why the emergency promulgation
6 process is necessary because of:
7 (A) Imminent peril to the public health, safety, or welfare;
8 (B) Prevention of substantial unforeseen financial loss to state
9 government; or
10 (C) The occurrence of an unforeseen event at a time when the
11 adoption of a rule in response to the event by the emergency
12 procedure is required to secure or protect the best interests
13 of the state or its residents.
14 (2) An agency may not use the emergency promulgation process under this section
15 solely for the convenience of the agency or to avoid the consequences for failing
16 to promulgate permanent rules in a timely manner.
17 (3) All notices of intent to adopt emergency rules made prior to March 14, 1985, are
18 hereby in all respects legalized and validated. If a person has a vested right in any
19 real or personal property by reason of an error in a notice or an error in the method
20 of giving a notice, and if no action or proceeding to enforce such right was
21 commenced prior to July 1, 1986, such right is forever barred. An action or
22 proceeding involving real property may not be brought or maintained in a court of
23 this state unless a notice of such action, made in accordance with chapter 15-10,
24 was recorded in the office of the register of deeds of the county in which the
25 affected real property is located prior to July 1, 1987.
26 (4) A permanent rule may be suspended, but not repealed, by an emergency rule. A
27 permanent rule that is amended by an emergency rule reverts to its previous form
28 ninety days after the emergency rule is effective, or at any earlier date specified in
29 the emergency rule, unless the permanent rule is further amended during that
30 period.
31 (5) An agency may not enforce an emergency rule if the agency files the rule with the
32 Office of the Secretary of State more than thirty days from the date on which the
33 notice of intent to adopt an emergency rule was published under subsection (1).

34 **Section 8.** That a NEW SECTION be added:

1-26-49. Agency limitations and requirements - Records retention

- (1) A rule that incorporates material by reference shall cite the section or portion of the publication containing the incorporated material. Immediately following the rule, a reference note shall identify the:
- (a) Publication by title, date of publication or enactment, and author;
 - (b) Location where the publication may be obtained; and
 - (c) Cost of the publication, if any.
- (2) The reference note required under subsection (1) does not apply to any material incorporated from the Code of Federal Regulations, Federal Register, United States Code, or United States Statutes at Large.
- (3) An agency may refer to any statute within a rule, but may not incorporate statutory language, other than definitions, in a rule. The agency may not publish or distribute any statutory material in conjunction with a rule unless otherwise required by law or authorized by the Code Commission in accordance with § 2-16-8.1.
- (4) The definitions in § 2-14-2 apply to the Administrative Rules of South Dakota, unless the context of the defined word plainly requires a different meaning.
- (5) An agency shall make available for public inspection any rule, final order, decision, opinion, intra-agency memorandum, and any other material, written statement of policy or interpretation formulated, adopted, or used by the agency in the discharge of the agency's functions.
- (6) An agency shall keep the original records, documents, and instruments required by this chapter and shall make copies of all records, documents, and instruments available to members of the Legislature upon request.
- (7) An agency shall make available to any interested person, electronically or through paper copy, a list of the agency's rules and the name and location of any person from whom and place from which the person may obtain information, make any submittal or request to the agency, or obtain any decision by the agency.
- (8) An agency shall keep any material that is derogatory to a person confidential, but the material must be made available to the person to whom it relates.
- (9) If a professional or occupational licensing board or commission is authorized by law to establish a fee by rule, and no maximum amount of the fee is specified, the fee must be reasonable and necessary, but may not exceed the board's or commission's previous year's budget by more than twenty percent. The fee shall provide sufficient funds to meet the budgetary needs of the board or commission

