

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0183

SENATE ENGROSSED NO. **SB 18** - 01/15/2002

Introduced by: The Committee on State Affairs at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to permit the summary disposition of certain contested
2 cases.

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

4 Section 1. That § 1-26-18 be amended to read as follows:

5 1-26-18. Opportunity shall be afforded all parties to respond and present evidence on issues
6 of fact and argument on issues of law or policy. However, each agency, upon the motion of any
7 party, may dispose of any defense or claim:

8 (1) If the pleadings, depositions, answers to interrogatories, and admissions on file,
9 together with the affidavits, if any, show that there is no genuine issue as to any
10 material fact and a party is entitled to a judgment as a matter of law; or

11 (2) At the close of the evidence offered by the proponent of the defense or claim if it
12 determines that the evidence offered by the proponent of the defense or claim is
13 legally insufficient to sustain the defense or claim.

14 A party to a contested case proceeding may appear in person or by counsel, or both, may be
15 present during the giving of all evidence, may have reasonable opportunity to inspect all



1 documentary evidence, may examine and cross-examine witnesses, may present evidence in
2 support of ~~his~~ the party's interest, and may have subpoenas issued to compel attendance of
3 witnesses and production of evidence in ~~his~~ the party's behalf.

4 Section 2. That § 3-6A-38 be amended to read as follows:

5 3-6A-38. If a grievance remains unresolved after exhaustion of a departmental grievance
6 procedure, an employee may demand a hearing before the Career Service Commission as
7 provided for in contested cases in chapter 1-26 and proceedings shall be held as provided ~~therein~~
8 in chapter 1-26. The Career Service Commission shall provide notice of the hearing within thirty
9 calendar days of an employee's request for a hearing ~~and the~~. The commission shall conduct a
10 hearing within thirty calendar days of the notice of the hearing unless the hearing is continued
11 for good cause or unless the commission determines, upon the motion of any party, that the
12 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
13 affidavits, if any, show that a grievance, defense, or claim presents no genuine issue as to any
14 material fact and a party is entitled to a judgment as a matter of law. The Career Service
15 Commission, upon the motion of any party, may dispose of any grievance, defense, or claim at
16 the close of the evidence offered by the proponent of the grievance, defense, or claim if it
17 determines that the evidence offered by the proponent of the grievance, defense, or claim is
18 legally insufficient to sustain the grievance, defense, or claim. The commissioner shall schedule
19 the hearing to ensure compliance with the time frames provided in this section. If the grievant
20 agrees, the commissioner may appoint a hearing examiner as authorized in § 1-26-18.1.

21 Any final action or decision may be appealed pursuant to chapter 1-26.

22 Section 3. That § 3-18-15.2 be amended to read as follows:

23 3-18-15.2. If, after following the grievance procedure enacted by the governing body, the
24 grievance remains unresolved, except in cases provided for in § 3-6A-38, it may be appealed to

1 the Department of Labor, if notice of appeal is filed with the department within thirty days after
2 the final decision by the governing body is mailed or delivered to the employee. The Department
3 of Labor shall conduct an investigation and hearing and shall issue an order covering the points
4 raised, which order is binding on the employees and the governmental agency. However, the
5 department, upon the motion of any party, may dispose of any grievance, defense, or claim:

6 (1) If the pleadings, depositions, answers to interrogatories, and admissions on file,
7 together with the affidavits, if any, show that there is no genuine issue as to any
8 material fact and a party is entitled to a judgment as a matter of law; or

9 (2) At the close of the evidence offered by the proponent of the grievance, defense, or
10 claim if it determines that the evidence offered by the proponent of the grievance,
11 defense, or claim is legally insufficient to sustain the grievance, defense, or claim.

12 Nothing in this section may be interpreted as giving the department of labor power to grant
13 tenure or promotion to a faculty member employed by the Board of Regents.