

AN ACT

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

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

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

1-26-4. The following procedure shall be complied with prior to the adoption, amendment, or repeal of any rule, except an emergency 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, or constitutional officer of the department to which it is attached;
- (2) Fifteen days after the service required by subdivision (1) or upon receiving the written approval of that officer to proceed, whichever comes first, and twenty days before the hearing, the agency shall serve the director with a copy of the proposed rules, a copy of any publication described in § 1-26-6.6, a copy of the fiscal note described in § 1-26-4.2, and a copy of the notice of hearing required by § 1-26-4.1. 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 hearing, the agency shall serve the Bureau of Finance and Management with a copy of the proposed rules, a copy of the fiscal note described in § 1-26-4.2, and a copy of 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 hearing;
- (4) The agency shall afford all interested persons reasonable opportunity to submit data, opinions, or arguments, either orally or in writing, or both, at a hearing held for that purpose. The hearing may be continued from time to time until its business has been completed. 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 hearing required by this subdivision;

- (5) For a period of ten days after the hearing, the agency shall accept written comments regarding the proposed rule, unless the entity promulgating the rule is a part-time citizen board, commission, committee, task force, or other multiperson decision maker, in which case the record of written comments shall be closed at the conclusion of the public hearing. However, the hearing may be specifically continued for the purpose of taking additional comments;
- (6) After the written comment period, the agency shall fully consider all written and oral submissions 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;
- (7) After reviewing the proposed rule, the director shall advise the agency of any recommended corrections to the proposed rule;
- (8) If the agency does not concur with any recommendation of the director, the agency shall appeal the recommended correction to the Interim Rules Review Committee for appropriate action; and
- (9) The agency shall serve the minutes of the hearing, a complete record of written comments, and a corrected copy of the rules on the members of the Interim Rules Review Committee.

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

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

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

- (1) Ten days have passed since all the requirements of § 1-26-4 have been completed or, if the rule is an emergency rule, three days have passed since all the requirements of § 1-26-5 have been complied with;
- (2) It has been signed by a majority of the members of the multi-member body or by the officer

having the authority to adopt it;

- (3) It has been signed by the director;
- (4) A copy has been filed with the director, in a form prescribed by the director to show amendments, deletions and other changes to existing rules, for use in preparation of copy for the Administrative Rules of South Dakota; and
- (5) The rule and a certificate have been filed with the secretary of state. The certificate shall affirm that the rule filed is a true and correct copy of the rule as adopted and that the agency has complied with § 1-26-4 or 1-26-5, and with this section.

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

Emergency rules are provisionally effective immediately after being filed. Notwithstanding § 15-6-6(a), all other rules are provisionally effective on the twentieth day after being filed, not counting the day of filing. In either case a later effective date may be specified as part of the rules being filed. A rule which is not yet effective or a provisionally effective rule may be suspended in the manner specified by § 1-26-38 any time prior to the first day of July of the year following the year in which it became, or would have become, effective. The rule's provisional status ends at that time, and it may not thereafter be suspended by the rules committee. Unless suspended, a provisionally effective rule shall be enforced by the agency and the courts as if it were not so conditioned.

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

Section 3. That § 1-26-5 be amended to read as follows:

1-26-5. Prior to the adoption or amendment of an emergency rule, an agency shall publish a notice of intent to adopt an emergency rule in the manner prescribed in § 1-26-4.1 and shall serve on the person specified by subdivision 1-26-4(1), each member of the interim rules review committee and

the director:

- (1) A copy of the proposed rule, which shall bear a special number to distinguish it from a permanent rule;
- (2) Any publication described in § 1-26-6.6 which shall be returned to the agency upon completion of the director's review and retained by the agency; and
- (3) A statement, with the reasons therefor, that the emergency procedure is necessary because of imminent peril to the public health, safety, or welfare, is necessary to prevent substantial financial loss to state government, or is necessary because of the occurrence of an unforeseen event at a time when the adoption of a rule in response to such event by the emergency procedure is required to secure or protect the best interests of the state or its residents.

An Act to revise the administrative rule process to reduce the number of document copies an agency must file when incorporating outside materials into administrative rules.

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I certify that the attached Act originated in the

SENATE as Bill No. 60

\_\_\_\_\_  
Secretary of the Senate

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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 60  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office this \_\_\_\_ day of \_\_\_\_\_ ,

19\_\_ at \_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_ , A.D., 19\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 19\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State