- 1 for per diem, travel expenses, office expenses, salaries and benefits, utilities,
2 supplies, testing, licensing, inspections, disciplinary actions, and legal fees.
- 3 (10) Upon the written request of an interested person prior to or within thirty days
4 following the adoption of a rule or the rejection of a petition filed in accordance
5 with § 1-26-50, an agency shall provide a concise written statement of the basis
6 for the agency's determination regarding the rule's adoption or rejection. A copy
7 of the statement must be served on the members of the Interim Rules Review
8 Committee and the director of the Legislative Research Council.
- 9 (11) An agency may not adopt any rule that restricts the right or privilege to carry or
10 possess a pistol in contravention to authority being exercised in accordance with
11 being licensed to carry a concealed pistol pursuant to chapter 23-7.
- 12 (12) The Office of the Secretary of State shall keep a copy of every agency's current
13 rules and any certificates pertaining to the rules. The copies and certificates must
14 be available for public inspection.
- 15 (13) An agency promulgating rules under this chapter may cause the rules, or any
16 portion of the rules, to be published in pamphlet form, subject to review by the
17 director of the Legislative Research Council for style and form and any other
18 limitations of certification.
- 19 (14) Any publication or copy of rules authorized under or required by this chapter must
20 be made available upon request to any agency or official of this state at no cost
21 and to any other person at a cost to be determined by the committee to cover
22 expenses of mailing and publication. An agency may not charge the public for any
23 copy of a notice of public hearing or notice of intent to adopt an emergency rule.
24 Section 1-8-10 does not apply to any copy of publications distributed by the Office
25 of the Secretary of State under this chapter, except as to certification.
- 26 (15) Notwithstanding § 15-6-6(e), any service required by this chapter shall, when
27 performed by mail, be complete when the material to be served is deposited with
28 the United States postal service.

29 **Section 9.** That a NEW SECTION be added:

30 **1-26-50. Petitions for rule promulgation**

- 31 (1) Any interested person, other than an inmate as defined in § 1-15-20.1, may submit
32 a petition to an agency requesting the promulgation, amendment, or repeal of a
33 rule. The petition must contain the:
- 34 (a) Text or substance of the rule or amendment;

- 1 **(b)** Section number of the rule to be repealed;
 2 **(c)** Basis for the request; and
 3 **(d)** Name and address of the petitioner.
 4 **(2)** Within thirty days after submission of a petition under this section, the agency
 5 shall:
 6 **(a)** Deny the petition and provide the basis of the agency's denial; or
 7 **(b)** Initiate rule promulgation proceedings.
 8 **(3)** The agency shall provide a copy of any petition and denial under this section to the
 9 Interim Rules Review Committee and the director of the Legislative Research
 10 Council.

11 **Section 10.** That a NEW SECTION be added:

12 **1-26-51. Declaratory judgments -- Declaratory rulings**

- 13 **(1)** A person may challenge the validity or applicability of a rule in an action for
 14 declaratory judgment in the circuit court for the county of the person's residence.
 15 The person may allege that the rule, or its application, interferes with, impairs, or
 16 may interfere with or impair, the person's legal rights or privileges. The agency
 17 shall be made a party to the action. The court may issue a declaratory judgment
 18 even if the person has not filed a petition with the agency for a declaratory ruling.
 19 **(2)** Each agency shall provide by rule for the filing and prompt disposition of a petition
 20 for declaratory ruling as to the applicability of any statutory provision or of any rule
 21 or order of the agency. An agency ruling on a petition has the same status as an
 22 agency decision or order in a contested case under this chapter. The agency shall
 23 file a copy of any declaratory ruling with the director of the Legislative Research
 24 Council for publication in the Administrative Rules of South Dakota.
 25 **(3)** An inmate, as defined in § 1-15-20.1, may not petition an agency for a declaratory
 26 ruling under this section.

27 **Section 11.** That a NEW SECTION be added:

28 **1-26-52. Completion of rule promulgation**

- 29 **(1)** The promulgation of a permanent rule is complete when:
 30 **(a)** The agency completes the process under § 1-26-47;
 31 **(b)** A majority of the members of the multi-member body or the officer having
 32 the authority to promulgate the rule signs the rule;
 33 **(c)** The director of the Legislative Research Council signs the rule;

- 1 (d) The agency files a copy of the rule with the director of the Legislative
 2 Research Council in a form prescribed by the director to show any change
 3 to existing rules, for publication in the Administrative Rules of South
 4 Dakota;
- 5 (e) The agency files with the Office of the Secretary of State the rule and a
 6 certificate affirming that the rule is a true and correct copy of the rule as
 7 promulgated by the agency and that the agency has complied with the
 8 promulgation process under § 1-26-47; and
- 9 (f) The agency appears before the Interim Rules Review Committee and the
 10 committee declares the rule promulgation process to be complete.
- 11 (2) The promulgation of an emergency rule is complete when:
- 12 (a) The agency completes the process under § 1-26-48;
- 13 (b) A majority of the members of the multi-member body or the officer having
 14 the authority to promulgate the rule signs the rule;
- 15 (c) The director of the Legislative Research Council signs the rule;
- 16 (d) The agency files a copy of the rule with the director of the Legislative
 17 Research Council in a form prescribed by the director to show any change
 18 to existing rules, for publication in the Administrative Rules of South
 19 Dakota; and
- 20 (e) The agency files with the Office of the Secretary of State the rule and a
 21 certificate affirming that the rule is a true and correct copy of the rule as
 22 promulgated by the agency and that the agency has complied with the
 23 promulgation process under § 1-26-48.
- 24 (3) Any certificate required under this section must be a sworn affidavit of the officers
 25 authorized to promulgate the rule. If a rule is promulgated by a multi-member
 26 body, the certificate must be signed by the body's presiding officer.

