

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

400B0269

## HOUSE ENGROSSED NO. **SB60** - 2/18/98

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. Any

1 publication described in § 1-26-6.6 shall be returned to the agency upon completion  
2 of the director's review and retained by the agency. Also, twenty days before the  
3 hearing, the agency shall serve the Bureau of Finance and Management with a copy  
4 of the proposed rules, a copy of the fiscal note described in § 1-26-4.2, and a copy of  
5 the notice of hearing required by § 1-26-4.1;

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

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

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

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

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

- 1 (8) If the agency does not concur with any recommendation of the director, the agency  
2 shall appeal the recommended correction to the Interim Rules Review Committee for  
3 appropriate action; and
- 4 (9) The agency shall serve the minutes of the hearing, a complete record of written  
5 comments, and a corrected copy of the rules on the members of the Interim Rules  
6 Review Committee.

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

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

9 1-26-6. The adoption, amendment, or repeal of a rule ~~shall be~~ is complete when:

- 10 (1) Ten days have passed since all the requirements of § 1-26-4 have been completed or,  
11 if the rule is an emergency rule, three days have passed since all the requirements of  
12 § 1-26-5 have been complied with;
- 13 (2) It has been signed by a majority of the members of the multi-member body or by the  
14 officer having the authority to adopt it;
- 15 (3) It has been signed by the director ~~or his designee~~;
- 16 (4) A copy has been filed with the director, in a form prescribed by ~~him~~ the director to  
17 show amendments, deletions and other changes to existing rules, for use in  
18 preparation of copy for the Administrative Rules of South Dakota; and
- 19 (5) The rule, ~~together with any publication described in § 1-26-6.6,~~ and a certificate have  
20 been filed with the secretary of state. The certificate shall affirm that the rule filed is  
21 a true and correct copy of the rule as adopted and that the agency has complied with  
22 § 1-26-4 or 1-26-5, and with this section.

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

1       Emergency rules are provisionally effective immediately after being filed. Notwithstanding  
2 § 15-6-6(a), all other rules are provisionally effective on the twentieth day after being filed, not  
3 counting the day of filing. In either case a later effective date may be specified as part of the rules  
4 being filed. A rule which is not yet effective or a provisionally effective rule may be suspended  
5 in the manner specified by § 1-26-38 any time prior to the first day of July of the year following  
6 the year in which it became, or would have become, effective. The rule's provisional status ends  
7 at that time, and it may not thereafter be suspended by the rules committee. Unless suspended,  
8 a provisionally effective rule shall be enforced by the agency and the courts as if it were not so  
9 conditioned.

10       No rule adopted after June 30, 1975, is valid unless adopted in compliance with § 1-26-4 or  
11 1-26-5, and this section and copies of it are made available to the public upon request, by the  
12 agency.

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

14       1-26-5. Prior to the adoption or amendment of an emergency rule, an agency shall publish  
15 a notice of intent to adopt an emergency rule in the manner prescribed in § 1-26-4.1 and shall  
16 serve on the person specified by subdivision 1-26-4(1), each member of the interim rules review  
17 committee and the director:

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

1 to such event by the emergency procedure is required to secure or protect the best  
2 interests of the state or its residents.

1 **BILL HISTORY**

2 1/13/98 First read in Senate and referred to Commerce. S.J. 31

3 1/20/98 Scheduled for Committee hearing on this date.

4 1/20/98 Commerce Do Pass, Passed, AYES 7, NAYS 0. S.J. 113

5 1/20/98 Commerce Place on Consent Calendar.

6 1/21/98 Second reading of consent calendar items.

7 1/21/98 Second reading of consent calendar items. S.J. 148

8 1/21/98 Senate Do Pass, Passed, AYES 34, NAYS 0. S.J. 148

9 1/22/98 First read in House and referred to Commerce. H.J. 190

10 2/12/98 Scheduled for Committee hearing on this date.

11 2/12/98 Commerce Do Pass, Passed, AYES 13, NAYS 0. H.J. 597

12 2/12/98 Commerce Place on Consent Calendar.

13 2/13/98 Second reading of consent calendar items.

14 2/13/98 Second reading of consent calendar items.

15 2/14/98 House of Representatives Deferred to another day. H.J. 703

16 2/17/98 Motion to Amend, Passed. H.J. 695

17 2/17/98 House of Representatives Do Pass Amended, Passed, AYES 67, NAYS 1. H.J. 696