27 **Section 12.** That a NEW SECTION be added:

28 **1-26-53. Department of Social Services -- Rules required by federal law**

- 29 (1) If federal law requires the secretary of the Department of Social Services to
 30 promulgate a rule, the secretary may submit to the director of the Legislative
 31 Research Council, in a form and manner to be determined by the director, without
 32 following the promulgation process set forth in § 1-26-47 or 1-26-48:
- 33 (a) A copy of the proposed rule;
- 34 (b) A copy of the federal law requiring the rule; and

- 1 (c) An affidavit stating that the proposed rule is required by the attached
2 federal law.
- 3 (2) The director shall review the proposed rule submitted under this subsection for
4 form, style, clarity, and legality in accordance with § 1-26-46, and shall provide
5 the agency with any recommendations for corrections, in writing, within three days
6 from the date of submission.
- 7 (3) The secretary shall incorporate any recommendation by the director under
8 subsection (2) and may file the proposed rule with the Office of the Secretary of
9 State five days after submission under subsection (1). Any rule filed under this
10 subsection is provisionally effective immediately upon filing or upon a later date as
11 may be required by the federal law.

12 **Section 13.** That a NEW SECTION be added:

13 **1-26-54. Effective Dates**

- 14 (1) A permanent rule is provisionally effective on the twentieth day following the day
15 on which the agency files the rule with the Office of the Secretary of State, not
16 including the day of filing, unless the rule or a statute specifies a later effective
17 date.
- 18 (2) A temporary emergency rule is provisionally effective immediately upon being filed
19 with the Office of the Secretary of State, unless the rule or a statute specifies a
20 later effective date. The rule will remain provisionally effective for no more than
21 ninety days.
- 22 (3) A rule is effective and may be enforced on the first day of July of the year following
23 the year in which the rule became provisionally effective.
- 24 (4) A rule is invalid unless the rule is promulgated in accordance with this chapter and
25 copies of the rule are made available by the agency to the public upon request.
- 26 (5) If an act of the Legislature prohibits an agency from promulgating a rule relating
27 to a specific subject, any rule promulgated by that agency relating to that subject
28 is void on the effective date of the act.
- 29 (6) If any statute that authorizes an agency to promulgate a rule is repealed or is
30 declared unconstitutional by the South Dakota Supreme Court or the Supreme
31 Court of the United States, any rule promulgated in accordance with the statute is
32 void unless another statute authorizes the agency to promulgate the rule.
- 33 (7) If an act of the Legislature or an executive order of the Governor transfers an
34 agency's authority to promulgate rules to any other agency, and the act or

1 executive order contains no provision for the disposition of the agency's rules, the
2 rules as promulgated become the rules of the other agency.

3 (8) No fewer than ten days before a permanent rule is provisionally effective, a person
4 may petition the agency that promulgated the rule to delay the effective date of
5 the rule. The agency shall grant or deny the petition, with or without a public
6 hearing, within ten days of the petition's filing. If the agency grants the petition,
7 the agency may delay the effective date of the rule for no more than ninety days.
8 The agency shall send a copy of the petition and a statement containing the basis
9 of the agency's determination to grant the petition to the chair of the Interim Rules
10 Review Committee. The agency shall file a copy of the statement with the Office of
11 the Secretary of State. An agency may delay a rule's effective date under this
12 subsection only once or may repeal the rule during the period of the delay.

13 (9) If any rule is proposed to have retroactive effect, the agency shall provide to the
14 committee the authority for the rule's retroactivity, or the basis for the agency's
15 determination that retroactivity is otherwise necessary.

16 (10) Within one year of the effective date of a rule, an action or proceeding may be
17 brought to contest the legality of any rule for failure to comply with the procedural
18 requirements of this chapter. Nothing in this subsection restricts a person's right
19 to initiate an action or proceeding to challenge the legality of any rule.